Supreme Court of Kentucky

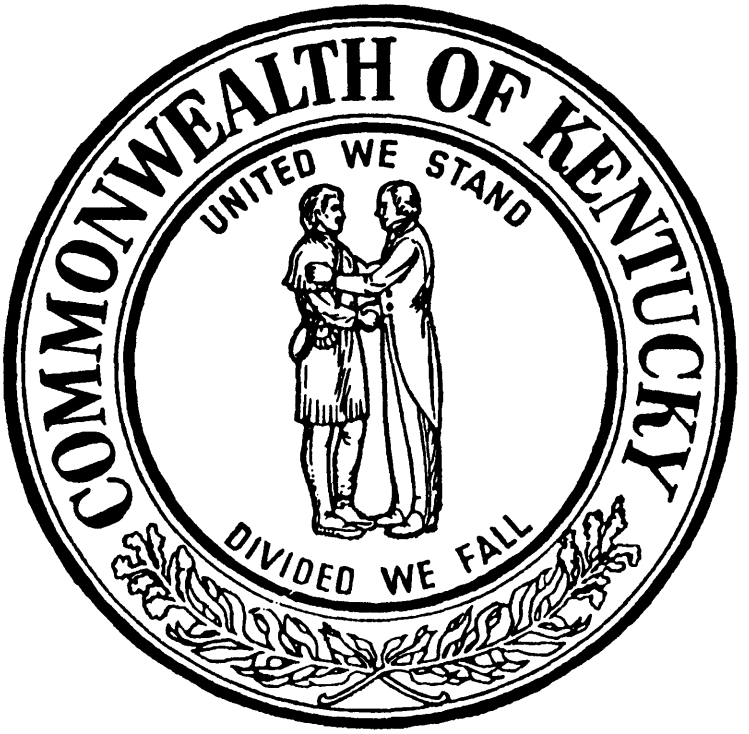
IN RE: **Order Approving Amendments to the Rules of Court, Practice and Procedure for the Eighth Judicial Circuit - Warren County**

The amendments to the Rules of Court, Practice and Procedure for the Eighth Judicial Circuit, Warren County, are hereby approved.

ENTERED: March 9, 2001.

CHIEF JUSTICE

COMMONWEALTH OF KENTUCKY
EIGHTH JUDICIAL CIRCUIT
RULES OF COURT
PRACTICE AND PROCEDURE



(REVISED DECEMBER 2000)

2000 LOCAL RULES

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RULE 1900. EXHIBIT RETENTION AND DISPOSAL

RULE 2000. AMENDMENTS

RULE 100. CITATION OF RULES

These rules apply to the practice of law in the Warren Circuit Court and shall be cited as "RWCC" or "Rules of Warren Circuit Court."

RULE 200. ORGANIZATION OF WARREN CIRCUIT COURT

Rule 201. DIVISIONS OF COURT

The Warren Circuit Court is a Court of continuous session, and the Court shall consist of numbered divisions, namely:

Division 1
Division 2
Division 3, Family Court

The Division 3, Family Court, has adopted its own set of local rules. The rules set forth herein shall govern Divisions 1 and 2, and Division 3 when it is not sitting as a family court.

Rule 202. TYPES OF CASES IN EACH DIVISION

The judges of each of the divisions shall hear criminal and civil cases and appeals. The judge of Division 3 shall hear family court cases as provided for in KRS 23A.010.

Rule 203. OTHER DIVISIONS

The judge of a division may preside and hear and determine any case or question in any other division when requested to do so by the judge of that division, or when the judge of that division is absent from the county or is not available.

Rule 204. ECONOMICAL LITIGATION DOCKET

All cases assigned to Divisions 1 and 2 falling substantially within the categories outlined in CR 89(1) will be assigned to the Economical Litigation Docket and operate under the SPECIAL RULES OF THE CIRCUIT COURT FOR THE ECONOMICAL LITIGATION DOCKET, CR 88-97, unless the judge assigned to the case decides otherwise.

Rule 205. TRANSFERS

After an action has been assigned to a division, the judge thereof may, with the concurrence of the judge of the other division, by joint order, transfer the action to the other division.

Rule 206. CONSOLIDATION OF CASES

When two or more actions have been filed that may, as a matter of right or in the discretion of the court, be consolidated and such actions are pending in different divisions of the court, any party to any of the actions may have any of the actions transferred by joint order to that division of the court in which the *first* of the actions was filed.

RULE 300. ASSIGNMENT OF CASES

All cases not assigned to Division 3, Family Court, shall be allotted equally and randomly between the two divisions of the court.

Rule 301. CIVIL CASES

Whenever a civil action is commenced by the filing of the original complaint with the circuit clerk, the clerk shall enter the case into the automated register which will

randomly and equally assign the case to one of the two divisions of the court. The clerk shall record the court division number on the face of the original complaint and include a duplicate of the register receipt in the court record. Thereafter, pleadings, motions, orders, and all papers in the case shall identify the division in which they are to be filed.

Rule 302. APPEALS TO CIRCUIT COURT

All cases appealed to circuit court shall be assigned in the same manner outlined in RWCC 301.

Rule 303. CRIMINAL CASES

Whenever a criminal action is commenced by an indictment, information, any petition for a writ, or any original petition, motion or request involving criminal proceedings, the clerk shall assign it in the same manner as outlined in RWCC 301, except as follows:

(a) In actions with multiple defendants, the clerk shall enter the case for the first defendant into the register which will automatically assign a case number and assign the case to one of the two divisions of the court. The first defendant's case number will receive the base case number, and all other co-defendants will be automatically assigned to the same division using the base number with a case number suffix.

(b) Any case dismissed without prejudice and refiled within one (1) year of the dismissal shall be assigned to the division from which the case was dismissed.

(c) Motions for post-conviction relief will be assigned to the same division in which the original action was assigned.

(d) Motions for review of bail brought in circuit court pursuant to RCr 4.54(1) will be heard by the judge of the division in which the grand jury is empaneled at the time the motion is filed. (See RWCC 600.)

RULE 400. CIVIL PRACTICE

Rule 401. MOTION DAYS

(a) Excepting legal holidays, and unless otherwise ordered by the court, the civil motion days of the court and the time of convening thereof shall be as follows:

Division 1: First and third Mondays of each calendar month; and

Division 2: Second and fourth Mondays of each calendar month.

(b) Civil motions will be heard at two starting times. The first group of cases filed for a particular motion day shall begin at 9:00 a.m., Central Time; and the next group of cases shall be set to begin at 10:30 a.m., Central Time.

(c) The clerk shall compile a motion docket on which will appear all cases to come before the court on motion day. Motion day shall commence with the call of the motion docket. At that time all routine or agreed upon matters that can be addressed without the need for a hearing will be considered before a second call of the docket to take up matters requiring a hearing. The court may assign another date and time for any motion requiring more than fifteen (15) minutes for a hearing. At the first call of the docket, counsel shall notify the court if the hearing may take more than fifteen (15) minutes. The moving party may withdraw its motion with proper notice to the opposing party. Otherwise, all parties must agree before a hearing can be canceled.

Rule 402. FILING AND SERVING OF MOTIONS, NOTICES OF RESPONSE

Each motion to be heard on a motion day shall be filed with the clerk and opposing parties, notified no later than closing time of the clerk's office on the Wednesday immediately preceding the motion day on which the motion is to be heard. Each motion shall be served on opposing counsel, or party not represented by counsel and entitled to notice, in conformance with CR 5.02. Service may not be accomplished by using the clerk's office mail slots. No motion shall be docketed unless filed in writing with the clerk.

A movant may bring a motion under the provisions of CR 78(2) which makes provision for the determination of motions without oral hearings upon brief written statements of reasons in support and opposition.

The movant shall give notice that the motion is made under CR 78(2) and shall direct the attention of the opposing attorney (or party if there is no attorney) to the fact that under this local rule the motion may be granted routinely by the court ten (10) days after filing unless a response is filed. The notice shall be substantially in the following form:

The foregoing motion is submitted to the court for decision pursuant to CR 78(2). This motion will routinely be granted by the court in ten (10) days unless a response is filed. The moving party has an affirmative duty to notify the clerk that its motion has been filed pursuant to CR 78(2).

Should the party opposing the motion under rule CR 78(2) wish to have a hearing on the motion, the party opposing the motion must so state in a written response, and

proceed to set the motion for a hearing, provided proper notice is afforded to the movant and all counsel of record (or party if not represented by counsel).

A motion to set a case for trial shall not be brought under CR 78(2).

Motions noticed under CR 78(2) should be limited to non-dispositive matters which can be acted on by the court without oral argument. However, notice under CR 78(2) may be appropriate in certain dispositive matters such as mortgage foreclosures.

Rule 403. CONTENT OF MOTIONS, PLEADINGS, AND ORDERS

Each motion shall bear a heading designating the relief sought in the motion and on whose behalf the motion is filed. Each motion shall specify the action of the Court requested by the movant and the subject matter thereof. Cases from federal or foreign jurisdictions cited in motions or memoranda in support shall be attached.

All motions, pleadings, and orders shall be typewritten, and shall be double spaced, except legal descriptions of real property, or citations from statutes, codes, cases or other legal publications. All motions, pleadings, and orders in excess of one (1) page shall have numbered pages.

Rule 404. TENDERED ORDERS

All motions may be accompanied by a tendered order. Tendered orders shall bear headings designating the relief granted and shall designate in the lower left corner all attorneys to whom copies shall be sent. If the attorney is from out of town or is a *pro se* litigant, their complete address must be listed in the tendered order.

Rule 405. MOTIONS FOR ATTORNEY'S FEES

(a) All motions for an attorney's fee shall be accompanied by an affidavit of counsel setting forth in detail the dates of the services rendered, the exact nature of the service rendered on each date, the names of the person rendering the service (if paralegal or someone other than counsel of record), and number of hours (or fractions thereof) rendered by each person for service rendered on each date. The number of hours shall be totaled, and a suggested reasonable amount of compensation per hour shall be set forth.

(b) The affidavit must also disclose the statute or other authority in support of the requested award of an attorney's fee. If the applicable statute is KRS 411.195, then the affidavit must also contain a showing that the requested attorney's fee was actually paid, or was agreed to be paid, by the party enforcing the written obligation. When a party seeking an award of an attorney's fee relies upon a writing to establish entitlement to the fee, a copy of the writing shall be attached with the applicable portion highlighted.

Rule 406. MOTIONS FOR DISCOVERY ORDERS

Counsel have the duty to make a good faith effort to resolve any disputes which arise in the course of discovery. Only if counsel are unable to resolve a discovery dispute may a motion to compel discovery, or for a protective order, or for sanctions, be filed pursuant to CR 26 and 37. The moving party shall attach to the motion a Certificate of Counsel that counsel have conferred and that they have been unable to resolve their differences. The certificate should detail the attempts of counsel to resolve the dispute.

Rule 407. EXHIBITS TO PLEADINGS AND MOTIONS

If any exhibit not already of record is referred to in a pleading, motion, or other papers filed with the court, it shall be filed and served upon the opposing party.

Rule 408. DEFAULT JUDGMENTS

(a) Motions for Default Judgment shall not be set for hearing and will be considered by the court without the necessity of counsel for movant or *pro se* movant appearing before the court.

(b) All motions for Default Judgment in claims involving a liquidated amount shall be accompanied by a Default Judgment Certificate as follows:

DEFAULT JUDGMENT CERTIFICATE

Plaintiff, by counsel, certifies that:

1) No papers have been served on plaintiff's counsel by the defendant(s) in default.

2) Defendant(s) were served on _____.

3) The balance due the plaintiff is as follows:

a) The amount of the original obligation is $_____.
b) The amount paid by defendant(s) to be deducted from the original obligation is $_____.
c) If the obligation contains pre-computed interest, and other pre-computed charges, the amount to be deducted by statute is $_____.
d) The balance due from defendant(s) is $_____.
e) If the balance due on line "d" above is different from the amount sought in the Default Judgment, the reason is:_____.

Rule 409. INTERROGATORIES AND REQUESTS FOR ADMISSIONS - CIVIL CASES

When answering interrogatories or request for admissions, or in filing objections, the replying party shall include the question or the request made immediately preceding the answer or objection.

RULE 500. PROCEDURES ON RULES OF CONTEMPT

To procure a show cause order in proceedings for contempt:

(A) A motion supported by a sufficient affidavit showing that applicant is entitled to the order must be filed.

(B) When this motion and affidavit are filed, an order may be issued *ex parte*, which shall not come on for hearing sooner than five (5) days from the date it is served, unless otherwise ordered.

(C) No order shall come on for hearing unless it has been served on the person named in the order by an officer authorized to serve a summons. The order shall contain a short statement of the grounds for its issuance.

RULE 600. CRIMINAL PRACTICE

Rule 601. GRAND JURIES

A grand jury shall be empaneled for each month during the year, with six (6) grand juries empaneled in each respective division of the court during each year. A grand jury shall be empaneled in Division 1 for the months of January, March, May, July, September, and

November. A grand jury shall be empaneled in Division 2 for the months of February, April, June, August, October, and December. The grand jury shall meet on each Wednesday of the month at 9:00 a.m., Central Time, unless otherwise ordered by the court.

Rule 602. CRIMINAL ARRAIGNMENTS

(a) All defendants who have been arrested, or otherwise notified of indictment, shall be arraigned no later than the first motion day for the assigned division following the return of the indictment or information, unless there is not sufficient time to give adequate notice of the arraignment, in which case the defendant will be arraigned the following motion day or as directed by the court.

(b) Both the defendant and counsel must be present at arraignment. If the defendant is not represented by an attorney, the court shall, before arraignment, appoint counsel if the defendant qualifies pursuant to KRS 31. Unless relieved by order of the court, the attorney appearing for the defendant at the arraignment shall represent the defendant in all future stages of the proceeding.

(c) At arraignment, the court shall assign a date certain for trial of the case, and a pretrial conference, if requested. If defendant is in custody, then bail shall be reviewed at that time. The court may, at any time, reassign the trial of a criminal case to another date.

Rule 603. CRIMINAL MOTIONS

(a) Excepting legal holidays, and unless otherwise ordered by the court, the criminal motion days of the court and the time of convening thereof shall be as follows:

Division 1: First and third Mondays of each calendar month, beginning at 1:00 p.m., Central Time; and

Division 2: Second and fourth Mondays of each calendar month, beginning at 1:00 p.m., Central Time.

The same local rules that govern civil motion practice, Rules 402, 403, 404, 405, 406, and 407, apply to criminal cases.

(b) Except as discussed in (c) below, all motions requiring an evidentiary hearing shall be noticed and docketed for motion day, at which time the court will set the hearing for a day and time certain.

(c) Evidentiary hearings for probation revocation motions, defendant's competency pursuant to KRS 504.100, and motions for post-conviction relief (RCr 11.42, CR 60.02, etc.) will be conducted at a date and time certain to be scheduled by the court.

Rule 604. DUPLICATES OF GRAND JURY VIDEOTAPES

(a) Upon request to the office of the Commonwealth's attorney, a defendant may procure a duplicate of any mechanical recording relating to his/her indictment pursuant to RCr 5.16. The "reasonable costs" referred to in RCr 5.16 is set at $15.00, plus the cost of the tape (or defendant may provide a good quality video tape), are all payable to the Commonwealth's attorney's office at the time the request is made.

Rule 605. PRETRIAL DIVERSIONS FOR CLASS D FELONIES

Pursuant to legislative mandate set forth in KRS 533.250(1), the Warren Circuit Court has enacted a pretrial diversion protocol for Class D felonies, which is attached hereto as Appendix A. The requirements enumerated therein will govern all pretrial diversions of Class D felonies.

RULE 700. NOTICES OF SETTLEMENT

Rule 701. NOTICES

When a civil or criminal action is settled by the parties, counsel for the parties shall promptly notify the court. Upon notice that a civil case has settled, the court will enter its own "Order of Dismissal (Case Reported Settled)," which dismisses the action, "without prejudice," and strikes the case from the court's active docket. Counsel may subsequently tender an agreed order to the court, dismissing "with prejudice."

Rule 702. COSTS

Failure to give prompt notice may be grounds for assessing any costs of jury usage against one or more of the parties or their counsel.

Rule 703. TRIAL DATES

If the case which is settled has been scheduled for trial, then the order entered dismissing the case as settled shall state when the case is set for trial and that said trial date is remanded from the court's docket.

RULE 800. WITHDRAWAL OF ATTORNEY

Rule 801. MOTIONS

An attorney of record shall move for permission to withdraw as counsel for a party only (i) upon the attorney's written request with the written consent of the attorney's client and the entry of appearance of a substitute attorney of record, or (ii) upon the attorney's written request with notice to the client and a showing of good cause with the consent of the court and upon such terms as the court shall impose.

Rule 802. PERMISSION

Within twenty (20) days of trial, or of a hearing on any motion for judgment or dismissal, an attorney of record shall not be permitted to withdraw from an action, in the absence of a compelling reason.

RULE 900. DEATH OF A PARTY

If a party dies during the pendency of an action, counsel representing the decedent shall notify all parties of the death by service of a statement of the fact of the death to be filed of record and served pursuant to the Kentucky Rules of Civil Procedure.

RULE 1000. OBJECTIONS DURING DEPOSITIONS

Any objection to evidence during a deposition shall be stated concisely and in a non-argumentative and non-suggestive matter. Counsel should recognize CR 32.02, which preserves objections to deposition testimony for trial or hearing, and CR 30.02(4)(e), the rule relating to videotape depositions that requires that all objections, except to the form of the question, be reserved

for ruling by the court and no later than ten (10) days before trial. A party may instruct a deponent not to answer only when necessary to preserve a privilege, to enforce limitation on evidence directed by the court, or to present a motion to terminate or limit examination.

RULE 1100. ELECTRONIC MEDIA AND STILL PHOTOGRAPHY COVERAGE OF JUDICIAL PROCEEDINGS

Rule 1101. APPLICABILITY

The Standards of Conduct and Technology Governing Electronic Media and Still Photography Coverage of Judicial Proceedings adopted by the Kentucky Supreme Court, effective July 1, 1981, are incorporated herein by reference in entirety. Deviation from these standards rests solely in the discretion of the presiding judge.

Rule 1102. REQUESTS FOR COVERAGE

Requests for coverage shall be filed not later than four (4) business days prior to commencement of the trial or other proceeding ("proceeding") sought to be covered, and shall specify whether the request applies to the entire proceeding or only selected portions thereof. Requests for coverage shall be in writing, addressed to the presiding judge, and filed with the court administrator in the Warren County Justice Center.

Upon receipt of a request for coverage, the court administrator will note the style and case number upon the request and file it with the record. The court administrator will also deliver a copy thereof to the presiding judge and immediately notify the attorneys for the parties (and/or any parties not represented by counsel) that such request has been filed and that a copy may be obtained from the case file.

A statement of objections to the coverage requested, together with the grounds therefor, shall be filed not later than three (3) business days prior to the commencement of the proceeding sought to be covered. If an evidentiary hearing is requested, the statement of objections should contain the number of witnesses to be presented and a brief synopsis of their testimony.

An evidentiary hearing may be held on such objections in the discretion of the presiding judge. In this event, attorneys and the media requesting coverage will be promptly notified of the hearing by the court administrator. The media requesting coverage must be represented by counsel at such evidentiary hearing.

Rule 1103. RULINGS ON REQUESTS FOR COVERAGE

Insofar as possible, the presiding judge will rule upon each request promptly, and the court administrator will notify the person making the request as far in advance as possible prior to the commencement of the proceeding.

Requests filed later than the time period provided will not be considered unless the presiding judge finds exceptional circumstances have prevented the filing of a timely request, and the parties consent to the coverage. Under no circumstances will the proceeding be delayed to accommodate an untimely request, nor will any request be considered if filed after the proceeding has commenced.

Rule 1104. PROSPECTIVE JURORS

No media coverage is permitted which will identify or depict any juror or prospective juror.

Rule 1105. ONGOING PROCEEDINGS

Insofar as practicable, the presiding judge or the court administrator will notify the media, in advance, of the schedule for the proceeding and recesses.

After provision is made for seating of counsels' staff personnel, reserve seating may be provided for one representative of each media granted leave to attend the proceeding.

Once a proceeding has begun, no one shall enter, move about, or leave the courtroom, except during court recesses or an emergency.

Spectators and media representatives may be permitted to enter the courtroom thirty (30) minutes prior to the beginning of each day of the proceeding. Ten (10) minutes before the session is to begin, reserved seats not taken will be made available to others.

Rule 1106. MEDIA ROOM

The court administrator may designate a media room to accommodate media representatives and necessary equipment for pooling of media resources. Only persons with media credentials shall have access to the media room.

Media representatives shall make every effort to remain in the media room so as not to impede court business.

RULE 1700. ALTERNATIVE DISPUTE RESOLUTION

Rule 1701. PREAMBLE AND SCOPE

The Warren Circuit Courts find that certain problem-solving techniques, commonly known as Alternative Dispute Resolution, often provide an efficient and cost-effective alternative to traditional litigation, and, further, that the use of Alternative Dispute Resolution methods may benefit and improve the judicial process for all citizens of this Commonwealth.

Alternative Dispute Resolution 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 differences.

This rule will refer primarily to mediation. Nothing in this rule shall prohibit parties from resolving disputes through other methods. The provisions of any specific rules regarding mediation shall take precedence over this general rule concerning Alternative Dispute Resolution methods.

Rule 1702. MEDIATION DEFINED

Mediation is an informal process in which a neutral third person or persons called a mediator or mediators act to facilitate 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.

Rule 1703. REFERRAL OF CASES

At any time, on its own motion or on motion of any party, the court may refer a case, or a portion of a case, for mediation or such other Alternative Dispute Resolution method as agreed upon by the parties. 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 on-going 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.

Rule 1704. NO STAY OF PROCEEDINGS

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

Rule 1705. APPOINTMENT OF MEDIATOR

Unless otherwise ordered, the parties shall agree upon a mediator or mediators or a mediation service within fifteen (15) days of the referral. If the parties cannot agree, they shall notify the court which will select a mediator or a mediation service.

Rule 1706. MEDIATOR COMPENSATION

The mediator shall be compensated at the rate agreed 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 by the parties or ordered by the court, the parties shall equally divide the mediator's professional fees. The court reserves the right to adjust who shall pay the mediator's fees as justice may require.

Rule 1707. MEDIATION PROCEDURE, TIME AND PLACE OF MEDIATION CONFERENCE

Following selection of the mediator, the mediator shall set an initial mediation conference within thirty (30) days. Unless, otherwise agreed or ordered, the mediation conference shall be held in the county in which the case is pending. 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.

Rule 1708. ATTENDANCE AT MEDIATION CONFERENCE

The parties must attend the mediation conference. Counsel of record for any party may attend the mediation conference. If a party is a public entity, it shall be deemed to 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 of the entity. If a party

is insured for the matter in dispute, that party is deemed to appear by the physical presence of a representative of the insurance carrier, who is not that carrier's outside counsel. This representative must be knowledgeable of the facts and have full authority to settle the case within the policy limits, if applicable. If a party is an organization other than a public entity or an insurance carrier for an insured party, it shall be deemed to 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 the representative present at the mediation does not have the requisite authority to settle the case, the court may require the party to pay the full cost for the mediation. The foregoing requirements of attendance may be varied by stipulation of the parties or by order of the court for good cause shown

Rule 1709. COMPLETION OR TERMINATION OF 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.

Rule 1710. 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 may also identify those matters which, if resolved or completed, would facilitate the possibility of a settlement.

Rule 1711. 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.

Rule 1712. CONFIDENTIALITY

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

(b) Mediation shall be considered 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. This privilege and immunity resides 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 1800. USE OF WARREN COUNTY JUSTICE CENTER FACILITIES

Requests to utilize the facilities of the Warren County Justice Center shall be made to the court administrator. The court administrator shall maintain a scheduling calendar indicating

dates and times when court facilities will be utilized in order to prevent scheduling conflicts and accommodate as many requests as possible. The court administrator shall draft and have available upon request a "Building Use Policy," that shall govern the use of the Warren County Justice Center.

RULE 1900. EXHIBIT RETENTION AND DISPOSAL

(A) The clerk shall take immediate custody of all exhibits introduced and retain same until disposed pursuant to other sections in this rule.

(B) Exhibits introduced by the commonwealth in a criminal action where a verdict of guilty was returned or a plea of guilty was entered shall be retained by the clerk for a period of two (2) years from the expiration of time for an appeal unless an order is entered by the court extending the time for retaining said exhibits. After the time period has expired, all exhibits shall be delivered to the commonwealth's attorney who shall review the exhibits and make a motion to the court as to which exhibits shall be declared contraband and which exhibits shall be declared forfeited under the applicable statutes.

(C) Exhibits introduced by the commonwealth in a criminal action wherein the defendant was found not guilty shall be delivered to the commonwealth's attorney or returned to the defendant as set forth in "(D)" below. The commonwealth's attorney shall make a motion to the court to have any property declared contraband or forfeited property as permitted by the statute and make a recommendation to the court regarding how the exhibits can be disposed. The commonwealth's attorney shall have the responsibility of disposing of all other exhibits except forfeited property or contraband in accordance with applicable law.

(D) Exhibits introduced by the defendant in a criminal action wherein the defendant was found not guilty shall be returned upon order of the court to the defendant or the defendant's attorney within thirty (30) days from notification by the clerk. If the defendant or the defendant's attorney does not pick up the exhibits within that time, the clerk shall dispose of said exhibits pursuant to the records retention schedule of the Administrative Office of the Courts, or as ordered by the court.

(E) In all civil cases, the clerk shall notify the attorneys for the parties that exhibits introduced during any proceedings in civil matters shall be picked up within thirty (30) days after the time for appeal has expired. If the attorneys do not pick up the exhibits within that time, the clerk shall dispose of the exhibits pursuant to the records retention schedule of the Administrative Office of the Courts or as ordered by the court.

(F) Exhibits too cumbersome to be included with the clerk's record on appeal shall be photographed by the clerk and the photograph included in the record in lieu of the exhibit. The exhibit itself will be returned for safekeeping to the party offering the exhibit unless otherwise ordered by the court.

RULE 2000. AMENDMENT

Prior to submission of any amendment of these rules for adoption by the Kentucky Supreme Court, notice and an opportunity to be heard shall be given to the Bowling Green-Warren County Bar Association. SCR 1.040(3).

These rules are to become effective upon certification and approval of the Chief Justice of the Commonwealth of Kentucky.

Respectfully Submitted,

THOMAS R. LEWIS, Judge
Eighth Judicial Circuit, Division 1

JOHN D. MINTON, JR., Judge
Eighth Judicial Circuit, Division 2

MARGARET RYAN HUDDLESTON, Judge
Eighth Judicial Circuit, Division 3, Family Court

APPENDIX A

Supreme Court of Kentucky

FILED

SEP 15 1999

ORDER

Pursuant to KRS 533.250, signed into law in May, 1998, the Pretrial Diversion Program for Class D Felons submitted by the 8th Judicial Circuit (Warren County) is hereby approved by the Kentucky Supreme Court and added to the Circuit's local rules.

Chief Justice

Entered: July 21, 1999

CLASS D FELONY PRETRIAL DIVERSION PROTOCOL FOR THE EIGHTH JUDICIAL CIRCUIT

I) 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 five (5) years, subject to certain conditions established by the Court.

II) Persons Eligible

KRS 533.250

A) Any person charged with a Class D felony, who has not had a felony conviction in the ten (10) years prior to commission of the current offense, or who has not been on felony probation or parole or released from felony incarceration within the ten (10) years prior to commission of the current offense, shall be eligible for pretrial diversion.

B) The person charged must enter a plea of guilty, or a plea pursuant to ***North Carolina v. Alford***, before becoming eligible for pretrial diversion.

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

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 fifteen (15) days before trial, any 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 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 Pretrial Services at AOC at 1-800-928-6381, or faxing the request to (502) 573-1669. **DO NOT** send requests to the local Pretrial Services Officer. KRS 533.252.

2) Interview and seek input from the victim and/or the 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, the Commonwealth must make written recommendations to the Court of conditions for the pretrial diversion, as well as the appropriate sentence to be imposed if the diversion agreement is unsuccessful. KRS 533.252(3).

IV) Order of Pretrial Diversion

A) The Court may, in its discretion, order pretrial diversion for eligible petitioners 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** include:

1) Restitution, if applicable.

2) Whether the diversion shall be supervised or unsupervised (and include supervision fees, if applicable).

3) Duration of the diversion.

4) Require defendant to obey all rules and regulations imposed by Probation and Parole.

5) As required by KRS 533.030(1) [conditions of probation-restitution], direct the defendant not to commit any offense during the period of the pretrial diversion. Specifically, direct the defendant to comply with any other provision of KRS 533.030 or any other condition the Court deems appropriate.

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

1) That the petitioner remain drug and alcohol free and be subject to random testing.

2) That the petitioner have no violation of the Penal Code or the Controlled Substances Act.

3) That the petitioner possess no firearm or any other deadly weapon.

D) Duration of the pretrial diversion shall not exceed five (5) years without agreement of the petitioner. Duration of the diversion agreement shall not be less than the time required to make restitution in full.

V) Voiding a Diversion Order — KRS 533.256

A) After a hearing, with notice to the Commonwealth and 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 law, based on his or her prior plea of guilt/plea pursuant to ***North Carolina v. Alford***.

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, the charges against the defendant shall be dismissed.

Approved this the 4th day of June, 1999, by John D. Minton, Jr., Chief Circuit Judge of the Eighth Judicial Circuit, and Steve Alan Wilson, Commonwealth's Attorney for the Eighth Judicial Circuit, to be effective immediately.

JOHN D. MINTON, JR., Chief Judge
Eighth Judicial Circuit

STEVE ALAN WILSON, Commonwealth's Attorney
Eighth Judicial Circuit

ADMINISTRATIVE OFFICE OF THE COURTS
100 MILLCREEK PARK
FRANKFORT, KENTUCKY 40601-9230
(502) 573-2350
FAX: (502) 695-1759

JOSEPH E. LAMBERT
CHIEF JUSTICE

CICELY JARACZ LAMBERT
DIRECTOR

July 28, 1999

Judge John D. Minton, Jr.
Chief Regional Circuit Judge
925 Center Street
Room 218
P.O. Box 3000
Bowling Green, KY 42101-3000

Re: Pretrial Diversion of Class D Felon

Dear Judge Minton:

Enclosed is the signed order approving your proposal for pretrial diversion of Class D Felons. The plan is now part of your local rules.

Sincerely,

Carol C. Ullerich
General Counsel

Enc

RECEIVED
WARREN CIRCUIT COURT
AUG - 5 1999