

Supreme Court of Kentucky

IN RE:

ORDER AMENDING

RULES OF CIVIL PROCEDURE (CR)

RULES OF CRIMINAL PROCEDURE (RCr)

2018-13

The following rules' amendments shall become effective January 1, 2019.

AMENDMENTS TO THE RULES OF CIVIL PROCEDURE (CR)

I. **CR 73.08 Certification of record on appeal**

CR 73.08 shall read:

The record on appeal as constituted under Rule 75 or Rule 76 shall be prepared and certified by the clerk of the court from which the appeal is taken within 10 days after the filing of the transcript of evidence by the court reporter. If the proceedings were taken exclusively by video recording, if no proceedings are to be transcribed, or if the appeal is from a Circuit Court order determining paternity, dependency, abuse, neglect, domestic violence, juvenile status offense, or involuntary termination of parental rights, then the record on appeal shall be certified by the clerk within 30 days after the date of filing the first notice of appeal. In Forma Pauperis cases, the time for certifying the record on appeal in cases taken exclusively by video recording or where there are no proceedings to transcribe shall run from the date the Motion to Proceed In Forma Pauperis is granted. If CR 76.03 applies to the appeal, the time for certifying the record shall begin to run as provided in CR 76.03. The appellate court, in its discretion, may extend the time for certification of the record upon motion and a showing of good cause.

II. CR 76.03(1) Prehearing conference

CR 76.03(1) shall read:

(1) This Rule, 76.03, applies to all civil actions appealed to the Court of Appeals, except prisoner applications seeking relief relating to confinement or conditions of confinement and appeals from Circuit Court orders determining paternity, dependency, abuse, neglect, domestic violence, juvenile status offense, or involuntary termination of parental rights.

III. CR 76.12(2) Briefs

CR 76.12(2) shall read:

(2) Time for filing.

(a) *Civil cases.* In civil cases, including workers' compensation appeals and excluding appeals from Circuit Court orders determining Paternity, Dependency, Abuse, Neglect, Domestic Violence, Juvenile Status Offense, or Involuntary Termination of Parental Rights, the appellant's brief shall be filed with the clerk of the appellate court within 60 days after the date of the notation on the docket of the notification required by Rule 75.07(6). The appellee's brief (or combined briefs, if the appellee is also a cross-appellant) shall be so filed within 60 days after the date on which the appellant's brief was filed. The appellant's reply brief shall be filed within 15 days after the date on which the last appellee's brief was filed or due to be filed. If the appellant is also a cross-appellee, a combined brief may be filed within 60 days after the date on which the last appellee's brief is filed or due to be filed. When a motion for discretionary review has been granted by the Supreme Court, the time in which the movant's brief must be filed shall be computed from the date of entry of the order granting review.

(b) *Civil appeals from Circuit Court orders determining Paternity, Dependency, Abuse, Neglect, Domestic Violence, Juvenile Status Offense, or Involuntary Termination of Parental Rights.* Appeals in these cases shall be expedited. The appellant's brief shall be filed with the clerk of the appellate court within 30 days after the date of the notation on the docket of the notification required by Rule 75.07(6). The appellee's brief shall be filed within 30 days after the date of filing of the appellant's brief. The appellant's reply brief shall be filed within 10 days after the date of filing of the appellee's brief. Motions for extension of time will not be considered except under extraordinary circumstances.

(c) *Criminal cases.* The times in which briefs are required to be filed in criminal cases shall be the same as in civil cases, except as follows:

(i) If counsel for the appellant is the Public Advocate of the Commonwealth or the Attorney General of the Commonwealth, or designee, the appellant's brief shall be filed within 60 days after the date on which the record on appeal was received by the clerk of the appellate court (notice of which shall be sent); and

(ii) If counsel for the appellant is someone other than the Public Advocate of the Commonwealth or the Attorney General of the Commonwealth, or designee, the appellee's brief shall be filed within 60 days after the date on which the appellant's brief was filed or within 60 days after the date on which the record on appeal was received by the clerk of the appellate court, whichever is the later.

AMENDMENTS TO THE RULES OF CRIMINAL PROCEDURE (RCr)

A. RCr 4.50 Exoneration of bond at the request of surety; Surrender the Defendant

New rule RCr 4.50 shall replace the current RCr 4.50 and shall read:

(1) At any time before forfeiture, any surety or any party acting at the request of the surety, may move the court before which the defendant has been held to answer, for exoneration from liability on the bond or recognizance and that any money or bonds that have been deposited as bail be returned to the surety. The motion must be in writing and served upon all parties.

(2) After a hearing upon the motion, for good cause shown, the court may exonerate the surety or sureties, subject to the interests of any valid lienholder, from liability on the bond or recognizance. Any money or bonds that have been deposited as bail shall be returned to the surety or sureties once the defendant is remanded to custody or released on such conditions required by the court.

B. RCr 13.10 Search Warrant: who may issue

RCr 13.10 shall read:

(1) Upon affidavit sufficient under Section 10 of the Kentucky Constitution and sworn, either in the presence of or through reliable electronic means, before an official authorized to administer oaths as provided in Rule 2.02 for the swearing of complaints, a search warrant may be issued by a judge, trial commissioner, or other official authorized by statute to issue search warrants.

(2) Where a reliable electronic means is being used in lieu of actual presence before an official authorized to administer oaths, the official administering the oath must be in oral communication with the person completing

the affidavit, so that the official administering the oath may comply with the requirements for administering oaths. The official administering the oath shall certify on the affidavit or an accompanying document that the oath was taken while in oral communication, and shall state the name and title of the official administering the oath and the time the affidavit was sworn.

(3) A copy of the search warrant and supporting affidavit shall be retained by the judge or other official issuing the warrant and promptly filed with the clerk of the court to which the warrant is returnable.

(4) The officer authorized to execute a search warrant shall make return thereof to the appropriate court within a reasonable time of its execution. The return shall show the date and hour of service.

C. **RCr 13.15 Biological Evidence**

RCr 13.15 shall read:


(1) The custodial agency holding evidence, pursuant to a valid court order, involved in a criminal prosecution of a defendant where the penalty of death, life without parole, or life without parole for 25 years is imposed shall preserve all biological evidence for as long as the defendant remains incarcerated under the sentence.

(2) Upon request, all biological evidence shall be made available to defendants enumerated in subsection (1) and said defendants may seek appropriate relief notwithstanding any other provision of the law.

(3) "Biological evidence" includes the content of sexual assault examination kits, and any item that contains blood, semen, hair, saliva, skin tissue, fingernail scrapings, bone, bodily fluids, or other identifiable biological material that is collected as part of a criminal investigation which may reasonably be used to incriminate or exculpate any person for a criminal offense.

All sitting. All concur.

ENTERED: August 20, 2018


CHIEF JUSTICE