

Supreme Court of Kentucky

IN RE:
ORDER AMENDING
RULES OF THE SUPREME COURT (SCR)

2016-09

The following rules' amendments shall become effective January 1, 2017.

I. SCR 9.000 Monitoring of District Court Probationers by Private Agency

SCR 9.000 shall read:

KRS 533.010 (12) permits a court to order a defendant to submit to probation monitoring by a private agency when the court deems it in the best interest of the defendant and the public to do so. The following rules shall apply when a district court orders a private agency to supervise a defendant who has been convicted of a misdemeanor or traffic offense and placed on probation as an alternative sentence to imprisonment.

II. SCR 9.010 When Referral to a Private Agency is Permitted

SCR 9.010 shall read:

A district court may refer a defendant convicted of a misdemeanor or a traffic offense to a private agency for monitoring in accordance with KRS 533.010(12) only when probation monitoring services are not being and cannot be performed by a governmental agency, a not for profit agency or volunteers.

III. SCR 9.020 Requirements of Private Agency

SCR 9.020 shall read:

To receive referrals from the district court, the private agency must agree in writing that it will:

- A. be an independent contractor and not an agent, servant, or employee of the court;
- B. have no individual or fiduciary financial relationship with a judge of the district in which the agency has been approved to provide services, nor with the judge's spouse, nor with a minor child of the judge residing within the judge's household;
- C. not have as a principal officer, director or trustee, or the spouse of said officer, director or trustee, anyone related by blood or marriage within the third degree of

relationship to any judge or the spouse of any judge in the district for which the agency has been approved to provide services;

D. maintain liability insurance in an amount equal to a minimum of \$1 million dollars and provide proof thereof to the district court on an annual basis, with copy of same submitted to the Administrative Office of the Courts;

E. accept pro bono referrals from the district court on a proportional basis with all other private probation companies providing approved services to a district court;

F. provide the district court on an annual basis a written schedule of fees to be charged, including a sliding scale fee schedule for indigent defendants based upon the individual's ability to pay, with copy of same submitted to the Administrative Office of the Courts;

G. assess fees in strict conformity with the fee schedule submitted to and approved by the district court;

H. report to the district court on a monthly basis all pro bono cases referred to such agency by the court and whether such agency accepted or rejected the pro bono referral and, if rejected, the reasons for such rejection;

I. maintain accurate and complete accounts of all monies received from the defendant, in accordance with proper accounting practices and procedures, and provide any such accounting upon request by the court;

J. report to the district court, as often as the court requires, on the defendant's progress and compliance with his or her terms of probation or conditional discharge;

K. establish and maintain policies and/or procedures for the confidential receipt and investigation of complaints made by defendants alleging abusive behavior of the agency's employees, agents, or representatives, and provide proof thereof to the district court on an annual basis, with copy of same submitted to the Administrative Office of the Courts;

L. establish and maintain training and/or certification requirements for the agency's employees, agents, or representatives who supervise defendants, and provide proof thereof to the district court on an annual basis, with copy of same submitted to the Administrative Office of the Courts;

M. not prepare, tender, or present warrants, orders, or motions to the district court concerning any defendant under the agency's supervision; and

N. not collect any fines, fees, or court costs for or on behalf of the district court.

IV. SCR 9.030 Requirements of District Court in referring a convicted offender to a private agency

SCR 9.030 shall read:

When utilizing a private agency for probation monitoring, the district court must:

A. assure the private agency has no discretion as to the terms or conditions of probation, including, but not limited to the condition of or the amount of restitution;

B. assure the private agency shall not collect any fines, fees, or court costs for the district court;

C. approve all fees to be charged by the private agency, and assure all fees actually charged comply with the approved schedule of fees submitted to the district court;

D. advise the defendant, in accordance with KRS 439.315(7), of his or her right during the pendency of the defendant's probation or conditional discharge to petition the court to modify or vacate its previous judgment or order on the grounds of change of

circumstances with regard to the defendant's ability to pay the fee charged by the agency;

E. assure that no defendant's probation is revoked due to nonpayment of the fee charged by the agency unless, in accordance with KRS 439.315(4), the court has held a hearing to determine why the fee has not been paid. Failure without good cause to pay the fee shall be grounds for the revocation of probation; however, the inability to pay the fee does not constitute good cause, and probation shall not be revoked based solely on the defendant's inability to pay;

F. assure the private agency and its employees, agents, or representatives shall not prepare, tender, or present warrants, orders, or motions to the district court concerning any defendant under the agency's supervision;

G. assure no employee of the private agency is seated inside the bar within the courtroom;

H. assure the terms of probation or conditional discharge are clearly stated on the court's docket or other forms provided by the Administrative Office of the Courts and not on forms provided by the private agency;

I. assign pro bono cases proportionately to all private agencies approved by the district court to provide services to the court;

J. assure that all private agencies report to the district court on a monthly basis all pro bono cases referred to such agency by the court and whether such agency accepted or rejected the pro bono referral and, if rejected, the reasons for such rejection;

K. keep and, with appropriate redactions, make available upon written request all records and supporting documentation provided by the private agency to the district court pursuant to SCR 9.020; and

L. maintain a list of all private probation monitoring agencies in the district that have met the requirements of this rule.

V. SCR 9.040 Disqualification

SCR 9.040 shall read:

Non-compliance with this rule by any private agency shall constitute grounds for the district court to deny or rescind approval for the private agency to provide services to the district court.

All sitting. All concur.

ENTERED: December 7th, 2016.


CHIEF JUSTICE