

# Supreme Court of Kentucky

IN RE:  
ORDER AMENDING  
THE FAMILY COURT RULES OF PROCEDURE AND PRACTICE (FCRPP)

2020-01

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This order is effective February 1, 2020 and replaces the current Family Court Rules of Procedure and Practice (FCRPP) with the following:

## I. GENERAL PROVISIONS

### FCRPP 1 Title, Purpose, and Scope

(1) Kentucky's Family Court represents an institutional change intended to improve the delivery of court services to families and children. The Family Court Rules of Procedure and Practice supplement the statutes, rules and procedures governing Family Law cases with rules and procedures which further assist the court, counsel, and parties in achieving the Court's objective while preserving the rule of law. See generally *Kuprion v. FitzGerald*, 888 S.W.2d 679 (Ky.1994).

(2) These rules constitute a separate section of the Kentucky Rules of Civil Procedure and shall be known as the Kentucky Family Court Rules of Procedure and Practice. They may be cited as such, or by the abbreviation "FCRPP." KRS 403.130(1).

(3) These Rules shall apply to the procedure and practice in all family law actions including dissolution of marriage; custody and child support; parenting time, time-sharing, and visitation; property division; maintenance; domestic violence; paternity; dependency; neglect or abuse; termination of parental rights; and adoption; or any and all other causes of action exclusively within the jurisdiction of Family Court. Procedural rules for special statutory proceedings shall prevail over any inconsistent FCRPP. CR 1.

(4) Self represented litigants shall be held to knowledge of these rules.

(5) The Kentucky Rules of Civil Procedure, Rules of Criminal Procedure, and Rules of Evidence shall apply to family law cases to the extent that they are not inconsistent with these rules.

(6) Child parenting time, time-sharing, and visitation are synonymous for the purpose of these rules unless, under the facts of the case, the law requires otherwise.

(7) No local rules, practices, procedures, orders, or other policies of any district or circuit may conflict with or controvert these rules; further, in the event that any such local

rules, practices, procedures, orders, or other policies are or otherwise conflict with these rules, these rules shall prevail.

## II. DISSOLUTIONS AND PROPERTY DIVISION

### FCRPP 2 Preliminary Matters

**(1) Original Pleadings.** All original pleadings, including forms, in a dissolution action shall be signed by the preparer, filed with the clerk of the court, and if applicable, shall include, unless otherwise ordered by the court, the following:

- (a) A verified petition;
- (b) Proof of service;
- (c) A verified response, or a verified entry of appearance in lieu of a response;
- (d) A verified separation agreement, unless filing is waived by the court pursuant to KRS 403.180(4)(b);
- (e) The Final Verified Disclosure Statement;
- (f) A verified waiver of notice of final hearing;
- (g) A verified deposition or interrogatories for proof of the allegations of the petition if done without a hearing;
- (h) A divorce education certificate, if required by the court; and
- (i) A child support work sheet.

**(2) Multiple Actions.** When actions concerning the same underlying claims are filed in different circuit courts within this state, the first action filed shall be the controlling action, subject to transfer by the court of that circuit on a motion for forum non conveniens or other appropriate legal grounds. A motion for transfer shall be filed prior to or with the response. On notice to the parties, the courts in both circuits may confer concerning proper venue.

**(3) Preliminary Mandatory Disclosure.** A preliminary disclosure statement, which is verified and contains the information required in the official AOC form, AOC-238 (Preliminary Verified Disclosure Statement), shall be exchanged between the parties within 45 days of service of the petition on the respondent, and objections thereto shall be exchanged 21 days thereafter but the disclosures shall not be filed in the record unless ordered by the court or required by local rule.

**(4) Execution of Releases.** Within 14 days of receiving a written request, made outside of formal discovery, for a signed release for specific information and/or documents, the party requested shall sign and return the release(s) unless a motion is made pursuant to CR 26 for a protective order. Such release(s) shall contain a provision directing that any information and/or documents provided to the requesting counsel or pro se party shall

simultaneously be provided to opposing counsel or the pro se party, all at requesting party's expense. Non-compliance with this rule may be grounds for a motion to compel discovery pursuant to CR 37.

**(5) Status Quo Orders.**

(a) Financial Matters: Without limiting a party's relief under CR 65, upon notice and evidentiary hearing, a court may enter a temporary status quo order preserving and maintaining the marital estate and assigning responsibility for payment of ongoing expenses. Any such order may be entered on the official AOC form, AOC-237 (Status Quo Order), and may include, but is not limited to, the provisions contained in Appendix A.

(b) Parenting Conduct: If the court believes that it is in the best interest of the child, the court may, either sua sponte or on motion of a party, enter a parenting status quo order. Any parenting conduct order may be entered on a form prescribed by the Administrative Office of the Courts and may include, but is not limited to, any provision contained in Appendix B. The provisions in Appendix B are not binding upon the parties unless ordered by the court in the action.

**(6) Case Management.**

(a) *Mediation.*

(i) The parties may agree to mediate at any time. After notice and opportunity to be heard and unless prohibited by KRS 403.036 (domestic violence), the parties may be ordered to mediate any issues before further proceedings.

(ii) Within 14 days of a final mediation, if the parties have been unable to resolve all issues, the petitioner shall file a motion for a case management conference or final hearing date, unless previously scheduled by the court.

(b) *Case Management Conference.*

(i) Unless notice is given to the court that a case is being mediated, within 60 days of service of the petition upon the respondent, the petitioner shall file a motion for a case management conference.

(ii) Both parties and their counsel shall attend the conference, unless otherwise ordered by the court.

(iii) Each party shall file the following documents at least 7 days prior to the conference:

(a) Any related motions; and

(b) Any stipulations or agreements reached.

(iv) In the event of failure of a party or parties to appear at the conference, the court may, in accordance with its order, conduct a hearing in which proof may be taken or the case dismissed, as the court may determine appropriate. No case shall be dismissed based solely on a party's failure to attend the case management conference without the issuance of a show cause order and service of that order on the absent party and counsel of record, if any, by mail to his or her last known address. The notice shall clearly and plainly state that failure to attend the next scheduled court appearance could result in dismissal of the action and termination of all

temporary orders, including temporary orders of custody, parenting time, time-sharing, visitation, child support, and maintenance.

**(7) Trial.** The trial shall not be continued except as otherwise ordered for good cause shown.

**(8) Temporary Motions.**

(a) All ex parte motions shall either be verified or supported by an affidavit, one of which states sufficient grounds for a restraining order or injunctive relief under CR 65; if granted, the motion shall be set for hearing with all parties at the earliest available date.

(b) Any pendente lite motions shall be served on the opposing party and set for a hearing before the court unless otherwise agreed to by the parties.

(c) Simultaneously filed motions may be supported by a single affidavit.

**(9) Contempt Motions, Generally**

(a) All motions for contempt shall include the date of entry and specific provision of the order allegedly violated.

(b) All motions for contempt shall be under oath, either verified or accompanied by affidavit, and describe with particularity the conduct claimed to violate the court's order.

(c) When contempt is alleged by motion, the court shall make an initial determination whether there is sufficient cause to believe its order was violated. If the court determines sufficient cause does not exist, then no show cause order shall be issued; otherwise, once service of the show cause order is effectuated on the alleged contemnor or his or her counsel, if any, the court shall schedule an evidentiary hearing.

**FCRPP 3 Obtaining Decrees and Judgments**

**(1) Matters Not Requiring a Trial.**

(a) If the parties agree on all claims, a final judgment, decree of legal separation, or decree of dissolution of marriage may be obtained without a trial by filing a motion or agreed order to submit the case for final disposition. The parties shall comply with any local rule requiring additional filings.

(b) A judgment or decree is not final until the original is signed by the court and entered by the clerk.

(c) When the parties agree on some, but not all, of the claims, their agreement shall be signed by them and their counsel, if any, before it is submitted to the court for approval and entry.

**(2) Default Cases (Other Than Custody and Parenting Time).**

(a) In all cases of default, the motion to submit for judgment or decree shall certify:

(i) That no answer, pleadings, or other papers have been received by the moving party or his or her counsel, if any, from the party in default;

(ii) The date the defaulting party was personally served with the initiating pleading and that 20 days have elapsed since the date of service, or, if the defaulting party was served by warning order attorney, the date the warning order attorney filed his or her report and that 50 days have passed since entry of the order appointing the warning order attorney; and,

(iii) The date, address, and manner of service of the motion for default and/or notice to submit the case for default judgment, and that the defaulting party is not on active military duty. If the defaulting party is on active military duty, the movant must also certify that the Servicemembers Civil Relief Act has been followed.

(b) An evidentiary hearing shall be conducted on all claims for custody and parenting time, notwithstanding the absence of the party in default.

**(3) Matters Requiring a Trial.**

(a) If the parties do not reach an agreement on any or all claims, a trial shall be held, on motion, as set by the court.

(b) The final verified disclosure statement shall contain the information required in the official AOC form, AOC-239 (Final Verified Disclosure Statement), which is available for use in compliance with this rule. A party need not file a final verified disclosure statement if the party files, or has filed, his or her preliminary verified disclosure statement and also files an affidavit attesting that there has been no change in the party's financial circumstances since the filing of the preliminary financial disclosure statement. The affidavit must contain the information required in the official AOC form, AOC-239.2 (Affidavit of No Change in Circumstances Requiring the Filing of a Final Verified Disclosure Statement), which is available for use in compliance with this rule.

(c) If financial claims are being tried, both parties shall:

(i) Serve a copy of the final verified disclosure statement and any supporting documentation, or the affidavit in (b) above, on the opposing party 21 days prior to trial unless otherwise ordered by the court; and

(ii) File the same with the court no later than 14 days prior to trial.

**(4) Evidence and Exhibits.**

(a) If otherwise admissible under the Kentucky Rules of Evidence, a court-appointed expert's report shall be admitted into evidence and may be considered by the court without further evidentiary foundation or testimony of the expert,

unless a party subpoenas the expert to testify or the court orders otherwise. The party who subpoenas a court-appointed expert to trial or for deposition shall pay the expert's fee for appearance, unless otherwise ordered by the court.

(b) No later than 14 days before trial, unless otherwise ordered or affirmatively waived, the parties shall exchange a list of exhibits and witnesses that each intends to use or have testify at trial. Witnesses shall be identified by name, address, and summary of anticipated testimony. Exhibits or witnesses not identified pursuant to this rule shall be excluded at trial except for good cause shown. This rule is not intended to limit the admissibility of rebuttal evidence. These pretrial deadlines do not alter discovery deadlines set by the civil rules.

(c) In addition to the discovery material set out in CR 5.06, the party who notices a deposition, propounds an interrogatory, or requests an admission shall be the custodian of the original, which shall not be filed in the court record without leave of the court.

**(5) Severability of Claims.** The court may sever claims for which there is the right of trial by jury or are outside the scope of KRS 23A.100. Such severed claims may be re-filed in the court of appropriate jurisdiction.

## COMMENTARY

FCRPP 3 applies to final evidentiary hearings. Application of this rule to interlocutory hearings is subject to the discretion of the court.

### **FCRPP 4 Procedures Before the Domestic Relations Commissioner**

**(1)** In jurisdictions having no family court, the circuit judge may appoint a domestic relations commissioner, who shall serve at the pleasure of the court. The court may refer domestic relations matters under KRS Chapter 403 to the domestic relations commissioner, except for domestic violence proceedings, contempt proceedings and injunctive relief proceedings. Any local rules relating to domestic relations commissioners shall be approved by the Chief Justice and be uniform in all divisions of circuit court within each county of each circuit.

**(2)** Each domestic relations commissioner shall have been licensed to practice law for at least eight years at the time of appointment, unless otherwise authorized by the Chief Justice, and shall satisfy the annual continuing legal education minimum requirement with domestic relations law education. Additionally, each domestic relations commissioner shall attend a training program, at least once every two years, which focuses on the dynamics and effects of domestic violence including the availability of community resources, victims' services and reporting requirements. Domestic relations commissioners shall not otherwise engage in the practice of domestic relations law.

**(3)** The domestic relations commissioner shall hear all matters and file a report promptly pursuant to KRS 454.350(2). Testimony may be heard orally before the commissioner or by deposition or interrogatory. All actions involving indigents shall be heard by the commissioner without fee. Proceedings before the commissioner shall be recorded by audio or video and a recording log shall be kept. The domestic relations

commissioner shall file the recorded hearings and the recording log in the record with the clerk of the court. Transcriptions shall not be required for any purpose within this Rule.

**(4)** The domestic relations commissioner shall have the authority to make recommendations to the judge regarding motions for temporary orders of custody, support and maintenance. All temporary and final decrees and orders shall be entered by the court upon review of the recommendations of the domestic relations commissioner as set forth below:

(a) Within 10 days after being served with a copy of the commissioner's recommendations, any party may file written objections thereto with the court. After hearing the court may adopt the recommendations, modify them, or reject them in whole or in part, or may receive further evidence or may recommit them for further hearing.

(b) The circuit court shall sign any recommended temporary or post-decree order within 10 days after the time for filing exceptions has run unless a motion for a hearing on the exceptions has been filed. All temporary recommendations of the domestic relations commissioner which become orders of the court shall be without prejudice and subject to the court's de novo review on final hearing.

(c) If the parties stipulate that the commissioner's findings of fact shall be final, only questions of law arising upon the recommendations shall thereafter be considered.

(d) All final decrees shall be entered by the court within 20 days of submission if no exceptions have been filed. If exceptions have been filed, entry of the final decree shall occur within 10 days of disposition of the exceptions.

**(5)** For any case assigned, the domestic relations commissioner shall receive a fee of \$60 per hour, assessed at a rate of \$15.00 for each quarter hour or part thereof. Such fees shall be paid through the office of circuit court clerk to the commissioner and shall be due on the fifth working day following the conclusion of the hearing. No more than \$600 shall be assessed in any case regardless of the number and length of hearings unless recommended by the circuit judge and approved by the Chief Justice for extraordinary circumstances shown. If a case is reopened additional fees totaling not more than \$200 may be assessed. No more than \$15 shall be assessed in any uncontested divorce.

**(6)** The compensation of domestic relations commissioners shall be by fee charged upon the parties, or paid out of any fund or subject matter of the action which is in the custody or control of the circuit court. This compensation shall be paid to the circuit court clerk, who shall issue payment to the commissioner.

**(7)** All domestic relations commissioners shall be limited in their total personal compensation derived from fees to not more than \$48,000 per annum unless approved by the Chief Justice. Fees in excess of the personal compensation of the commissioner shall be remitted to the Administrative Office of the Courts with the annual accounting for all amounts received.

**(8)** The Administrative Office of the Courts shall establish audit and accounting standards, prescribe bookkeeping and accounting practices and procedures, and otherwise perform audits and oversee the financial accounts of domestic relations

commissioners. A copy of any audit shall be submitted by the Administrative Office of the Courts to the chief judge of the circuit. In the event that the audit reveals an accounting or other irregularity, a copy shall also be submitted to the Chief Justice.

(9) The commissioner shall not retain his or her recommendations as security for his or her compensation. When the party ordered to pay the compensation allowed by the court does not pay it after notice and within the time prescribed by the court, that party may be subject to civil contempt.

## **FCRPP 5. Maintenance**

### **(1) Motions to Establish or Modify Temporary or Permanent Maintenance.**

(a) All motions to establish or modify temporary or permanent maintenance shall be accompanied by the following:

- (i) A statement from movant setting forth the amount of maintenance requested;
- (ii) Copies of the movant's last three pay stubs or, if movant is self-employed, proof of the movant's current income;
- (iii) An affidavit setting forth movant's monthly expenses and income and the monthly income of the party against whom the motion is brought, if known;
- (iv) The most recently filed federal and state income tax return; and
- (v) The notice of hearing accompanying the motion, which shall contain the following statement "You must file with the Court, at least 24 hours prior to the time of the hearing, copies of your last three pay stubs, or if self-employed, proof of your current income, your most recently filed federal and state income tax returns and an affidavit setting forth your monthly expenses and income."

(b) At least 24 hours prior to the hearing, the responding party shall file with the court, and serve the movant with copies of the following information:

- (i) His or her last three pay stubs or, if self-employed, proof of current income;
- (ii) His or her most recently filed federal and state income tax returns; and
- (iii) An affidavit setting forth his or her monthly expenses and income.

## **III. CUSTODY, PARENTING TIME, AND SUPPORT**

### **FCRPP 6 General Provisions**

(1) The provisions of this section shall apply to all actions in which there are disputes regarding custody, parenting time, or support.

(2) A parent or custodian may move for, or the court may order, one or more of the following, which may be apportioned at the expense of the parents or custodians:

- (a) A custody evaluation;



- (b) Psychological evaluation(s) of a parent or parents or custodians, or child(ren);
- (c) Family counseling;
- (d) Mediation;
- (e) Appointment of a guardian *ad litem* for a child(ren);
- (f) Appointment of a friend of the court or *de facto* friend of the court;
- (g) Appointment of such other professional(s) for opinions or advice which the court deems appropriate; or,
- (h) Such other action deemed appropriate by the court.

**(3)** The court or domestic relations commissioner shall conduct a hearing on any motion for temporary custody, parenting time, maintenance, or support, within 60 days of filing the motion except for good cause stated on the record. Nothing herein prevents the parties from entering into an agreement on these issues.

**(4)** In all proceedings for the dissolution of marriage in which children of the marriage are minors, or in any custody proceedings, the court may order the parents or custodians and children to participate in counseling or divorce education on a case-by-case basis, which shall be at the expense of the parties.

### **COMMENTARY**

Particular attention should be paid to the distinction between a guardian *ad litem* appointed under subsection (2)(e) and a friend of the court appointed under subsection (2)(f). A guardian *ad litem* is an attorney advocating for the best interest of the child and should be appointed with that role in mind. *Morgan v. Getter*, 441 S.W.3d 94 (Ky. 2014). “The GAL should not file reports, testify, make recommendations, or otherwise put his own or her own credibility at issue.” *Id.* at 114. By contrast, a friend of the court or *de facto* friend of the court is an investigator who advises the court. He or she may make recommendations and file reports, and he or she is subject to cross-examination by the parties’ counsel. Use of the AOC form orders of appointment is required to avoid conflating these two roles and to provide clarity to appointed persons, counsel, and parties. Nothing in this rule is intended to limit the scope of the court’s authority under KRE 706, KRS 403.290, or KRS 403.300.

### **FCRPP 7 Custody**

**(1)** Unless otherwise ordered by the court, in any action in which the permanent custody or time-sharing of the child(ren) is in issue, each party shall, not less than 14 days prior to the day set for hearing, provide the other party(ies) with a list of the names and addresses of every person and a short statement of the subject of their testimony, other than a parent or the child(ren) of the parents, expected to be called as a witness, as well as a list of exhibits to be entered.

## **(2) Relocation.**

### **(a) Joint Custody**

(i) Before a joint custodian seeks to relocate, written notice shall be filed with the court and served on the non-relocating joint custodian.

(ii) The written notice shall include the proposed relocation address, date of relocation and the effect, if any, of relocation on court-ordered time-sharing.

(iii) If court-ordered time-sharing is affected by the proposed relocation, within 20 days of the filing of the notice, the relocating joint custodian shall file an agreed order or a motion to modify the existing time-sharing order.

(iv) Within 20 days of service of the notice, the non-relocating joint custodian may file a motion to modify custody or time-sharing.

### **(b) Sole Custody**

(i) Before a sole custodian seeks to relocate, written notice shall be filed with the court and served on the non-custodial parent.

(ii) The written notice shall include the proposed relocation address, date of relocation and the effect, if any, of relocation on court-ordered time-sharing.

(iii) If the court-ordered time-sharing is affected by the relocation, within 20 days of service of the notice, the non-custodial parent may file a motion contesting the change in time-sharing.

## **COMMENTARY**

Pursuant to KRS 403.770, if the relocating custodian has an active Emergency Protective Order or Domestic Violence Order against the other parent or custodian, the relocating custodian must not be required to disclose to the other party the relocation destination. The court and clerks will strictly comply with the statutory mandates set forth in KRS 403.770. If the domestic violence action is not pending in the same circuit, the court may require the relocating custodian to disclose the relocation destination provided only if the location is filed under seal, with strict confidentiality maintained by the court and clerk, and the location is not disclosed to the opposing party.

## **FCRPP 8 Parenting Time**

**(1)** Parenting time orders shall be based upon the best interest of the child(ren); and the court may consider:

(a) The Sample Parenting Time Guidelines set forth in Appendix C;

(b) Parenting time guidelines established by local court rule; or

(c) Parenting time guidelines agreed to by the parties in writing.

**(2)** A motion to modify parenting time shall set forth facts supporting the requested modification and be verified or accompanied by an affidavit. The court may deny the motion if the alleged facts fail to state adequate cause to proceed.

## COMMENTARY

The intent of Sample Parenting Time Guidelines is to assist the court in drafting its own parenting time orders. The court should not presume a model parenting time schedule is in the best interest of a particular child. Parenting time orders must be supported by case-specific findings as required under CR 52.01. See *Drury v. Drury*, 32 S.W.3d 521 (Ky. App. 2000).

### **FCRPP 9 Child Support**

**(1)** Once support has been set by the court, it shall continue in full force and effect unless modified by the court, or ended by operation of law.

**(2)** An order directing the payment of support shall be entered utilizing the AOC-152 (Uniform Child Support Order and/or Wage/Income Withholding Order), which is the form prescribed by the Administrative Office of the Courts pursuant to KRS 205.713 and KRS 205.802. This form shall be located on the Court of Justice website and shall include the following:

- (a) The amount and frequency of the support payments;
- (b) That the payment shall be paid
  - (i) By wage/income withholding, to begin immediately; or,
  - (ii) If wage/income withholding is not ordered to begin immediately for good cause shown, as ordered by the court and as directed in KRS 403.215; or,
  - (iii) According to a written agreement reached between both parties which provides for an alternative arrangement to wage/income withholding.
- (c) In non-IV-D cases the federal Income Withholding for Support (IWO) form OMB 0970-0154, and in IV-D cases the state CS-89, shall be utilized to notify the employer/income withholder of any wage/income withholding ordered by the court.
- (d) The party responsible for medical and other ordered expenses of the child(ren); and,
- (e) The social security numbers of the parties and child(ren), CR 7.03 notwithstanding.

**(3)** Notice of any wage/income withholding shall be served upon the employer and the employee as follows:

- (a) In non-IV-D cases, the OMB 0970-0154 shall be accompanied by the underlying AOC-152.
- (b) In IV-D cases, the CS-89 shall be utilized.

### **(4) Motions to Establish or Modify Child Support**

(a) A motion to establish or modify child support shall be accompanied by the following:

- (i) A completed child support guidelines worksheet with movant's portion completed.
- (ii) Copies of the movant's last three pay stubs or, if movant is self-employed, proof of the movant's current income.
- (iii) The most recently filed federal and state income tax returns.
- (iv) Verification of the cost of health insurance for the child(ren) only.
- (v) A notice of hearing with the motion's hearing date or notice that the court will set the hearing, and the following statement: "You must file with the Court, at least 24 hours prior to the time of the hearing, a completed child support guidelines worksheet and copies of your last three pay stubs or, if self-employed, proof of your current income and the most current federal and state tax returns."

(b) The responding party shall file the following information with the court and serve the movant at least 24 hours prior to the hearing:

- (i) A completed child support worksheet.
- (ii) Copies of the respondent's last three pay stubs or, if self-employed, proof of current income.
- (iii) The most recently filed federal and state income tax returns.
- (iv) Verification of the cost of health insurance for the child(ren) only.

(c) In addition, in cases that are Title IV-D cases, counsel shall certify, prior to the hearing being held, that reasonable efforts were made to resolve all the issues in dispute.

#### **IV. DOMESTIC VIOLENCE AND INTERPERSONAL PROTECTIVE ORDERS**

##### **FCRPP 10 Issuance of Summons**

**(1)** If an emergency protective order or temporary interpersonal protective order is not issued due to an insufficient relationship as identified in KRS 403.720(2) or (5), or KRS 456.030(1) or for failure to state an act or threat of domestic violence, dating violence and abuse, stalking or sexual assault between the parties, the finding of the insufficient relationship or failure to state an act or threat of domestic violence, dating violence and abuse, stalking or sexual assault shall be noted on the petition by the judge, and no summons shall be issued.

**(2)** If the relationship is one recognized under KRS 403.720(2) or (5) and there is a finding of domestic violence and abuse, dating violence and abuse, stalking or sexual assault and a finding of immediate and present danger, an emergency protective order or temporary interpersonal protective order shall be issued.

**(3)** If there is no finding of an immediate and present danger of domestic violence and abuse, dating violence and abuse, stalking or sexual assault when the relationship is one recognized under KRS 403.720(2) or (5), or KRS 456.030(1) but the court determines that domestic violence and abuse, dating violence and abuse, stalking or sexual assault exists, a summons shall be issued and a hearing shall be held to determine if a domestic violence order or interpersonal protective order should be issued. Any finding at the hearing shall constitute an appealable order.

(4) If a summons is issued for a minor child pursuant to KRS 403.730, service shall be in the manner prescribed in CR 4.04(3). If the minor child has no guardian or committee, a guardian *ad litem* shall be appointed pursuant to CR 17.03(2) and KRS 387.305.

## COMMENTARY

This rule is about civil protection orders and not about the automatic IPO issued post-conviction in criminal cases.

### FCRPP 11 Contempt Proceedings

(1) No petitioner shall be held in contempt for failure to appear at a domestic violence or interpersonal protective order hearing or for failing to prosecute a civil or criminal contempt violation of a protective order except for good cause shown on the record. Failure to appear may result in denial of the petition.

(2) When the court conducts contempt proceedings in domestic violence or interpersonal protective order actions, the party subject to contempt shall be represented by counsel, unless waived, and an attorney shall be appointed by the court if the party qualifies as an indigent.

### FCRPP 12 Reissuance of Emergency Protective Order or Temporary Interpersonal Protective Order Upon Transfer to Another Circuit

When the local protective order protocol requires that a case be transferred to another circuit due to a pending dissolution case, any active emergency protective order or active temporary interpersonal protective order shall continue and the summons shall be re-issued by the initiating court, pursuant to KRS 403.740(4), for a period not to exceed 14 days if service has not been made on the adverse party by the date of transfer, or as the court determines is necessary for the protection of the petitioner. Thereafter, reissuance of the summons shall occur as needed in the court of transfer.

## V. PATERNITY ACTIONS

### FCRPP 13 Genetic Testing

When paternity is an issue in any action, the court may order the mother, child and the putative father to submit to genetic tests as follows:

(1) In a case in which paternity is denied or in which the parties request genetic testing, on motion made by any party, a pretrial order shall be entered by the court forthwith which requires both parties and the child to submit to genetic tests in accordance with KRS 406.081 or 406.091 unless an agreed order is entered.

(2) Within 30 days of receipt of the genetic report, the petitioner shall file the original report with the court in support of a motion to dismiss, a motion for trial or a motion for summary judgment. This does not preclude prehearing conferencing in the interim which may extend the 30 days by agreement or resolve the issues.

(3) In those cases in which the genetic test report excludes the defendant from the paternity of the child, the court, after the expiration of 30 days from the date of the filing of the exclusionary report, shall enter an order of dismissal in favor of the defendant unless a motion for additional testing pursuant to KRS 406.091 is filed prior to the expiration of the 30 days.

## **VI. POST-DECREE AND POST-FINAL ORDER**

### **FCRPP 14 Post-Decree and Post-Final Order Service**

All motions filed more than six months after the entry of a Decree of Dissolution or a final order shall be served on the party at the last known address and upon the attorney of record, if any, by ordinary mail.

## **VII. DEPENDENCY, NEGLECT OR ABUSE**

### **FCRPP 15 Orders in Dependency, Neglect or Abuse Actions**

Any order entered in a dependency or neglect or abuse action shall be on the appropriate Administrative Office of the Courts forms. The forms must be signed by the Court with an actual signature or appropriate electronically produced signature made at the time the order is authorized and completed. Faxed or scanned original signatures are acceptable. A stamped signature, verbal order, or pre-signed order is not authorized under these rules and shall not be used. This rule does not preclude supplemental orders or orders for which there is no appropriate Administrative Office of the Courts forms.

### **FCRPP 16 Notice in Dependency, Neglect or Abuse Actions**

**(1) Judicial Notice.** In making any determinations with regard to a child in a dependency or neglect or abuse action, the court may consider the findings of fact and court orders from any other court proceeding in any other court file involving the child or the child's parents or the person exercising custodial control or supervision, if the court is aware of such proceedings. To the extent that the court relies on such, the court shall include a copy of that material in the record.

**(2) Notice and Opportunity to be Heard.** Prior to any court proceedings under KRS Chapters 620 and 625 with respect to the child, the state child welfare agency shall inform the court of the name and address of the child's foster parents, pre-adoptive parents and any relatives who are providing care for the child. The clerk shall provide written notice of such proceedings to all parties, the child's foster parents, pre-adoptive parents, and any relatives who are providing care for the child. The foster parents, pre-adoptive parents or any relative who is providing care for the child shall have an opportunity to be heard and may be subject to cross examination but shall not be designated as a party to such a proceeding solely on the basis of such notice and right to be heard. If the parent/custodian against whom a petition has been filed is present when the permanent custody hearing is set, that parent shall be given written notice while in court, which is sufficient notice under this rule.

## **FCRPP 17 Service**

(1) A copy of the petition and summons, and an emergency custody order, if any, shall be served upon parents or persons exercising custodial control or supervision or who have been awarded legal custody by a court or claims a right to legal custody under the law of this state. It may be served by any person authorized to serve process except an employee of the Cabinet for Health and Family Services.

(2) If the location or identity of a parent or person exercising custodial control is unknown, the petition and summons shall be served as directed by the court, which may include service on the nearest known adult relative, service by mail to the last known address, or other service directed by the court and given in a manner reasonably calculated to give actual notice. Service may be by warning order if other means are not effective. The petitioner shall identify the nearest known adult relative in the petition.

(3) A notice and statement of the rights and a blank affidavit of indigency, which contain the contents of the official AOC forms, AOC-DNA-2.2 (Notice of Emergency Removal), and AOC-DNA-11 (Financial Statement, Affidavit of Indigence, Request for Counsel and Order) shall be served with the emergency custody order. The official AOC forms are available for use in compliance with this rule.

## **FCRPP 18 Emergency Custody Orders in Dependency, Neglect or Abuse Actions**

(1) Any request for an emergency custody order in a dependency, neglect or abuse case shall be in writing and shall be accompanied by an affidavit for emergency custody order which contains the contents of the official AOC form, AOC-DNA-2.1 (Affidavit for Emergency Custody Order), and which alleges dependency, or abuse or neglect. The affidavit shall be presented to the judge with any other documentation presented at the time of the filing of the request. The official AOC form may be utilized for compliance with this rule.

(2) An affidavit for an emergency custody order may be sworn, either in the presence of or through reliable electronic means, before an official authorized to administer oaths. The presentation of the affidavit to the Court and the administration of the oath may be made in person or by reliable electronic means.

(3) When 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 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 communication with the affiant and shall state the name and title of the official administering the oath and the time the affidavit was sworn.

(4) The person seeking the emergency custody order shall indicate on the affidavit whether there are other proceedings pending, or any orders of custody, related to the child in the Commonwealth or any other state.

(5) The emergency custody order shall be entered using the official AOC form, AOC-DNA-2 (Emergency Custody Order). In no event shall a child be removed pursuant to KRS 620.060 only on a verbal order.

(a) Upon issuance of an emergency custody order by the judge, the person seeking the emergency custody order shall file the emergency custody order and the affidavit with the clerk no later than the close of the next work day and the clerk shall assign a case number.

(b) If not filed with the emergency custody order, a petition shall be filed with the clerk within 72 hours of taking the child into custody in the same case file as the emergency custody order and affidavit.

(c) The court may, after issuing an emergency custody order, transfer the case for forum non conveniens to the county where the dependency, abuse or neglect is alleged to have occurred and shall notify the court to which the case is being transferred, upon issuance of the transfer order.

### **FCRPP 19 Petition**

(1) A petition pursuant to KRS Chapter 620 shall contain the contents of the official AOC form, AOC-DNA-1 (Juvenile Dependency/Neglect or Abuse Petition), which is available for use in compliance with this rule. In proceedings involving siblings, separate petitions shall be filed for each child and individual case numbers shall be assigned by the clerk of the court, but all siblings' files shall be assigned to the same judge.

(2) When a petition is filed a copy shall be mailed or provided by the clerk to the parents or other person exercising custodial control or supervision, the state child protective service agency, the county attorney, any guardian *ad litem*, and any counsel of record, no later than the business day following the filing of the petition.

(3) Pursuant to KRS 620.070(1), a petition may be filed by any interested person.

### **FCRPP 20 Notice of Temporary Removal Hearing**

The clerk shall provide notification of the temporary removal hearing to the parents or other person exercising custodial control or supervision, county attorney, the state child protective service agency, any guardian *ad litem* (or by statute, counsel for the child), any counsel of record and any foster parent(s) caring for the children, if that information is provided by the Cabinet to the clerk.

### **FCRPP (21) Continuances**

(1) If the court grants an extension of time or a continuance for any hearing other than the annual permanency hearing, it shall make written or oral findings on the record that the continuance is necessary in the best interest of the child, for discovery or presentation of evidence or witnesses, to protect the rights of a party, or for other good cause shown.

(2) The annual permanency review hearing shall be conducted at least annually and shall not be continued beyond 12 months from the placement of the child in foster care for any reason, including good cause.



## COMMENTARY

Pursuant to 45 C.F.R. 1356.21(b)(2)(i), the state child welfare agency must obtain a judicial determination that it has made reasonable efforts to finalize the permanency plan that is in effect (whether the plan is reunification, adoption, legal guardianship, placement with a fit and willing relative, or placement in another planned permanent living arrangement) within 12 months of the date the child is considered to have entered foster care and at least every 12 months thereafter while the child is in foster care. Under 45 C.F.R. 1356.21(b)(2)(ii), if such a judicial determination is not made, the child becomes ineligible under title IV-E at the end of the month in which the judicial determination was required to have been made, and remains ineligible until such a determination is made.

### **FCRPP 22 Dismissal**

Once filed, a petition shall be dismissed only upon court order.

### **FCRPP 23 Transfer**

Cases shall not be transferred from one county to another prior to adjudication except on a specific finding of improper venue or forum non conveniens.

### **FCRPP 24 Appearances**

Any attorney appearing on behalf of a party in a dependency, neglect or abuse action shall file a written entry of appearance unless an order appointing the attorney as guardian *ad litem* (or by statute, counsel for the child), or court-appointed counsel has been entered. An attorney shall not withdraw from representation except upon motion to withdraw granted by the court.

### **FCRPP 25 Records and Transcripts**

(1) Any electronic or stenographic record of interviews with children, including a recording of any in-camera proceedings, shall be filed under seal with the clerk and may be made available to the parties or their counsel on motion and written order of the court.

(2) In courts that have more than one county in their jurisdiction any recordings made in a county other than where the action is filed shall be delivered to the clerk of the county where the action is filed by the court ordering the hearing.

### **FCRPP 26 Reports**

Any dispositional report shall be filed, and a copy, electronic or otherwise, provided to the court, the guardian *ad litem*, pro se litigants, and all counsel of record, seven days prior to a dispositional hearing and shall contain the contents of the official AOC form, AOC-DNA-12 (Dependency, Neglect or Abuse Dispositional Report), which is available for use in compliance with this rule.

## **FCRPP 27 Case Plan and Case Progress Reports**

The court shall require the following to be filed in the court record and provided to all parties:

- (a) The out of home case plan;
- (b) Any visitation agreement for the case plan or the case permanency plan; and,
- (c) Any prevention plan or safety plan developed by the child protective service agency.
- (d) The state child welfare agency shall provide the names and addresses of the child's foster parents, pre-adoptive parents or relatives providing care to the child, court appointed special advocate, and foster care review board member assigned to the case with the case permanency plan or case progress report filed with the court on a form prescribed by the Administrative Office of the Courts.

## **FCRPP (28) Reviews**

**(1) Permanency Progress Review.** In addition to the annual permanency hearing mandated by KRS 610.125, the court shall conduct a permanency progress review no later than 6 months after a child is placed in foster care, in the home of a non-custodial parent, or other person or agency, when that child was sixteen years of age or younger at the time of the filing of a dependency, neglect or abuse petition.

**(2) Independent Living Review.** In addition to the permanent placement review and the annual permanency hearing, and when the child remains in foster care or committed to the state child welfare agency, the court shall conduct an independent living review at least 6 months prior to the child turning 18 years of age to ensure that training on independent living and other appropriate services have been included in the case plan and are being provided to the child.

### **(3) Qualified Residential Treatment Program Review.**

(a) CHFS shall file a notice and request for a review hearing with the court within 5 days of placing a child into a qualified residential treatment program (QRTP) stating the date of placement, the name of the provider, and the location of the placement.

(b) Within 30 days of a child's placement in a QRTP, CHFS shall file with the court an assessment of the appropriateness and necessity of the child's placement in the QRTP. The assessment shall include all information required by Family First Prevention Services Act of 2018.

(c) The court shall review every placement of a child in a QRTP and make findings within 60 days of the placement regarding the appropriateness and necessity of the placement. The findings shall include:

- (i) A review of the assessment required in paragraph (b) of this section.

- (ii) A determination whether the needs of the child can be met through placement in a foster family home or, if not, whether placement of the child in a qualified residential treatment program provides the most effective and appropriate level of care for the child in the least restrictive environment and whether that placement is consistent with the short- and long-term goals for the child, as specified in the permanency plan for the child; and
- (iii) An approval or disapproval the placement.

### **FCRPP (29) New Action**

Any new allegation or request for removal after a child has achieved permanency shall be filed as a new action.

## **VIII. ADOPTION AND TERMINATION OF PARENTAL RIGHTS**

### **FCRPP (30) Venue and Petition**

**(1) Venue.** When filed in the same county in which a KRS Chapter 620 proceeding has been held, a proceeding under KRS Chapter 625 shall be assigned to the same family court division that heard the KRS Chapter 620 action. Otherwise, venue shall proceed according to KRS 625.050(4).

#### **(2) Petition.**

(a) A separate petition shall be filed for each child and individual case numbers shall be assigned by the clerk of the court in proceedings filed pursuant to KRS Chapters 199 and 625, and in the case of siblings, shall be heard by the same judge.

(b) Every petition in an adoption or termination of parental rights action shall include the case number of any underlying juvenile case, specifically dependency, neglect or abuse or termination of parental rights cases, and shall include the name of any guardian *ad litem* (or by statute, counsel for the child) previously appointed.

### **FCRPP (31) Adoption**

**(1)** No request for final hearing shall be made prior to the filing of the state child protective service agency report pursuant to KRS 199.510.

**(2)** In the event of an uncontested adoption, a hearing shall be held within 60 days of the filing of a request for a final hearing.

**(3)** A continuance of any final hearing date shall not be granted except upon good cause shown. Annual permanency review hearings shall continue to be held in any dependency, neglect and abuse action as required by FCRPP (21) until finalization of the adoption.

### **FCRPP (32) Involuntary Termination**

(1) Immediately upon the filing of any petition for involuntary termination of parental rights, the petitioner shall obtain a pretrial date. In the event the parents are not served prior to the pretrial date, the pretrial date shall be used as a case status review to expedite the proceeding.

(2) A continuance of any final hearing date shall not be granted except upon good cause shown. The annual permanency review hearings shall continue to be held in any dependency, neglect and abuse action as required by FCRPP (21) until permanency is achieved.

(3) Any party who relies upon facts of record in another court action to prove a matter in a termination for parental rights action shall move for the admission of the relied-upon court record, including any video recording, into the court record of the termination of parental rights action. Any court record admitted under this rule shall be certified in the record of any appeal of the termination of parental rights judgment.

### **FCRPP (33) Orders Terminating Parental Rights**

The clerk of the court shall send two certified copies of the order terminating parental rights to the state child protective agency. The prospective adoptive parent or his or her attorney, if any, may obtain a certified copy of the order terminating parental rights from the state child protective agency to attach to the adoption petition.

### **FCRPP (34) Post-Termination of Parental Rights Review**

If an order terminating parental rights is entered, a copy of the order shall also be certified to the record in the underlying dependency, neglect and abuse case which shall be identified in the order. The clerk of the court in the underlying dependency, neglect and abuse case shall docket the matter for a review hearing within 90 days from the date of the entry of the order of termination of parental rights and shall docket the matter as directed by the court at least annually thereafter until permanency is achieved.

## **IX. COURT-APPOINTED COUNSEL**

### **FCRPP 35 Standards for Court-Appointed Counsel**

(1) Rules 35 through 38 shall apply to the appointment and conduct of court-appointed counsel, including guardians *ad litem* and those representing adults, in any action under KRS Chapters 199, 620, and 625.

(2) In addition to Rules 35 through 38, court-appointed counsel shall follow the Statewide Standards of Expected Conduct for Court-Appointed Counsel (the Statewide Standards) set forth in Appendix D. Each Circuit or District may deviate from the Statewide Standards by way of local rule, if approved by the Chief Justice.

(3) Proposed local standards for court-appointed counsel shall set forth the conduct expected of court-appointed counsel. Local standards should incorporate

American Bar Association and/or National Council of Juvenile and Family Court Judges best practices standards.

### **FCRPP 36 Appointment and Retention**

(1) Each judge shall keep a list of approved court-appointed attorneys. The attorney list shall include each attorney's phone number, physical address, and electronic mail address. Attorneys shall be responsible for updating the judge with any changes to required information.

(2) Each judge's list should be open to any attorney who is in good standing, satisfies the requirements of these rules, and requests to serve. No attorney shall be appointed exclusively as guardian *ad litem* or as an attorney representing an adult.

(3) Courts may impose sanctions, including removal from the appointment list and any active cases, on any attorney who does not comply with these rules. The court shall not remove an attorney from an active case if doing so would harm the client.

(4) Except for guardians *ad litem*, courts shall not appoint counsel unless the file contains a completed AOC-DNA-11 (Financial Statement, Affidavit of Indigence, Request for Counsel, and Order (DNA/TPR Cases)), and the court has reviewed the form. An exception to this rule shall be if the court takes sworn proof on the record regarding the party's alleged indigency and makes a specific written finding that the party seeking counsel is indigent. In that event, the party must complete the AOC-DNA-11 form and file that form into the record within five business days following the appointment or the appointment shall be vacated. This rule is not applicable to warning order attorney service under Civil Rule 17.

(5) Judges shall review their attorney lists at least every four years.

(6) Each judge shall make his/her attorney list available to the public upon verbal request.

(7) Judges, or their designated clerk, shall appoint counsel sequentially from the list unless:

(a) Another attorney has previously represented that person;

(b) Appointing the attorney would create a conflict; or

(c) The specific and unique circumstances of a party requires, in the interest of justice, that a non-sequential attorney be appointed who has specific and identifiable attributes which would best fit the party's circumstances.

### **Commentary**

Any proceeding with multiple children pending with a common parent(s) with concurrent actions pending should be considered one case, which also includes situations in which there have been multiple petitions adjudicated and disposed of simultaneously involving the same child or children. A proceeding shall be considered active for purposes of this rule from the filing of the petition until permanency is achieved.

FCRPP 36(4) is not intended to prevent courts from coordinating potential representation to appear at the initial hearing as potential appointees.

FCRPP 36(7)(c) is not intended as a mechanism for unnecessary selective appointments. It is intended to be a mechanism for appointing attorneys in certain rare circumstances in which the client's interests could be harmed by the appointment of the next sequential attorney. For instance, the provision might be applicable for appointing an attorney of the same sex to represent a child who was sexually assaulted by someone of the opposite sex.

### **FCRPP 37 Required Training**

(1) Each attorney seeking appointment in an action under KRS Chapters 199, 620, and 625 shall have completed the required dependency, neglect and abuse training provided by the Administrative Office of the Courts.

(2) Each attorney shall complete a minimum of four hours of relevant legal or multi-disciplinary training every two years. Relevant legal education must include instruction on improved practice and current law regarding dependency, neglect and abuse, termination of parental rights, or related proceedings. Multi-disciplinary training must include instruction on child development, trauma-informed care and approaches, substance abuse disorder, child welfare forensics, impact of the Americans with Disabilities Act, or other matters related to practice in actions under KRS Chapters 199, 600, and 625. Court-appointed counsel shall provide proof that he or she has completed the required training to the appointing authority in each Circuit or District to remain eligible for appointments.

### **FCRPP 38 Duties Regarding Representation and Repayment**

(1) Each indigent party or child is entitled to court appointed counsel to file or defend an appeal brought from a decision of the Circuit or District Court. Once an appeal is filed, the appeal will be a new case requiring a new appointment; however, efforts should be made to appoint the same counsel from the prior case unless there is a conflict of interest or a new appointment is requested by the attorney, the child, or the adult parent or caregiver who is entitled to appointed counsel.

(2) To reduce administrative costs, Courts shall not approve multiple payments to court-appointed counsel for work on the same case except for good cause shown.

### **Commentary**

FCRPP 38(2) is intended to apply to multiple payment requests made in the same case. It does not prohibit a single payment request that does not meet the maximum allowable fee. Also, it does not prohibit multiple payments for the same client, provided that the payments are requested for different actions (i.e., multiple trailers, appeals).

## **X. APPENDIX A**

### **Sample Financial Status Quo Orders**

1. Neither party shall, except as necessary to pay reasonable living expenses, incur unreasonable debt, sell, encumber, gift, bequeath or in any manner transfer, convey or dissipate any property, cash, stocks or other assets currently in his or her possession or in the control of another person, company, legal entity or family member without permission of the court or an agreed order signed by both parties or their attorneys.

2. Neither party shall allow the cancellation or lapse of any health, life, automobile, casualty or disability insurance currently covering themselves or a family member or change the named beneficiaries on such policies prior to receiving permission of the court or filing an agreed order signed by both parties or their attorneys.

## **XI. APPENDIX B**

### **Sample Parenting Conduct Orders**

This list below includes examples of terms that may be included in a court order relating to custody or parenting. A court may issue one or more of these orders and may issue orders not on this list. These examples are not binding upon any party unless specifically ordered in that party's case. Each party should review the specific orders in his or her case to determine which, if any, orders apply to him or her.

Absent a court order permitting them to do so, no parent or legal custodian of a child shall:

1. Permit or encourage a child to refer to someone other than the child's actual parents as "father", "mother", "mom," or "dad".

2. Change the child's surname without written permission from the child's parent(s).

3. Fail as soon as practical to notify the other parent or custodian of a medical or psychiatric emergency involving the child which requires professional treatment.

4. Ask the child questions about events and activities at the other parent or custodian's home.

5. Ask the child to keep secrets from a parent or custodian.

6. Discuss litigation between parents or custodians and, in particular ask a child to choose who they want to live or spend more time with.

7. Conduct parental or custodial business, make threats, or argue during possessory exchanges.

8. Disparage the other parent, custodian, or siblings in the presence of the child or permitting third persons to do so.

9. Interfere, by word or deed, with the natural development of the child's love and affection for a parent or custodian.

10. During periods of parenting time, unreasonably prohibit the child from contacting the other parent or custodian.

11. Listen to, eavesdrop on, or record conversations between the child and the other parent or custodian.

12. Contact the child during the other parent or custodian's parenting time without having first been contacted by the child or given permission to do so by the possessory parent or custodian.

13. Discuss matters of child support or maintenance in the presence of the child or permitting third persons to do so.



14. Pass money or messages through the child to the other parent or custodian, particularly messages relating to money or the possessory schedule.

15. During non-parenting time, attempt to remove or remove the child from an individual providing child care, an institutional daycare provider or school, for any period of time, without the expressed consent of the parent or custodian with the right to possession of the child.

16. Change the child's school without written consent of the other parent or joint legal custodian.

17. Remove a parent or custodian as an emergency contact or recipient of medical, schooling, or extracurricular activity information.

18. Reschedule medical and counseling appointments for the child without reasonable prior notice to the other parent or joint legal custodian.

19. Fail to administer medicine to the child as prescribed.

20. Fail to ensure the child's continued participation in scheduled or traditionally scheduled extracurricular activities.

21. Schedule activities of any kind during the other parent or custodian's parenting time without permission from the other parent or joint legal custodian.

22. Intentionally or repeatedly fail to return the child's clothing, medicine, or property at the end of his or her parenting time.

23. Fail to use age appropriate vehicle restraints or legally required protective equipment during any activity.

24. Prohibit the child from having reasonable contact with his or her friends.

25. Fail to reasonably assist the child with school homework or projects during overnight possessory periods.

26. Fail to agree to occasional, but reasonable, requests to alter the possessory schedule.

## XII. APPENDIX C

### Sample Parenting Time Guidelines

The following schedules are suggested as **an example** for the parents and the court to use when establishing parenting time schedules. Each case will present unique facts or circumstances which shall be considered by the court in establishing a time-sharing/visitation schedule and **the final schedule established by the court or agreed to by the parents may or may not be what these guidelines suggest.**

1. The parenting time schedule set by the court for holidays, school breaks and summer break should control over regularly scheduled parenting time, even if this allows successive parenting time periods.
2. The parent exercising parenting time should be responsible for timely picking up the child(ren) at the beginning of the parenting time period and returning the child(ren) in a timely manner at the end of the time-sharing/visitation period.
3. Times in a parenting time schedule should be set in the time zone where the child primarily resides.
4. For parenting time pertaining to school holidays, whether in a formal school or home-schooled, the school holidays where the child(ren) primarily resides should apply.
5. Each parent should provide to the other parent contact numbers and addresses (unless a domestic violence order is in effect) where the child(ren) can be located during their scheduled parenting time.
6. The parent exercising parenting time should be given a minimum of every other weekend as parenting time with the child(ren) and one midweek parenting time. The parent having such parenting time should be responsible for delivering the child(ren) to school, child care, or the other parent's home as specifically ordered by the court or agreed to by the parents.
7. Holidays.
  - a. If a holiday is celebrated on a Monday following a parent's regularly scheduled parenting time, then that parent should be permitted to extend parenting time until 6:00 p.m. on the holiday, unless the parents agree otherwise.
  - b. Other holidays.
    - (i) Parent exercising parenting time.
      - 1) During the first full year after divorce/custody proceedings have been filed, the non-residential parent should have parenting time scheduled as follows:
        - a) New Year's Day and July 4<sup>th</sup> from 8:00 a.m. until 6:00 p.m.

- b) Thanksgiving, beginning at 6:00 p.m. the day school ends until 3:00 p.m. Thanksgiving Day.
- c) Christmas/Winter Break, beginning at 6:00 p.m. the day school ends until noon on December 25.
- d) Holidays not listed that are of special interest to the family should be assigned to the non-residential parent in time amounts similar to those in a), b) and c) above.

2) Holiday time not scheduled above to the parent exercising parenting time should be with the other parent.

3) Mother's Day and Father's Day, regardless of any conflict with the above proposed schedule, should be spent with the appropriate parent from 8:00 a.m. until 6:00 p.m.

4) Fall Break or Spring Break, as allowed by the child(ren)'s school calendar, should be scheduled for the parent with whom the child(ren) primarily resides in the first full year after the divorce/custody proceedings are filed from 6:00 p.m. the day school ends until 6:00 p.m. the following Friday. If school breaks are longer than one week due to the school schedule, the parent with whom the child(ren) primarily resides should be scheduled for the first half of the break and the other parent should be scheduled for the last half.

5) Summer Break should be scheduled to allow the parent exercising parenting time a minimum of two periods of two consecutive weeks during the Summer Break. Each parent should provide the time periods he or she desires to the other parent before the end of the school year, or at least 60 days in advance of the requested time. If a child(ren) must attend summer school in order to pass to the next grade, summer parenting time should not prevent school time.

6) Birthdays: Unless the birthday falls on a regularly scheduled parenting time day, the parent exercising parenting time should be scheduled for birthday time from 5:00 p.m. until 8:00 p.m. If it is a regular day of the parent exercising parenting time where the child(ren) does not primarily reside, the other parent should have birthday time from 5:00 p.m. until 8:00 p.m.

(ii) Alternating years: For each year thereafter, the parenting time set out above should alternate between the parent with whom the child(ren) primarily resides and the parent exercising parenting time.

#### 8. Waiting/Tardiness/Cancellations.

a. In the event either parent will be more than 30 minutes late, due to reasonable unforeseen circumstances, to pick up the child(ren), he or she should provide direct notice to the other parent or a designated third party and make suitable arrangements for exchange of the child(ren).

b. If parenting time is missed through no fault of the parent, and reasonable notice has been given, that time should be made up, if reasonable to do so.

c. If the child(ren) is ill, the parent who has the child should give 24-hour notice, if possible, to allow for appropriate plans to be made.

## **X. APPENDIX D - STATEWIDE STANDARDS OF EXPECTED CONDUCT FOR COURT-APPOINTED COUNSEL**

*The standards below are the default standards for attorneys appointed to represent an adult or child in dependency, abuse, neglect, termination of parental rights, and adoptions. However, local courts may have adopted alternative standards by way of local rule. Please consult your court's local rules to find whether alternative standards have been approved and adopted.*

### **(1) Scope**

These Statewide Standards apply to all court-appointed counsel who represent children, parents, persons exercising custodial control, or any other person entitled to representation in adoption, dependency, neglect and abuse, and termination of parental rights actions. Each court-appointed counsel shall follow these standards, as well as the Kentucky Rules of Professional Conduct (SCR 3.130 through SCR 3.995). Should the Kentucky Rules of Professional Conduct impose a different duty than these Statewide Standards, the higher standard controls.

### **(2) Essential Practices for All Court-Appointed Attorneys**

All appointed attorneys, including guardians *ad litem* and those appointed to represent adults, should:

1. Zealously advocate for his or her client;
2. Communicate with his or her client(s) regularly, including minor children, where practical, based upon the child's age and ability to communicate;
3. Explain the child welfare legal process and the client(s)'s rights and duties in a manner that best facilitates the client(s)'s understanding of the same;
4. Have knowledge and understanding of current federal and state child welfare laws;
5. Prepare for and attend court hearings and reviews;
6. Discuss and understand the client's life circumstances, including strengths, needs, and the client(s)'s available resources; and assist them with accessing such resources when possible;
7. Understand trauma and client's specific trauma history, how the client's trauma history impacts client's experience with the child welfare system and ability to engage in child welfare services, and how trauma impacts the attorney/client relationship;
8. Build a relationship of trust and ensure the client experiences fairness;
9. Seek court accommodations that promote equal access and full participation in proceedings;
10. Prepare his or her client and the client's witnesses for court;
11. Maintain a reasonable caseload and devote sufficient time for advocacy;
12. Conduct an independent investigation at every state of the proceeding, before and after the jurisdictional/dispositional phase of the proceedings, which should include obtaining and reviewing on an ongoing basis and to the extent allowable under state law (including via subpoena, discovery, or court order), child welfare agency records, service provider records, and all other relevant records for parents and children;
13. Provide ethical legal representation;

14. Confirm his or her client receives proper notice and understands, to the best of the client's ability, the duties and restrictions imposed by court orders;
15. Actively engage in conflict resolution and negotiation;
16. Proactively move the case forward if it is in the client's interests, including reducing case continuances and timely filing any necessary pleadings, motions, or briefs;
17. File motions and appeals necessary to protect his or her client rights and interests;
18. Understand how cultural, social, and economic differences affect the attorney-client relationship sufficiently to ensure that all clients receive the same quality of representation;
19. Understand how racial, cultural, social, and economic differences may impact the attorney/client relationship, avoid imposing personal values upon clients, and take these factors into account when working with clients to achieve their case goals, including identifying and accessing services;
20. Understand and recognize the impact of personal and system bias stemming from race, gender identity, sexual orientation and expression, ethnicity, culture, country-of-origin, disability, and socioeconomic status, and develop strategies, including legal strategies, to mitigate the negative impact of personal and system bias on clients' case goals; and
21. Identify and use to clients' advantage their individual, familial, cultural, and community strengths.

### **(3) Standards for Guardians *ad litem***

The guardian *ad litem*'s role is to advance the child(ren)'s interests in court, provide legal counsel, help the child understand the legal process, and empower the child to participate. To achieve this, the guardian *ad litem* should:

1. Explain to the child that he or she represents the child and advocates in the child's best interest;
2. Understand the child's wishes in regard to the outcome of the case;
3. Ensure the client's voice is heard in the proceedings, which includes informing the court, upon permission of the child, of any wishes the child has that differ from the child's best interest;
4. Ensure the child has an opportunity to attend and participate in court hearings;
5. Advocate for the child to maintain contact with parents, siblings, and kin through visitation, placement, and permanency planning, when appropriate;
6. Communicate with any person or agency who has relevant information to the case, including teachers, foster parents, and service providers;
7. Promote tailored and specific case plans and services; and
8. Advocate for the child's access to education and community supports.

### **(4) Standards for Attorneys Representing Adults**

The role of an attorney appointed to represent an adult is to protect the client's legal rights, advance the client's interests in court, and help the client understand the legal process. To achieve this, the court-appointed attorney, in addition to the Essential Practices for All Court-Appointed Attorneys, should:

1. Diligently pursue the clients' case goals and as needed and when consistent with client's interests and objectives;
2. ensure the client's voice is heard in the proceedings;
3. Help the client problem-solve and meet case goals;
4. Advocate parent-child contact through visitation and permanency planning; and
5. Identify potential ancillary legal issues that could impact client's dependency case, refer client to legal resources to address issues, and communicate regularly with client's other legal service providers to with the goal of ensuring that dependency proceedings and other legal proceedings benefit client.

All sitting. All concur.

ENTERED: January \_\_\_\_\_, 2020.

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CHIEF JUSTICE