

Supreme Court of Kentucky

2022-58

ORDER

In Re: Order Amending the Rules of Civil Procedure, the Supreme Court Rules and the Family Court Rules of Practice and Procedure

The following amendments to the Rules of Civil Procedure, Supreme Court Rules and the Family Court Rules of Practice and Procedure shall be effective January 1, 2023:

I. Rules of Civil Procedure

A. CR 53.03 Powers

CR 53.03 shall read:

An order of reference to a master commissioner or local rules of court may specify or limit his or her powers and may direct him or her to report only upon particular issues or to do or perform particular acts or to receive and report evidence only and may fix the time and place for beginning and closing the hearings and for the filing of the master commissioner's report. Subject to the specifications and limitations stated in the order or local rules of court, the master commissioner has and shall exercise the power to regulate all proceedings in every hearing before him or her and to do all acts and take all measures necessary or proper for the efficient performance of his or her duties under the order or local rules of court. He or she may require the production before him of evidence upon matters embraced in the reference, including the production of all books, papers, vouchers, documents, and writing applicable thereto. He or she may rule upon the admissibility of evidence unless otherwise directed by the order of reference and has the authority to put witnesses on oath and may himself or herself examine them and may call the parties to the action and examine them upon oath. When a party so requests, the master commissioner shall make a record of the evidence offered and excluded in the same manner and subject to the same limitations as provided in applicable Rules of Civil Procedure and/or Rules of Evidence for a court sitting without a jury.

B. CR 53.07 Limit on Compensation

CR 53.07 shall read:

All master commissioners shall be limited in their total personal compensation derived from fees in accordance with the Rules of Administrative Procedure of the Court of Justice, Part IV, unless approved by the Chief Justice. Fees in excess of the personal compensation of the commissioner and office expenses and salaries shall be remitted as provided in Rule 53.08; however, anticipated six (6) months expenses may be retained.

C. CR 99.05 Appointment of mediator

CR 99.05 shall read:

Within fifteen (15) days of referral, the parties shall agree on a mediator or a mediation service. If the parties cannot agree, they shall notify the court. Only if the parties cannot agree on a mediator, the court will select a mediator who is recognized as a trained or experienced mediator in civil actions.

II. Supreme Court Rules

A. SCR 1.030 The Court of Appeals

SCR 1.030(1) shall read:

The headquarters of the Court of Appeals shall be in Frankfort.

III. Family Court Rules of Practice and Procedure

A. FCRPP 2 Preliminary matters

FCRPP 2(6) shall read:

(6) **Mediation and Case Management.** Rules regarding mediation and case management are found in FCRPP 39 and 40.

B. X. MEDIATION AND CASE MANAGEMENT CONFERENCES

The amended title to Section X shall read “Mediation and Case Management Conferences.”

C. FCRPP 39 Mediation

New rule FCRPP 39 shall read:

- (1) Mediation shall not be ordered in any case where one party may pose a risk of harm to other participants, and, in no event, shall mediation be ordered in conflict with KRS 403.036.
- (2) At any time on its own motion or on motion of any party, the court may refer a case or portion of a case for mediation. Courts shall not, however, follow any blanket policy or practice of referring all cases, or any particular type of case, to mediation, nor any blanket policy or practice requiring completion of mediation as a pre-condition to assigning a trial date. In each case, the court shall take the following factors into consideration when determining whether to order the parties to mediation:
 - (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;
 - (f) The ability of the parties to participate in the mediation process including the ability of any party, counsel or required representative to participate in virtual mediation; and
 - (g) The cost to the parties.

- (3) The parties may agree to mediate one or more issues in an action with a mediator or mediation service of their choice. If the parties are unable to agree on a mediator or a mediation service within fifteen (15) days of being referred to mediation, the court may choose a private mediator, private mediation service, or a Kentucky Court of Justice employee. Any mediator chosen by the court must be qualified under subsection (e) of this rule and must agree to conduct the mediation.
- (4) A mediator shall not be ordered to mediate. If a mediator does not accept a case assignment, prompt notice must be given to the court.
- (5) Absent agreement by the parties, mediations shall be conducted by a person who:
 - (a) Has completed a 40-hour mediation training, with either 20 hours of that training or 20 hours of additional training focused on family law mediation including the dynamics of domestic violence and interpersonal violence in relationships.
 - (b) Has at least 15 hours of hands-on experience in mediating matters similar to the ones being mediated, and
 - (c) Is qualified by education, training, and experience to undertake the mediation.
- (6) All mediators, including judicial staff, shall keep mediation information confidential under CR 99.11, except for reporting obligations provided in CR 99.09.
- (7) Attorneys may attend mediation with their clients. The mediator shall advise any party appearing without an attorney of the benefits of legal representation and of the parties' right to have any agreement reviewed by an independent attorney.
- (8) The mediator shall solely act as a mediator. The mediator shall not provide therapy, legal advice, or other professional advice to parties. The mediator may identify the legal issues but shall not direct the decision of the mediation participants based upon the

mediator's interpretation of the law as applied to the facts of the situation.

- (9) Any agreement, during mediation, by the parties on any issue shall be reduced to writing and signed by the parties and their counsel.
- (10) Conducting, or otherwise participating in, a case conference, including a case management conference under FCRPP 37, or acting as a parental coordinator, is not considered "mediation" under these rules.

D. FCRPP 40 Case Management Conference

New rule FCRPP 40 shall read:

- (1) Unless notice is given to the court that a case is being mediated, within 60 days of service of the petition upon the respondent, either party may file a motion for a case management conference or the court may schedule a conference sua sponte.
- (2) Both parties and their counsel shall attend any case management conference, unless otherwise ordered by the court.
- (3) 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.
- (4) 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.

E. XI. APPENDIX A. SAMPLE FINANCIAL STATUS QUO ORDERS

Appendix A, "Sample Financial Status Quo Orders," shall be renumbered as Section XI of the FCRPP.

F. XII. APPENDIX B. SAMPLE PARENTING CONDUCT ORDERS

Appendix B, "Sample Parenting Conduct Orders," shall be renumbered as Section XII of the FCRPP.

G. XIII. APPENDIX C. SAMPLE PARENTING TIME GUIDELINES

Appendix C, "Sample Parenting Time Guidelines," shall be renumbered as Section XIII of the FCRPP.

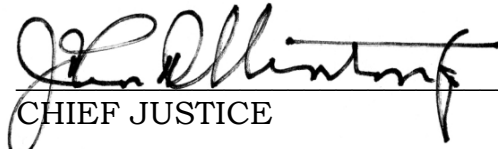
H. XIV. APPENDIX D. STATEWIDE STANDARDS OF EXPECTED CONDUCT FOR COURT-APPOINTED COUNSEL

Appendix D, "Statewide Standards of Expected Conduct for Court-Appointed Counsel," shall be renumbered as Section XIV of the FCRPP.

This Order shall be effective January 1, 2023, and until further Orders of this Court.

Entered this 9th day of December 2022.

All sitting; all concur.


CHIEF JUSTICE