

Family Court Rules of Practice and Procedure 2022 Proposed Amendments

Written comments to these proposed amendments to the Family Court Rules of Practice and Procedure must be submitted by June 30, 2022, to ruleamendments@kycourts.net.

II. DISSOLUTIONS AND PROPERTY DIVISION

Amended Rule FCRPP 2(6) shall read:

FCRPP 2 Preliminary Matters

~~{(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.]~~

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

Amended Section X and New Rules FCRPP 39 and FCRPP 40 shall read:

X. *MEDIATION AND CASE MANAGEMENT CONFERENCES*

FCRPP 39 Mediation

- (a) 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.***
- (b) 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:***
 - (i) The stage of the litigation, including the need for discovery, and the extent to which it has been conducted;***
 - (ii) The nature of the issues to be resolved;***

- (iii) The value to the parties of confidentiality, rapid resolution, or the promotion or maintenance of on-going relationships;*
 - (iv) The willingness of the parties to mutually resolve their dispute;*
 - (v) Other attempts at dispute resolution;*
 - (vi) 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*
 - (vii) The cost to the parties.*
- (c) 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.*
- (d) 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.*
- (e) Absent agreement by the parties, mediations shall be conducted by a person who:*
 - (i) 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.*
 - (ii) Has at least 15 hours of hands-on experience in mediating matters similar to the ones being mediated, and*
 - (iii) Is qualified by education, training, and experience to undertake the mediation.*
- (f) All mediators, including judicial staff, shall keep mediation information confidential from the court except for reporting obligations provided in CR 99.09.*
- (g) Attorneys may attend mediation with their clients. Any party appearing without an attorney shall be advised of*

the benefits of legal representation and of the parties' right to have the agreement reviewed by an independent attorney.

- (h) 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.*
- (i) Any agreement, during mediation, by the parties on any issue shall be reduced to writing and signed by the parties.*
- (j) 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.*

COMMENTARY

The training required in FCRPP 39(e)(i) should include focus on instilling knowledge and developing skills relevant to family law issues and should include conflict resolution, the mediation process, communication skills, the psychological aspects of litigation on families, child development, domestic violence, child neglect and abuse, substance abuse, financial and property issues, paternity, cultural and diversity awareness and impact, family law, and family or circuit court procedures. Family mediators are strongly encouraged to take general mediation training prior to this training.

FCRPP 39(h) is intended, in part, to avoid misunderstandings regarding the role of the mediator as a neutral person, and not as a representative of one or more parties. It is not intended to prohibit the appropriate use of mediation approaches that involve evaluating the facts of the case and applicable law and making informed recommendations on the likely outcome of a legal issue (e.g., evaluative mediation). It is also not intended to prohibit the appropriate use of mediation approaches that assist parties in developing better methods for communicating and addressing

conflicts (e.g., transformative mediation). In appropriate circumstances, a mediator should encourage the parties to seek separate legal, mental health, financial, tax or other professional advice before, during, or after the mediation process.

FCRPP 40 Case Management Conference

- (a) 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.*
- (b) Both parties and their counsel shall attend the conference, unless otherwise ordered by the court.*
- (c) Each party shall file the following documents at least 7 days prior to the conference:
 - (i) Any related motions; and*
 - (ii) Any stipulations or agreements reached.**
- (d) 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.*

The Appendices shall be renumbered as follows:

- [X]XI. Appendix A**
- [XI]XII. Appendix B**
- [XII]XIII. Appendix C**
- [XIII]XIV. Appendix D**