

# Supreme Court of Kentucky

IN RE:  
ORDER AMENDING  
RULES OF CIVIL PROCEDURE (CR)  
RULES OF CRIMINAL PROCEDURE (RCr)  
RULES OF THE SUPREME COURT (SCR)

2004-5

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The following rules' amendments shall become effective January 1, 2005.

**I. AMENDMENTS TO THE RULES OF CIVIL PROCEDURE**

**A. CR 3.02(1) Circuit civil fees and costs**

Section (1) of CR 3.02 shall read:

(1) The filing fees for a civil case in Circuit Court (including original actions of administrative agencies, special districts or boards) shall be paid to the circuit clerk at the time the case is filed and shall be \$100.00, except as provided below:

(a) There shall be no filing fees for proceedings for a writ of habeas corpus, proceedings under RCr 11.42, and mental health proceedings under KRS Chapters 202A, 202B and 387.

(b) Fees required by KRS 453.060 and KRS 27A.630 shall be paid in addition to the fees required by this rule.

**B. CR 3.03(1) District civil fees and costs**

Section (1) of CR 3.03 shall read:

(1) The filing fee for a civil case in District Court shall be paid to the clerk at the time the case is filed and shall be \$45.00, except as provided below:

(a) Where the case or controversy does not exceed \$1500.00, exclusive of interests and costs (Small Claims), the fees shall be \$20.00;

(b) Where the amount in controversy is \$500.00 or less and is not filed in small claims court, the fees shall be \$35.00;

(c) Where the case involves the probate of an estate, the fees shall be \$35.00;

(d) Where the case involves the appointment of guardians, conservators, and curators and is not related to a pending probate proceeding, the fees shall be \$35.00 for each application;

(e) Where the matter involves a name change for a natural person, the fees shall be \$35.00;

(f) Where the case involves a paternity determination under KRS Chapter 406, the fees shall be \$35.00;

(g) Where the case involves mental health proceedings under KRS Chapter 202A, 202B or 387, there shall be no fees except as provided in paragraph (d) of this subsection;

(h) Where the case involves a hearing for a student pursuant to KRS 159.051, there shall be no fees;

(i) Where the case involves filing forcible detainer actions, the fees shall be \$35.00; and

(j) Where the case involves filing a petition to marry under KRS 402.020, the fees shall be \$5.00.

(k) The fees required by KRS 453.060 and KRS 27A.630 shall be paid in addition to the fees required by this rule.

**C. CR 26.01 Discovery methods**

CR 26.01 shall read:

(1) Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; and requests for admission. Unless the court orders otherwise under Rule 26.03, the frequency of use of these methods is not limited.

(2) Electronic Format. In addition to serving a hard copy, a party propounding or responding to interrogatories, requests for production, or requests for admission is encouraged to serve the discovery request or response in an electronic format (either on a disk or as an electronic document attachment) in any commercially available word processing software system. If transmitted on

disk, each disk shall be labeled, identifying the caption of the case, the document, and the word processing version in which it is being submitted. If more than one disk is used for the same document, each disk shall be in the same word processing version, shall be similarly labeled and also shall be sequentially numbered. If transmitted by electronic mail, the document must be accompanied by electronic memorandum providing the forgoing identifying information.

**D. CR 26.02(4)(a) Scope of discovery**

Subsection (a) of Section (4) of CR 26.02 shall read:

**(4) Trial Preparation: Experts.**

Discovery of facts known and opinions held by experts, otherwise discoverable under the provisions of paragraph (1) of this rule and acquired or developed in anticipation of litigation or for trial, may be obtained only as follows:

(a) (i) A party may through interrogatories require any other party to identify each person whom the other party expects to call as an expert witness at trial, to state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion. (ii) After a party has identified an expert witness in accordance with paragraph (4)(a)(i) of this rule or otherwise, any other party may obtain further discovery of the expert witness by deposition upon oral examination or written questions pursuant to Rules 30 and 31. The court may order that the deposition be taken, subject to such restrictions as to scope and such provisions, pursuant to paragraph (4)(c) of this rule, concerning fees and expenses as the court may deem appropriate.

**E. [CR 43.05 Scope of examination and cross-examination; leading questions]**

CR 43.05 is deleted.

**F. [CR 43.06 Same; examination of adverse party]**

CR 43.06 is deleted.

**G. [CR 43.07 Impeachment of witnesses]**

CR 43.07 is deleted:

**H. [CR 43.08 Same; prior contradictory statements]**

CR 43.08 is deleted.

**I. [CR 43.09 Separation of witnesses]**

CR 43.09 is deleted.

**J. [CR 43.10 Avowals]**

CR 43.10 is deleted.

**K. [CR 43.11 Affirmation in lieu of oath]**

CR 43.11 is deleted.

**L. [CR 44.02 Proof of lack of record]**

CR 44.02 is deleted.

**M. CR 72.02(1) When and how taken**

Section (1) of CR 72.02 shall read:

(1) Appeals from the district court to the circuit court in civil cases shall be taken by filing a notice of appeal in the district court and paying the required filing fee.

**N. [CR 76.04 Time in which appeals and cross-appeals must be perfected]**

CR 76.04 is deleted.

**O. CR 76.12(3) and (4)(g) Briefs**

Section (3), and Subsection (g) of Section(4) of CR 76.12 shall read:

**(3) Number of Copies.**

(a) Briefs in the Court of Appeals shall be filed in quintuplicate. In the Supreme Court ten copies shall be filed.

(b) Filing of Electronic Briefs on Diskette or CD-ROM. Any party filing a brief on the merits with the Clerk of the Supreme Court may, and is encouraged to, file with the required copies of the paper brief an electronic brief thereof on a floppy disk or CD-ROM (preferred). The Clerk of the Supreme Court shall receive and file the floppy disk or CD-ROM with the papers of that case.

(i) All electronic briefs shall be on a 3.5 floppy disk or CD-ROM that can be read via Microsoft Windows and shall contain in a single file all information

contained in the paper brief, including the cover, the table of contents, and the certifications, in the same order as the paper brief. The electronic briefs may also contain hypertext links or bookmarks to cases, statutes and other reference materials available on the Internet or appended to the brief.

(ii) An electronic brief must be formatted in Microsoft Word (preferred) or WordPerfect.

(iii) An electronic brief shall contain a label indicating;

(a) The style and docket number of the case,

(b) The name of the document contained on the diskette or CD-ROM,  
and

(c) The language format of the document.

#### **(4) Form and content.**

(g) *Form of citations.* All citations of Kentucky Statutes shall be made from the official edition of the Kentucky Revised Statutes and may be abbreviated "KRS." The citation of Kentucky cases reported after January 1, 1951, shall be in the following form for decisions of the Supreme Court and its predecessor court: Doe v. Roe, \_\_ S.W.2d \_\_ or \_\_ S.W.3d \_\_ (Ky. [date]), or for reported decisions of the present Court of Appeals, Doe v. Roe, \_\_ S.W.2d \_\_ or \_\_ S.W.3d \_\_ (Ky. App. [date]). For cases reported prior thereto both Kentucky Reports and Southwestern citations shall be given.

#### **P. CR 76.16(5)(b) Oral arguments**

Subsection (b) of Section (5) of CR 76.16 shall read:

(b) In all cases before the Supreme Court to which paragraph (5)(a) of this Rule does not apply, appellant or cross-appellant shall file and serve upon each appellee or cross-appellee not later than ten (10) days before oral argument a notice of issues in the order to be argued that the appellant or cross-appellant intends to argue orally, with specific reference to the argument number and page numbers of each issue in the appellant's or cross-appellant's brief. If the appellant or cross-appellant fails to do so, without good cause, the appellant's oral argument or the portion of the cross-appellant's oral argument devoted to issues raised in the cross-appeal shall be limited to answering questions from the court.

**Q. CR 76.22 Advancement**

CR 76.22 shall read:

Appeals may be advanced for good cause shown.

**II. AMENDMENTS TO THE RULES OF CRIMINAL PROCEDURE**

**A. RCr 5.06 Attendance of witnesses**

RCr 5.06 shall read:

The circuit court, upon request of the foreperson of the grand jury or of the attorney for the Commonwealth, shall issue subpoenas for witnesses. The attendance of witnesses may be coerced as in other judicial proceedings. RCr 7.02 shall apply to grand jury subpoenas.

**B. RCr 7.24 (3)(B) and (C) Discovery and inspection**

Subsections (B) and (C) of Section (3) of RCr 7.24 shall read:

(B)(i) If a defendant intends to introduce expert testimony relating to a mental disease or defect or any other mental condition of the defendant bearing upon the issue of his or her guilt or punishment, the defendant shall, at least 20 days prior to trial, or at such other time as the court may direct upon reasonable notice to the parties, notify the attorney for the Commonwealth in writing of such intention and file a copy of such notice with the clerk. The court may for cause shown allow late filing of the notice or grant additional time to the parties to prepare for trial or make such other order as may be appropriate.

(ii) When a defendant has filed the notice required by paragraph (B)(i) of this rule, the court may, upon motion of the attorney for the Commonwealth, order the defendant to submit to a mental examination. No statement made by the defendant in the course of any examination provided for by this rule, whether the examination be with or without the consent of the defendant, shall be admissible into evidence against the defendant in any criminal proceeding. No testimony by the expert based upon such statement, and no fruits of the statement shall be admissible into evidence against the defendant in any criminal proceeding except upon an issue regarding mental condition on which the defendant has introduced testimony. If the examination ordered under this rule pertains to the issue of punishment (excluding a pretrial hearing under KRS 532.135), the court shall enter an order prohibiting disclosure to the attorneys for either party of any self-incriminating information divulged by the defendant until the defendant is found guilty of a felony offense, unless the parties otherwise enter into an agreement regulating disclosure.

(C) If there is a failure to give notice when required by this rule or to submit to an examination ordered by the court under this rule, the court may exclude such evidence or the testimony of any expert witness offered by the defendant on the issue of his or her mental condition.

**C. [RCr 9.46 Expert Witnesses]**

RCr 9.46 is deleted.

**D. [RCr 9.48 Separation of witnesses]**

RCr 9.48 is deleted.

**E. [RCr 9.52 Avowals]**

RCr 9.52 is deleted.

**F. RCr 9.78 Confessions, Searches, and Witness Identification;  
Suppression of Evidence**

RCr 9.78 shall read:

If at any time before trial a defendant moves to suppress, or during trial makes timely objection to the admission of evidence consisting of (a) a confession or other incriminating statements alleged to have been made by the defendant to police authorities, (b) the fruits of a search, or (c) witness identification, the trial court shall conduct an evidentiary hearing outside the presence of the jury and at the conclusion thereof shall enter into the record findings resolving the essential issues of fact raised by the motion or objection and necessary to support the ruling. If supported by substantial evidence the factual findings of the trial court shall be conclusive.

**G. RCr 12.05 Petition for Rehearing and Discretionary  
Review Motion not required for exhaustion**

New rule RCr 12.05 shall read:

In all appeals from criminal convictions or post-conviction relief matters a litigant shall not be required to petition for rehearing or to file a motion for discretionary review to either the Kentucky Court of Appeals or Kentucky Supreme Court following an adverse decision of either the circuit court or Court of Appeals in order to be deemed to have exhausted all available state remedies respecting a claim of error. Rather, when the claim has been presented to the appellate court, and relief has been denied, the litigant shall be deemed to have

exhausted all available state remedies available for that claim. If rehearing or discretionary review is sought on less than all of the claims of error presented on appeal, the litigant, nevertheless, shall be deemed to have exhausted all available state remedies respecting the claim(s) of error for which rehearing or discretionary review is not sought. Finality of the opinion for all claims of error is governed by CR 76.30(2).

**H. RCr 13.03 Review of trial dockets**

New rule RCr 13.03 shall read:

At least once each year trial courts shall review all pending criminal actions on their dockets. Notice shall be given to each attorney of record of every case in which no pretrial step has been taken within the last year, that the case will be dismissed in thirty days for want of prosecution except for good cause shown. The court shall enter an order dismissing without prejudice each case in which no answer or an insufficient answer to the notice is made. This rule shall not apply to cases where the trial court has issued an arrest warrant based on the defendant's failure to appear in the case.

**III. AMENDMENTS TO THE SUPREME COURT RULES**

**A. SCR 3.030(2) Membership, practice by nonmembers and classes of membership**

Section (2) of SCR 3.030 shall read:

(2) A person admitted to practice in another state, but not in this state, shall be permitted to practice a case in this state only if that attorney subjects himself or herself to the jurisdiction and rules of the court governing professional conduct, pays a per case fee of \$100.00 to the Kentucky Bar Association and engages a member of the association as co-counsel, whose presence shall be necessary at all trials and at other times when required by the court. No motion for permission to practice in any state court in this jurisdiction shall be granted without submission to the admitting court of a certification from the Kentucky Bar Association of receipt of this fee.

**B. SCR 4.300 Section 4C(2) Commentary**

Section 4C(2) Commentary of SCR 4.300 shall read:

Commentary

Section 4C(2) prohibits a judge from accepting any governmental position except one relating to the law, legal system or administration of justice as

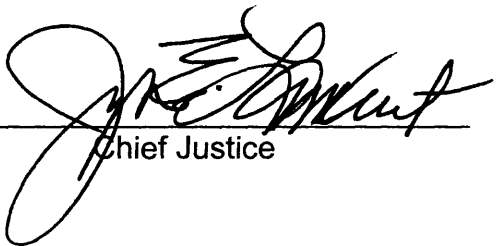


authorized by Section 4(C)(3). The appropriateness of accepting extra-judicial assignments must be assessed in light of the demands on judicial resources created by crowded dockets and the need to protect the courts from involvement in extra-judicial matters that may prove to be controversial. Judges should not accept governmental appointments that are likely to interfere with the effectiveness and independence of the judiciary.

Section 4C(2) does not govern a judge's service in a nongovernmental position. See Section 4C(3) permitting service by a judge with organizations devoted to the improvement of the law, the legal system or the administration of justice and with educational, religious, charitable, fraternal or civic organizations not conducted for profit.

All sitting. All concur, except: Wintersheimer, J., dissents on the proposed amendments to CR 76.12(4)(g); Lambert, CJ. and Wintersheimer, J., dissent on the proposed amendments to CR 76.16(5)(b); Stumbo, J., dissents on the proposed amendments to RCr 7.24(3)(B)and(C); Keller, J., votes against the adoption of RCr 13.03 because he believes that it violates the separation of powers provisions of Kentucky's Constitution for reasons stated in his dissent in Hoskins v. Maricle, \_\_\_ S.W.3d \_\_\_ (Ky. 2004); and Graves, Johnstone, and Stumbo, JJ., dissent on the proposed amendments to SCR 3.030(2) and would direct that the monies go to legal services for the poor.

ENTERED: October 29, 2004

  
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Chief Justice