

Supreme Court of Kentucky

IN RE:
ORDER AMENDING
RULES OF CIVIL PROCEDURE (CR)
RULES OF CRIMINAL PROCEDURE (RCr)

2009-01

The following rules' amendments shall become effective April 1, 2009.

A. AMENDMENTS TO THE RULES OF CIVIL PROCEDURE

I. CR 7.03 Privacy Protection for Filings Made with the Court

The new rule CR 7.03 shall read:

(1) Unless the court orders otherwise, in a filing with the court that contains certain personal data identifiers, including an individual's social-security number or taxpayer-identification number, or birth date, or a financial-account number, an attorney or party making the filing must redact the document so the following information cannot be read:

- (a) the digits of the social-security number or taxpayer-identification number;
- (b) except in criminal cases, the month and day of the individual's birth; and
- (c) the digits of the financial-account number.

Redaction may be made by any method, including but not limited to replacing the identifiers with neutral placeholders or covering the identifiers with an indelible mark, that so obscures the identifiers that they cannot be read.

(2) An attorney or party making a filing under part (1) above shall keep an unredacted, original copy of the filing. The attorney and party shall be custodians of the original or unredacted copy of the filing and shall present it upon order of the court.

(3) The court may order that a filing be made under seal without redaction. If the court orders an unredacted copy of the filing under seal, a copy redacted in compliance with part (1) of this rule may also be filed.

(4) For good cause, the court may by order in a case:

- (a) require redaction of additional information; or
- (b) limit or prohibit a nonparty's access to a document filed with the court.

(5) The clerk is not required to review filings with the court for compliance with this rule. The responsibility to redact filings rests with counsel and the party making the filing.

(6) A person waives the protection of this rule as to the person's own information by including it in a filing without redaction.

(7) An attorney or party failing to comply with this rule will be subject to the sanction powers of the court, including having the relevant filing stricken from the record. A conforming copy of a filing previously stricken from the record for failure to comply with this rule may be refiled unless otherwise ordered by the court.

II. CR 45.01 Form; issuance

CR 45.01 shall read:

(1) Every subpoena shall state the court from which it is issued, the title of the action, the court in which the action is pending, and its civil action number; and the name, address, telephone number and e-mail address of the attorney or pro-se party causing the subpoena to be issued. Every subpoena shall command each person to whom it is directed to attend and give testimony and/or to produce designated documents or tangible things in that person's possession, custody, or control, or to permit inspection of premises, at the time and place therein specified. A copy of every subpoena served shall be certified to the opposing party and to any person whose information is being requested.

(2) The clerk or other authorized deputy shall issue a subpoena signed but otherwise in blank, to a party requesting it, who shall fill it in before service. An attorney licensed to practice law in this state may also issue and sign a subpoena on behalf of the court. Subpoenas shall not be used for any purpose except to command the attendance of the witness and/or production of documentary or other tangible evidence at a deposition, hearing or trial; unless the parties agree that production may be made without a deposition. Upon order of the Court, with the agreement of the parties, documents may be produced without a deposition.

III. CR 45.02 For production of documentary evidence

CR 45.02 shall read:

The court, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance therewith, may (a) quash or modify

the subpoena if it is unreasonable and oppressive or (b) condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things.

IV. CR 45.03 Service; Notice

CR 45.03 shall read:

(1) A subpoena may be served in any manner that a summons might be served. It may also be served by any person over eighteen years of age, and the affidavit endorsed thereon by such person shall be proof of service or the witnesses may acknowledge service in writing on the subpoena. Service of the subpoena shall be made by delivering or offering to deliver a copy thereof to the person to whom it is directed. A subpoena may be served at any place within this state. Proof of service shall be made by filing with the issuing court a statement showing the date and manner of service and the names of the persons served. The statement must be certified by the server.

(2) Copies of all documents received in response to the subpoena shall be forthwith furnished to all other parties to the action, except on motion and for good cause shown. Any other tangible evidence received in response to the subpoena shall be forthwith made available for inspection by all other parties to the action.

(3) Every subpoena, except those issued for trial, shall be served, in the manner prescribed by Rule 5.02, on each party and any person whose information is being requested.

V. CR 45.04 Protection of a person subject to a subpoena

CR 45.04 shall read:

(1) A subpoena that commands the person to whom it is directed to produce designated documents or tangible things or to permit inspection of premises may relate only to matters within the scope of discovery permitted by Rule 26.02. Every subpoena will be subject to the provisions of Rule 26.03.

(2) The person to whom a subpoena is directed may, within ten (10) days after the service thereof or on or before the time specified in the subpoena for compliance if such time is less than ten (10) days after service, serve upon the attorney or pro se party designated in the subpoena written objection to inspection or copying of any or all of the designated materials. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials except pursuant to an order of the court from which the subpoena

was issued. The party serving discovery may, upon notice, move for an appropriate order.

(3) A resident of the state may be required to attend an examination only in the county wherein he resides or is employed or transacts his business in person, or at such other convenient place as is fixed by an order of the court. A person commanded to produce documents or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

VI. CR 45.05 Subpoena for a hearing or trial; personal attendance

CR 45.05 shall read:

(1) Subject to the provisions of paragraph (2) of this rule a witness whose deposition might be used under Rule 32.01(c) shall not be compelled to appear in court for oral examination, unless he/she failed, when duly subpoenaed, to give his/her deposition.

(2) Upon the affidavit of a party or his/her attorney that the testimony of a witness is important, and that the just and proper effect of that testimony can not in a reasonable degree be obtain without oral examination in court, the court may, in its discretion, order the personal attendance of the witness, although such witness may otherwise be exempt from personal attendance.

VII. CR 73.02 When and how taken

Sub-section (e) of section (1) of CR 73.02 shall read:

(1) (e) The running of the time for appeal is terminated by a timely motion pursuant to any of the Rules hereinafter enumerated, and the full time for appeal fixed in this Rule commences to run upon entry and service under Rule 77.04(2) of an order granting or denying a motion under Rules 50.02, 52.02 or 59, except when a new trial is granted under Rule 59.

(i) If a party files a notice of appeal after the date of the docket notation of service of the judgment required by CR 77.04(2), but before disposition of any of the motions listed in this rule, the notice of appeal becomes effective when an order disposing of the last such remaining motion is entered.

(ii) A party intending to challenge a post-judgment order listed in this rule, or a judgment altered or amended upon such motion, must file a notice of appeal, or an amended notice of appeal, within the time prescribed by this rule measured by the date of the CR 77.04(2) docket

notation regarding service of the order disposing of the last such remaining motion.

(iii) No additional fee is required to file an amended notice.

VIII. CR 76.28 Opinions

Section (2) of CR 76.28 shall read:

(2) Time of Announcement.

Unless otherwise determined by the Supreme Court, opinions of the Supreme Court will be released for publication on Thursdays. Opinions of the Court of Appeals shall be released on Fridays. However, if a Friday is a state holiday, the Court of Appeals, at the discretion of the Chief Judge may render opinions on the last working day before the holiday. The time of publication shall be 10:00 A.M. prevailing Frankfort time.

IX. CR 76.36(7) Original proceedings in appellate court

Sub-section (c) of section (7) of CR 76.36 shall read:

(7) Appeals to the Supreme Court.

(c) To perfect the appeal the appellant shall, within thirty (30) days after filing a notice of appeal, file with the Clerk of the Supreme Court a brief setting forth argument for reversal or modification of the judgment or order from which the appeal is taken. In workers' compensation cases, briefing shall proceed according to CR 76.12.

X. CR 76.38(4) Effective date and reconsideration of orders

A new section (4) of CR 76.38 shall read:

(4) Orders granting or denying reconsideration under this Rule will not be reconsidered.

XI. SUPOENA DUCES TECUM FORM

The new Subpoena Dues Tecum Form shall read:

AOC-0 Rev. 4-08 Page 1 of 1 Commonwealth of Kentucky Court of Justice CR 45; Rcr 7.02	Doc. Code:RS Ver. 1.01	<input type="checkbox"/> SUBPOEANA <input type="checkbox"/> SUBPOEANA DUCES TECUM	Case No. _____ Court _____ County _____ Date _____
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VS.

PLAINTIFF

DEFENDANT

The Commonwealth of Kentucky to:

Name _____

Address _____

You are commanded to appear before: (select one of three choices)

_____ Court The Grand Jury of _____ County

Other _____

You are to appear at: _____

on the _____ day of _____, 20____, at _____ a.m. OR p.m. Eastern Central Time

To testify in behalf of _____

To produce _____

To give depositions

You are commanded to produce and permit inspection and copying of the following documents or objects (or to permit inspection of premises): _____

on the _____ day of _____, 20____, at _____ a.m. OR p.m. Eastern Central Time
 at the following address: _____



PROOF OF SERVICE



B. 2008 AMENDMENTS TO THE RULES OF CRIMINAL PROCEDURE

I. RCr 4.48 Forfeiture of bail

RCr 4.48 shall read:

(1) If the court has ordered forfeiture of bail following a show-cause hearing as described in Rule 4.42(5), or following the willful failure of the defendant to appear in court when required, the court shall serve a copy of the forfeiture order on the defendant and the defendant's surety or sureties at their last-known addresses. If the defendant or the defendant's surety or sureties do not appear within 20 days after service of the order or return of not found and satisfy the court that appearance or compliance by the defendant was impossible and without his or her fault, the court may order judgment against the defendant and the defendant's surety for the amount of the bail or any part thereof and the costs of the proceedings.

(2) If the declaration of forfeiture is made by a trial court other than the circuit court and the amount of bail is beyond its jurisdiction, or a lien on real estate is involved, the bond shall be filed with the clerk of the circuit court of the county where the amount of forfeiture may be determined and collection proceedings may be so instituted.

(3) A forfeiture may be set aside upon such conditions as the forfeiting court may impose if it appears that justice does not require its enforcement.

(4) When bail is forfeited, the clerk of the court shall enter a record of the forfeiture and date of forfeiture. When real estate is affected, the clerk shall forthwith send notice of the forfeiture and date thereof to the county clerk of each county where the real estate is situated. The county clerk of the latter county shall make an appropriate entry at the end or on the margin of the record of the Commonwealth's lien on the real estate.

II. RCr 4.54 Continuation of bail

RCr 4.54 shall read:

(1) Except as provided in Rule 5.22 and Rule 12.78, bail taken at any stage of the proceedings shall continue in effect to insure the appearance of the defendant for any and all purposes at all stages of the proceedings, including appeal. In the event a defendant waives the charges to the Grand Jury, or following a preliminary hearing is ordered bound over to the circuit court, control over bail, including any conditions thereof, shall remain with the district court until indictment is returned, at which time control shall pass to the circuit court. Upon the conviction of a defendant, bail may be increased, decreased, revoked, or modified by the trial court without being subject to the hearing requirements of

Rule 4.42, and control over bail shall remain with the trial court throughout any appeal.

(2) Subject to RCr 5.22, bail shall terminate (a) when the principal is acquitted or the prosecution is dismissed; (b) when the principal, following conviction, fails to file a notice of appeal within the time limit under Rule 12.04; (c) when the appeal taken by the defendant is dismissed; or (d) on the effective date of an appellate decision affirming the conviction.

(3) In the event of a reversal of a conviction by an appellate court granting the defendant a new trial, the defendant shall be entitled to the rights of pre-trial release under Rule 4.04 as if upon an initial appearance.

(4) The efficacy of a bail bond shall not be affected by the fact that the defendant is prosecuted for an alleged offense or offenses different from but arising out of the same occurrence as the charge named in the bail bond.

III. RCr 8.28 Presence of defendant

RCr 8.28 shall read:

(1) The defendant shall be present at the arraignment, at every critical stage of the trial including the empaneling of the jury and the return of the verdict, and at the imposition of the sentence. The defendant's voluntary absence after the trial has been commenced in his or her presence shall not prevent proceeding with the trial up to and including the verdict. The defendant may be permitted to remain on bail during the trial. Upon a hearing and finding by the trial court, that a defendant in custody on any charge, including a felony, intentionally refuses to appear for any proceeding, including trial, short of physical force, such refusal shall be deemed a waiver of the defendant's right to appear at that proceeding.

(2) A defendant who persists in engaging in disruptive conduct after being warned by the court that such conduct will cause him or her to be removed may be excluded from the courtroom.

(3) A corporation may appear by counsel for all purposes.

(4) In prosecutions for misdemeanors or violations the court may permit arraignment, plea, trial and imposition of sentence in the defendant's absence. However, no plea of guilty to a violation of KRS 189A or KRS 218A may be entered in the defendant's absence, unless the defendant first executes a written waiver of his or her right to be present.

(5) During his or her appearance in court before a jury the defendant shall not be required to wear the distinctive clothing of a prisoner. Except for good cause shown the judge shall not permit the defendant to be seen by the jury in shackles or other

devices for physical restraint.

IV. RCr 11.02 Sentence.

RCr 11.02 shall read:

(1) Sentence shall be imposed without unreasonable delay. Pending sentence the court may commit the defendant or continue or alter the bail. Before imposing sentence the court shall, if the defendant is guilty of a felony, cause a presentence investigation to be conducted, examine and consider the report, and furnish a copy of the report to the attorney for the Commonwealth and the attorney for the defendant no later than two (2) business days prior to final sentencing. The defendant may waive the presentence investigation report pursuant to KRS 532.050. The court shall consider the possibility of probation or conditional discharge and shall afford the defendant and the defendant's counsel an opportunity to make a statement or statements in the defendant's behalf and to present any information in mitigation of punishment.

(2) After imposing sentence in a case tried on a plea of not guilty, the court shall advise the defendant of his or her right to appeal and of the right of a person who is unable to pay the cost of an appeal, or unable to employ counsel, to apply for leave to appeal in forma pauperis and to have the continued assistance of counsel to perfect and prosecute the appeal. If the defendant is proceeding without counsel and so requests, the clerk of the court shall prepare a notice of appeal for the defendant's signature and shall file the notice forthwith.

V. RCr 12.04. When and how taken

RCr 12.04 shall read:

(1) An appeal is taken by filing a notice of appeal in the trial court.

(2) The notice of appeal shall name all of the appellants and appellees and designate the judgment from which the appeal is being taken. The clerk shall serve notice of the filing of the notice of appeal by mailing a copy thereof to the clerk of the appellate court and to the attorney for each appellee, shall note on each copy thus served the date on which the notice of appeal was filed, and shall note in the docket the names of the parties served and date or dates on which the copies were mailed.

(3) The time within which an appeal may be taken shall be thirty (30) days after the date of entry of the judgment or order from which it is taken, subject to Rule 12.06, but if a timely motion has been made for a new trial an appeal from a judgment of conviction may be taken within thirty (30) days after the date of entry of the order denying the motion; provided, however, that in the case of a motion for new trial made later than five (5) days after return of the verdict, the appeal must be from the

order overruling or denying the motion, and the review on appeal shall be limited to the grounds timely raised by the motion as provided by Rule 10.06.

(4) The timely filing of a notice of appeal from a judgment of the district court shall stay proceedings on the judgment as long as the case remains on appeal, except for the requirement of bail. Stays in juvenile dispositions shall be discretionary with the court.

VI. RCr 12.76 Stay of execution

RCr 12.76 shall read:

(1) (Death.)

A sentence of death shall be stayed pending review by an appellate court, but the defendant may be transferred to the penitentiary.

(2) (Imprisonment.)

The execution of a sentence of imprisonment shall be stayed if an appeal is taken and the defendant is admitted to bail.

(3) (Fine.)

A sentence to pay a fine or a fine and costs, if an appeal is taken, may be stayed by the trial court upon such terms as the court deems proper.

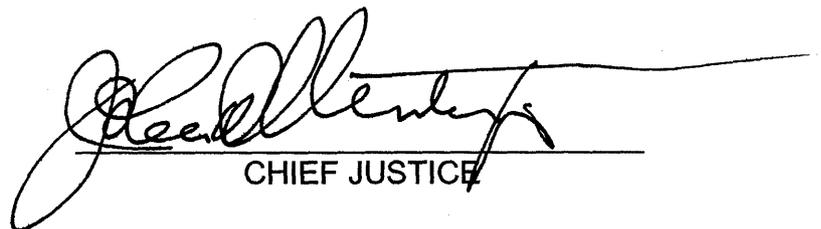
(4) (Probation.)

A sentence of probation may be stayed if an appeal from the conviction or sentence is taken. If the sentence is stayed, the court shall fix the terms of the stay.

All sitting. All concur except:

Schroder and Venters, JJ. dissent and would not adopt the proposed amendments to CR 45.01.

ENTERED: February 11, 2009.


CHIEF JUSTICE