

The background of the cover is a photograph of the Kentucky State Capitol building, a large neoclassical structure with a prominent white dome and a portico of columns. In the foreground, there are several pink roses in bloom, some in sharp focus and others blurred. The sky is a clear, light blue.

The Advocate

KENTUCKY JUSTICE ASSOCIATION

2010 —
Year in
Review

Changes That Will Impact Your Practice

March/April 2011 •
Volume 39, Number 2

From Pike to Jefferson, It's all the Same— Uniform Procedures for Family Court Practice

By Amy B. De Renzo and Emily K. Saling

The Commonwealth of Kentucky has now joined the ranks of neighboring states in adopting uniform family court procedural rules to be implemented statewide and called Family Court Rules of Procedure and Practice (FCRPP). These rules became effective January 1, 2011 and, according to the Kentucky Supreme Court, “[w]ill have a significant impact on the practice of family law in Kentucky.”

In 2009, the Supreme Court of Kentucky embarked on an initiative to design family law rules of procedure in an effort to ensure, as well as expedite, the safety, permanency and well being of children and families. In undertaking to create the FCRPP, the Supreme Court of Kentucky enlisted the help of current and former judges, family law professors and practicing family law attorneys across the commonwealth. The Supreme Court then held a public hearing at the annual Kentucky Bar Association Convention in June 2010, in which they revealed the first draft of the FCRPP. The Kentucky Bar Association’s magazine, *Bench & Bar* (May 2010, Volume 74, Number 3) also printed copy of these proposed rules. The Supreme Court held open a comment period until July 31, 2010 before finally adopting the final version of the new Family Court Rules of Practice and Procedure. The FCRPP is a separate section of the civil rules and the current civil and criminal rules will apply to family law cases only to the extent that they are not inconsistent with the new rules. *Pro se* litigants will be held to have knowledge of the new rules as well as all practicing attorneys in the commonwealth of Kentucky beginning January 1, 2011.

One of several benefits of the enactment of the rules is that Kentucky’s unified court system now has a set of uniform family law rules by which it will operate. Attorneys and litigants know that the procedural rules of practice apply statewide, which will make practicing family law in more than one county in Kentucky an easier task for attorneys.

Previously, judges followed the Supreme Court’s Civil

Rules. Most counties created separate, local family court rules with each county having intricate diverse rules, making it a nuisance to undertake cases in counties other than one’s usual home county of practice. The Supreme Court has specified that these new rules will prevail over any local rule of court. With the January 1, 2011 enactment of the FCRPP, all judges hearing family law cases have until July 1, 2011 to revise their local rules to comply with the FCRPP and submit the revisions to the Kentucky Supreme Court for approval.

Although not all Kentucky counties have a designated family court system, all counties hear family court cases. The Supreme Court of Kentucky has made clear that these new rules shall apply in all family law cases across the state. The intent is that the “FCRPP address *all* subject matter in the area of family law.” The Supreme Court declared that, “[t]he intention of the FCRPP is to promote the uniformity in court rules, procedures and best practices for all of Kentucky’s courts, attorneys, parties and community partners.” The Court continues to note that “[t]he new rules establish statewide, best practice standards to ensure that practitioners, litigants and community partners, including the courts, are on a consistent playing field regardless of their location within the commonwealth.” As any multi-county practitioner knows, being on a “consistent playing field” with the local attorney is important in all types of litigation. Reviewing local rules before entering any county’s courthouse is still a mainstay, but at least the FCRPP alleviates the cumbersome requirement concerning the procedures in family law cases.

The FCRPP prescribes applicable rules and procedures for counties without a family court division of circuit court, which instead employ domestic relations commissioners who continue to hear cases subject to the direction of the appointing judge. “These rules were previously located in Civil Rule 53, which was repealed to make all rules relating to family law appear as one unified set of rules, the FCRPP.”

A few of the poignant revisions are listed here.

Dissolution of Marriage

The Supreme Court set forth new additional requirements that are now mandatory in order to obtain a divorce decree. FCRPP 2 specifies that both parties seeking a divorce must exchange a Preliminary Verified Disclosure Statement (AOC-238) within 45 days of filing the petition for dissolution, which are not to be filed with the Court unless so ordered. FCRPP 3 requires parties who have entered into a Marital Settlement Agreement disposing of all issues to file an Agreed Order or motion to submit for decree of dissolution of marriage. Although many counties already have this practice, subsection (1)(a) (i) sets forth a list of attachments and information to provide in the motion. For example, subsection (H) requires that both parties file a signed written waiver of the right to have a hearing.

Custody, Shared Parenting, Visitation and Support

FCRPP 6(2) requires the court or domestic relations commissioner to conduct a hearing on motions for temporary custody, time-sharing, visitation or child support within 30 days of filing the motion except for good cause stated on the record.

While awaiting the hearing, the new procedures include Appendix A, which sets forth “suggested ... guidelines” for implementing a parenting schedule. It is important to note that these suggestions are merely suggestions and are not mandatory. They give a couple beginning points to determine the type of parenting schedule that works for their family. Armed with the knowledge that a court will be aware of these suggestions, a couple may be

more willing to reach their own agreements without the immediate necessity of a decision from a judge. Implementing these suggestions, even as a temporary solution, may alleviate an already busy docket for a judge hearing family matters.

Another significant matter being addressed is one of relocation. If either parent intends to move with children from Kentucky to another state or more than 100 miles from the present residence, relocation of the children may not occur unless the court enters an order modifying the status quo. Before the enactment of these rules of procedure, a parent could move unless a motion was filed objecting to the move.

Domestic Violence

This section of the FCRPP describes new protocol for the issuance

Robson Forensic Medical Device Expertise

Biomechanical Engineering

Expert: Valentina Ngai, Ph.D.



- Medical devices: instruments, implants and assistive devices
- Premarket & postmarket wear testing
- Kinematic & kinetic testing
- Device performance requirements
- Biomechanical implants & instruments

Dr. Ngai is an expert in biomechanical engineering. She has been conducting research in biomechanics for nearly a decade, including five years of research conducted for the Department of Orthopedic Surgery at Rush University Medical Center. Dr. Ngai provides investigations, reports, and testimony toward the resolution of disputes and litigation involving the testing and performance of medical implants and devices. She has been published in the Journal of Biomechanics, Wear, and the Journal of Engineering in Medicine.

vngai@robsonforensic.com

Biomechanical Engineering

Expert: Mari S. Truman, P.E.



- Orthopedic medical devices: Instruments and implants for skeletal trauma/joint reconstruction
- Design safety assurance
- Device performance requirements
- Product warnings
- Biomechanics: Impact & injury

Mari has nearly 30 years experience in product design and development in orthopedic medical devices, including implants and instruments. Mari draws on her strong knowledge of design control processes, failure modes and effects analysis, clinically relevant tissue loading, design safety assurance including device performance requirements and warnings, during her medical device litigation reviews. Mari has qualified as an expert in biomechanics in various state and federal courts.

MariS.Truman@robsonforensic.com

Robson Forensic

Engineers, Architects, Scientists & Fire Investigators

www.robsonforensic.com
800.654.4344

of a summons. Before the FCRPP, a summons was often issued despite the absence of a sufficient relationship, prescribed by statute (KRS 403.720(2)), and the absence of a statement of an act or threat of domestic violence. With the enactment of the FCRPP, if domestic violence exists, but there is no evidence of immediate danger, a summons will be issued as long as a statutorily defined relationship exists. In those cases, a hearing is scheduled to determine whether a domestic violence order (DVO) shall be issued. FCRPP 10(3).

Paternity Actions

Paternity actions are distinguished from all other actions by the relationship of the parties. A case is filed as a paternity action if the parties involved were never married to one another but have a child in common. When a case

reaches a conclusion and is closed, a party seeking to file a motion must file a fee to re-open the case. Before the FCRPP, counties decided when and how much to charge to re-open paternity cases. FCRPP 14 now requires each county to enforce a mandatory re-opening fee of \$50 for paternity cases re-opened after six months from entry of a paternity judgment for modifying any support, custody or visitation ordered.

In addition, judges hearing paternity actions are now permitted to transfer any matter in a paternity action to their custody, visitation and support docket. FCRPP 14(3). When these transfers occur, the Court will be required to order the moving party to pay the appropriate filing fee, which will be the difference in the cost of filing these two types of action. *Id.*

Dependency, Neglect or Abuse

FCRPP 17 now authorizes judges presiding over a dependency, neglect or abuse action to consider court orders and findings of fact from other court proceedings involving the child, his parents or the person having custodial control or supervision of the child in making a decision. In the event a judge relies on these other materials, a copy of the documents relied upon shall be included in the case file. FCRPP 17.

This section also instructs the courts to use particular forms prescribed by the Administrative Office of the Courts (AOC) in all dependency, neglect or abuse cases. The rule further specifies there will be no verbal orders for the removal of a child and that all

Continued on page 22

Disability Insurance Claims and Appeals

Disability insurance claim denied?
Call an attorney with experience handling
disability claims and appeals, both employer-
sponsored and individual policies.

**Driscoll &
Associates**
LAW OFFICES

6011 Brownsboro Park Blvd., Suite A
Louisville, KY 40207
502.587.1983 • 1.877.587.1983
www.driscollandassociates.com



Will Driscoll

Admitted to practice in all
Kentucky state and federal
courts and U.S. Court of
Appeals, Sixth Circuit.

2011 Friends of KJA

These supporters of KJA provide many different services for the legal profession. Please consider them when you need one of these services.



DIAMOND SPONSORS

Ringler Associates

(877) 288-0741

Cindy Chanley

Louisville

(877) 288-0741

Brad Cecil

Louisville

(877) 541-9388

Gayle Christen

Florence

www.RinglerAssociates.com

The Only Broker You Need! Since 1975, Ringler Associates has provided injured parties and their attorneys with the finest structured settlement services. Our brokers have successfully completed over 120,000 structures with annuity premiums in excess of \$1.9 billion. Today, Ringler Associates is involved in one of every four structures where an independent broker is used. Our brokers focus on achieving the best possible results for all parties using tax-free structured settlement annuities.

The Center for Special Needs

Trust Administration

Todd Belisle • (877) 766-5331

www.SNTCenter.org

The Center for Special Needs Trust Administration is a not-for-profit corporation with the sole mission of providing comprehensive services to the entire community of people with disabilities.

The Centers for Lien Resolution

Todd Belisle • (800) 498-8382

www.LienResolutionServices.com

The Centers for Lien Resolution provides services to plaintiff clients in the areas of Medicare/Medicaid lien resolution and Medicare set-asides.

FORGE Consulting

Peter Wayne • (502) 595-8600

www.ForgeConsulting.com

FORGE is a national consulting firm that is challenging the status quo in the settlement industry. Our plaintiff-focused approach and full-market access ensures that our clients receive the best possible settlement, individually structured to meet their particular financial needs. From Special Needs Trust Planning, Medicare Set Aside Allocations, Wealth Management Options, and Qualified Funds, we are determined to make a difference in the fight for plaintiffs rights, and are staunch partners with attorneys who wish to do the right thing for their clients.

Lawyers Mutual Insurance Company of Kentucky

Pete Gullett, Jane Broadwater Long • (502) 568-6100

www.LMICK.com

Lawyers Mutual Insurance Company of Kentucky provides legal professional liability insurance to practicing Kentucky lawyers. The company is organized as a mutual, and is therefore, owned by Kentucky lawyers. The Board of Directors is composed exclusively of practicing Kentucky lawyers, and the company is run on a daily basis by Kentucky lawyers. Lawyers Mutual is the only malpractice provider available in Kentucky approved by KJA, the KBA and the LBA. Begun as a project of the KBA Board of Governors, Lawyers Mutual is proud to continue faithful to its original mission to provide high quality, reasonably priced malpractice insurance to the lawyers of Kentucky in a stable manner. Lawyers Mutual has not turned its back on the plaintiff's bar, small firms, solo practitioners or real estate practices.

GOLD SPONSORS

Counsel Financial

Garrett Swearingen • (800) 820-8707

www.CounselFinancial.com

Loans to Litigators... Just Ask. Counsel Financial Services provides litigators with flexible revolving credit lines up to \$50 million using the value of your contingent cases as collateral.

SILVER SPONSORS

FindLaw

Jim Ray • (812) 449-9202 • www.lawyermarketing.com

FindLaw is the legal industry's most effective provider of online marketing, providing Web sites and other online marketing services that generate new business with qualified prospects.

Injured Workers Pharmacy

Ryan Freger • (888) 321-7945 • www.IWPharmacy.com

IWP takes the financial burden out of the medication process for injured workers by shipping medications directly to the patient and collecting payment from the insurance company.

JMW Settlements

Lisa Peak • (800) 544-5533 • www.jmwsettlements.com

JMW Settlements provides immediate, full service structured settlement support on a full range of personal injury cases, including employment and other nonphysical torts.

Leading Technologies, LLC

Bob Yano • (419) 452-6992 • www.LTForensicExperts.com

Leading Technologies, LLC, Consultants and Forensic Experts, is a multi-disciplined professional organization with more than 150 qualified experts in over 75 disciplines. Contact us for a free consultation.

BRONZE SPONSORS

Lexis Nexis

J. Mills Brockman • (606) 308-3658 • www.lexisnexis.com

LexisNexis provides content-enabled workflow solutions to professionals in law firms, corporations, government, law enforcement, tax, accounting, academic institutions and risk compliance assessment.

Logan Lavelle Hunt Insurance Agency

Steve Church • (502) 245-1516

www.winstonco.com

Logan Lavelle Hunt offer all lines of insurance, including home, auto, business, life, health, professional liability, bonds and financial planning to our clients.

Medical Review Consulting

Gina Rogers • (270) 726-3211

www.medicalreviewconsulting.com

A legal nurse consulting firm with extensive experience analyzing medical negligence, personal injury and wrongful death cases. Your complete resource for locating experts and case coordination/development.

Power Presentations

Katie Coulter • (502) 558-6723

www.powerpresentations.org

Power Presentations provides litigation support with high-quality trial graphics, software, training, synched video and the technical support you need to integrate technology into your courtroom or legal presentations.

Robson Forensic

Jesse James Arnold • (800) 813-6736

www.robsonforensic.com

The forensic experts at Robson Forensic are renaissance men and women who have done the work central to the issues, and can testify accordingly with the experience of more than 28,000 cases and claims.

Continued from page 20

orders be in writing on the appropriate AOC prescribed form.

Another significant change is that petitions involving siblings are required to have a separate petition filed for each child with each petition having its own case number. FCRPP 20(1).

Termination of Parental Rights and Adoption

FCRP 32(a) requires separate petitions to be filed for each child in an Adoption and/or Termination of Parental Rights case, yet clarifies that only one judge shall be assigned to each sibling group.

FCRPP 36 requires a review hearing conducted 90 days from the date of entry of an order terminating parental rights. The purpose of the hearing is to review progress toward finalization of placement or adoption of the child. Thereafter, the same hearing is to occur at least annually for the same purpose as the initial hearing.

Status Offenders


A status offender is a child who has been accused of committing acts that would not otherwise be considered a crime if committed by an adult. KRS 600.020(59)(a). The most common of these offenses are habitual truancy, habitually running away and acting beyond control of the child's parents or of the child's school.

FCRPP 39 gives court-designated workers the power to decide whether a status offense complaint meets the criteria for diversion. Should a diversion agreement be reached, a petition shall not be filed. *Id.*

Each child in a status proceeding shall be appointed a public advocate unless waived on the record. FRCPP 42(2).

FCRPP 44 also establishes statewide rules and procedures for the detention and release of juvenile status offenders.

Nearly all counties in Kentucky currently have their own set of local rules, some with specific local rules for

family law. Fortunately, with the enactment of the FCRPP, all attorneys can practice a family law case in any county in the commonwealth of Kentucky, from Pike to Jefferson, and not have to scramble to learn the respective local family court rules. It makes sense to anticipate uniformity in the practice of law to some degree, and now family law attorneys can expect to see the same rules and procedures in every county in which they appear. To be sure, these new procedures set forth in the FRCPP will definitely change the face of family law cases throughout the state. 

—Amy De Renzo is a partner in the law firm of De Renzo Durrett, PLLC, in Louisville, Ky. She is the Chair of KJA's Domestic Relations Section. Amy can be reached at (502) 587-3454 or abd@derenzodurrettlaw.com.

—Emily Saling is an associate with De Renzo Durrett, PLLC, in Louisville, Ky. Her practice includes family and criminal law. She may be reached at (502) 587-3454 or eks@derenzodurrettlaw.com.

OUR SECRET WEAPON.

A single search...that's all it takes.

TRIALSMITH

www.TrialSmith.com 800.443.1757