# A Review of the New Kentucky Family Court Rules of Procedure and Practice (FCRPP): The Rules Relating to DNA, TPR and Adoption

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## Ky. Family Court Rules of Procedure and Practice ("FCRPP")

- Family Law Initiative began 2009
- Civil Rules Conference May 2009
- Subcommittee work July 2009 Nov 2009
- Supreme Court Civil Rules Committee Jan 2010
- KBA July 2010
- Approved by Supreme Court October 2010
- Effective January 1, 2011
- Applies to ALL COURTS with jurisdiction of family law, whether in family, district, or circuit court
- Pro se litigants held to knowledge of rules
- Local rules revised 2011



### **Rules of Court**

- A set of *procedural regulations* adopted by courts which are *mandatory upon parties and their lawyers* on matters within the jurisdiction of those courts.
- Most states have statewide rules of court.
- Most Family, Circuit and District Court judges adopt what are called "local rules" of court.
- Local rules include the time allowed to file papers, the format of documents, and numerous other mundane but vital matters.

### Kentucky has the following Statewide rules:

- Rules of Civil Procedure
- Rules of Criminal Procedure
- Supreme Court Rules (include Judicial Canons and Ethics for Lawyers)
- Rules of Administrative Procedure
- Rules of Evidence
- And now.... Family Court Rules of Procedure and Practice



## Intention of FCRPP and Family Law Initiative

- Promote uniformity throughout the Commonwealth
- Promote BEST PRACTICES!!!
- To help ensure and expedite safety, permanency and well-being of Kentucky children and families



## FCRPP Broken Down by Subject Matter

- Dissolution and Property Division
- Custody, Shared Parenting, Visitation & Support
- Domestic Violence
- Paternity Actions
- Dependency Neglect and Abuse
- Adoption & Termination of Parental Rights
- Status Offenders



## FCRPP VI. Dependency, Abuse and Neglect (DNA) (FCRPP 16 – 36)

### **Court Orders**

FCRPP 16

 <u>ALL</u> orders in dependency, neglect and abuse actions must be on the appropriate AOC form.



## Judicial Notice in DNA Cases FCRPP 17

- Court may consider findings of fact and court orders for any other court proceeding in any other court file involving the child, child's parent's, or PECC if the court is aware of such proceedings
- The Court must include a copy of any material they have relied on in the court record



### **Service**

FCRPP 18 (1)

- Copy of petition, summons, ECO must be served on:
  - Both parents
  - PECCs or supervision
  - Any person with legal custody
  - Any person claiming a right to the child



## Documents to be served/ ECO to be accompanied by:

FCRPP 18 (2)

- Notice and statement of rights AOC DNA-2.2
- Financial statement, affidavit of indigence, request for counsel and order AOC-DNA-11



### **Emergency Custody Orders**

FCRPP 19(1), 19(2) & 19(3)

- Any request for an ECO must be in writing and on AOC form AOC-DNA-2
- Person seeking ECO must list any known other proceedings regarding child or orders regarding custody (FCRPP 19(2))
- No child is to be removed on a verbal order



## FILING of ECO FCRPP 19(3)

- ECO must be filed with the clerk no later than close of business the next day (excl. holidays and weekends)
- Clerk is to assign a case number
- Petition to be filed within 72 hours of child going into custody (same case number)



### Filing of petition

FCRPP 20 (1)

 Separate petitions are to be filed regarding each child

Siblings are to be assigned to same judge



### **Notice of Filing of Petition**

FCRPP 20(2) & 21

No later than the next business day following filing of a petition, clerk shall provide or mail copies of petition <u>and give notice of TRH</u> to:

- Parents or PECC
- State child protection agency
- County attorney
- Any Guardian ad litem
- Any counsel of record



### Orders from Hearings FCRPP 22

- Adjudication Hearing shall be entered on AOC-DNA-4 FRCPP 22(1)
- Disposition Hearing shall be entered on AOC-DNA-5 FRCPP 22(3)
- Permanency Hearing shall be entered on AOC-DNA-6 FRCPP 22(3)
- Permanent Custody Order shall be entered on AOC-DNA-9 FRCPP 22(4)



### **Transfer of Cases**

FCRPP 19 and 25

 After issuing an ECO, the court may transfer for forum non conveniens to county where abuse/neglect alleged to have occurred and notify the court to which case is transferred

FRCPP 19

 Cases shall not be transferred to another county prior to adjudication except on a specific finding of improper venue or forum non conveniens



### **Continuances**

FCRPP 23

- When a continuance or extension of time is granted, the court must make findings on the record (written or oral) that a continuance is necessary for one of these reasons:
  - in best interest of child
  - for accumulation or presentation of evidence or witnesses,
  - to protect rights of a party, or
  - other good cause shown.



### Dismissal FCRPP 24

## After a petition has been filed, it may only be dismissed by court order



## Representation by Attorneys in DNA Cases

FCRPP 26

- Attorney MUST file a written entry of appearance
- Attorney may NOT withdraw except upon motion granted by the court



## Records and Transcripts FCRPP 27

- Electronic or stenographic record of interviews with children—including inchambers proceedings—must be filed under seal with clerk
- Records may be made available to parties or counsel on motion and written order of court



## Dispositional Report FRCPP 28

- Any dispositional report by CHFS must be filed at least three (3) days before the dispositional hearing
- The report must be filed on the AOC-DNA-12, DNA Dispositional Report



### Case Plan

FRCPP 29

The Court must require these document to be filed in the court record and provided to all parties:

- 1. The out-of-home case plan
- Any visitation agreement included in the case plan or permanency plan
- 2. Any prevention plan established by CPS



### Permanent Placement Review

FRCPP 30

- The Court must conduct a permanency progress review for any child who is/was under age 16 at the time the petition was filed.
- This permanency progress review must be held no later than six months after a child is placed into foster care, with a noncustodial parent, or other person or agency



### Neglect or Abuse After Permanency FRCPP 31

 Any new allegation of abuse or neglect or request for removal after permanency has been achieved shall be filed as a new petition



## Adoption and Termination of Parental Rights

FRCPP 32

- Any TPR proceeding must be assigned to the same family court division that heard the KRS 620 action (when the petition is filed in the same county where the KRS 620 proceeding was held)
- A separate petition must be filed for each child, and individual case numbers assigned (but sibling cases must be heard by the same judge)
- The TPR petition must include the number of underlying juvenile or TPR case and name of prior GAL



### **Scheduling of TPR Hearings**

FRCPP 34

- The petitioner must obtain a pretrial date when the involuntary TPR petition is filed
- If parent(s) are not served prior to the pretrial, that date to be used as case status review to expedite the proceeding
- In a TPR case, NO continuance of a final hearing should be granted unless good cause shown



## Orders Terminating Parental Rights FRCPP 35

- Clerk shall send two certified copies of order of TPR to state child protection agency
- Prospective adoptive parent or attorney may obtain certified copy of order from CPS to attach to adoption petition



### **Post-TPR Review**

FRCPP 36

 If an order terminating parental rights is entered, the court must conduct a review hearing within 90 days of entry of order and at least annually thereafter to review progress toward finalizing placement or adoption for child



## Adoption—Scheduling of Hearings FRCPP 33

- No request for hearing should be made before filing of the agency report required by KRS 199.510 and GAL report, if any
- A final hearing on an uncontested adoption must be held within 30 days of a request
- NO continuance of final hearing should be granted except for good cause shown



### So.... major changes include:

- Use of AOC DNA forms is now mandatory
- Verbal orders for removal of a child are not permitted.
- All orders must be in writing on the required AOC form.
- A separate petition must be filed for each child where there is a sibling group.
- AOC-DNA-12 dispositional report
- Children under the age of 16 must receive a 6
   month permanency progress review by the court.

### And....

- 6 month review for children under 16
- A separate petition must be filed in DNA and TPR cases for each child where there is a sibling group.
- 90 day permanency review post-TPR
- In uncontested adoptions, a hearing must be held within 30 days of the filing of a request for a final hearing.
- Immediately upon the filing of a petition for involuntary termination of parental rights, the petitioner shall obtain a pretrial date.

## **Notice and Opportunity to be Heard**

 45 CFR 1356.21 requires each State to provide the foster parents, any pre-adoptive parents or relative providing care with timely notice of an hearing or court review held regarding the child while the child is in care



## **Next steps in the Family Law Initiative:**

- Local Rule revisions (current) for conformity to FCRPP and best practices
- Edits and additions to the FCRPP
- Commentary to be developed
- GAL/CAC standards and training to be developed
- Statutory analysis and review through committee process to update KRS with legislative recommendations
- STATEWIDE Family Court!

