

IX. COURT-APPOINTED COUNSEL

FCRPP 36 Standards for Court-Appointed Counsel

(1) Rules 36 through 39 shall apply to the appointment and conduct of court-appointed counsel, including guardians *ad litem* and those representing adults, in any action under KRS Chapters 199, 620, and 625.

(2) In addition to Rules 36 through 39, court-appointed counsel shall follow the Statewide Standards of Expected Conduct for Court-Appointed Counsel (the Statewide Standards) set forth in Appendix D. Each Circuit or District may deviate from the Statewide Standards by way of local rule, if approved by the Chief Justice.

(3) Proposed local standards for court-appointed counsel shall set forth the conduct expected of court-appointed counsel. Local standards should incorporate American Bar Association and/or National Council of Juvenile and Family Court Judges best practices standards.

FCRPP 37 Appointment and Retention

(1) Each court shall keep a list of approved court-appointed attorneys. The attorney list shall include each attorney's phone number, physical address, and electronic mail address. Attorneys shall be responsible for updating the court with any changes to required information.

(2) Each court's list should be open to any attorney who is in good standing, satisfies the requirements of these rules, and requests to serve. No attorney shall be appointed exclusively as guardian *ad litem* or as an attorney representing an adult.

(3) Courts may impose sanctions, including removal from the appointment list and any active cases, on any attorney who does not comply with these rules. The court shall not remove an attorney from an active case if doing so would harm the client.

(4) Except for guardians *ad litem*, courts shall not appoint counsel unless the file contains a completed AOC-DNA-11 (Financial Statement, Affidavit of Indigence, Request for Counsel, and Order (DNA/TPR Cases)), and the court has reviewed the form. An exception to this rule shall be if the court takes sworn proof on the record regarding the party's alleged indigency and makes a specific written finding that the party seeking counsel is indigent. In that event, the party must complete the AOC-DNA-11 form and file that form into the record within five business days following the appointment or the appointment shall be vacated. This rule is not applicable to warning order attorney service under Civil Rule 17.

(5) Courts shall review their attorney lists at least every four years.

(6) Each court shall make its attorney list available to the public upon verbal request.

(7) Courts shall appoint counsel sequentially from the list unless:

(a) Another attorney has previously represented that person;

(b) Appointing the attorney would create a conflict; or

(c) The specific and unique circumstances of a party requires, in the interest of justice, that a non-sequential attorney be appointed who has specific and identifiable attributes which would best fit the party's circumstances.

Supreme Court Commentary

Any case with multiple children pending with a common parent(s) with concurrent actions pending should be considered one case, which also includes situations in which there have been multiple petitions adjudicated and disposed of simultaneously involving the same child or children. A case shall be considered active for purposes of this rule from the filing of the petition until permanency is achieved.

FCRPP 37(4) is not intended to prevent courts from coordinating potential representation to appear at the initial hearing as potential appointees.

FCRPP 37(7)(c) is not intended as a mechanism for unnecessary selective appointments. It is intended to be a mechanism for appointing attorneys in certain rare circumstances in which the client's interests could be harmed by the appointment of the next sequential attorney. For instance, the provision might be applicable for appointing an attorney of the same sex to represent a child who was sexually assaulted by someone of the opposite sex.

FCRPP 38 Required Training

(1) Each attorney seeking appointment in an action under KRS Chapters 199, 620, and 625 shall have completed the required dependency, neglect and abuse training provided by the Administrative Office of the Courts.

(2) Each attorney shall complete a minimum of four hours of relevant legal or multi-disciplinary training every two years. Relevant legal education must include instruction on improved practice and current law regarding dependency, neglect and abuse, termination of parental rights, or related proceedings. Multi-disciplinary training must include instruction on child development, trauma-informed care and approaches, substance abuse disorder, child welfare forensics, or other matters related to practice in actions under KRS Chapters 199, 600, and 625. Court-appointed counsel shall provide proof that he or she has completed the required training to the appointing authority in each Circuit or District to remain eligible for appointments.

FCRPP 39 Duties Regarding Representation and Repayment

(1) Each indigent party or child is entitled to court appointed counsel to file or defend an appeal brought from a decision of the Circuit or District Court. Once an appeal is filed, the appeal will be a new case requiring a new appointment; however, efforts should be made to appoint the same counsel from the prior case unless there is

a conflict of interest or a new appointment is requested by the attorney, the child, or the adult parent or caregiver who is entitled to appointed counsel.

(2) To reduce administrative costs, Courts shall not approve multiple payments to court-appointed counsel for work on the same case except for good cause shown.

Supreme Court Commentary

FCRPP 39(2) is intended to apply to multiple payment requests made in the same case. It does not prohibit a single payment request that does not meet the maximum allowable fee. Also, it does not prohibit multiple payments for the same client, provided that the payments are requested for different actions (i.e., multiple trailers, appeals).

X. APPENDIX A

Sample Financial Status Quo Orders

1. Neither party shall, except as necessary to pay reasonable living expenses, incur unreasonable debt, sell, encumber, gift, bequeath or in any manner transfer, convey or dissipate any property, cash, stocks or other assets currently in his or her possession or in the control of another person, company, legal entity or family member without permission of the court or an agreed order signed by both parties or their attorneys.

2. Neither party shall allow the cancellation or lapse of any health, life, automobile, casualty or disability insurance currently covering themselves or a family member or change the named beneficiaries on such policies prior to receiving permission of the court or filing an agreed order signed by both parties or their attorneys.

XI. APPENDIX B

Sample Parenting Conduct Orders

This list below includes examples of terms that may be included in a court order relating to custody or parenting. A court may issue one or more of these orders and may issue orders not on this list. These examples are not binding upon any party unless specifically ordered in that party's case. Each party should review the specific orders in his or her case to determine which, if any, orders apply to him or her.

Absent a court order permitting them to do so, no parent or legal custodian of a child shall:

1. Permit or encourage a child to refer to someone other than the child's actual parents as "father", "mother", "mom," or "dad".