

Supreme Court of Kentucky

2022-11

ORDER

In Re: Order Amending Rules of the Supreme Court (SCR)

The following amendments to the Supreme Court Rules shall be effective April 1, 2022, with the exception of SCR 3.390, which shall be effective January 1, 2023.

I. SCR 1.050 The Administrative Office of the Courts

Sections 4, 6 and 8 of SCR 1.050 shall read:

- 4) All courts and clerks within the Court of Justice shall keep such records and report such statistics as may be required by the Administrative Office of the Courts with the approval of the Supreme Court.
- 6) Requests to hold court at any location other than a court facility shall first be presented to the Administrative Office of the Courts for review and recommendation to the Supreme Court.
- 8) When a civil matter has been submitted for final adjudication, an attorney may file a notice with the clerk, with a copy to the judge and all parties. The clerk shall send a copy of the notice to the Administrative Office of the Courts. The Administrative Office of the Courts shall compile a submission report that is made available to the judge for review. The clerk shall notify the Administrative Office of the Courts when a final decision has been rendered.

If a civil matter remains under submission for longer than 90 days, judges shall certify the reason to the Chief Justice. Any judge who knowingly violates any provision of this section may be reported to the Judicial Conduct Commission.

II. SCR 1.060 Circuit court clerks

Section 2 of SCR 1.060 shall read:

- 2) No such certificate shall be issued to any person unless that person has received a passing grade of 70% or more on a standard

examination to be prepared and administered by the Administrative Office of the Courts. The examination shall include general knowledge questions and specific questions pertaining to the materials included in the Circuit Clerk's Manual, Circuit Clerk's Accounting Manual, the Personnel Policies of the Court of Justice, and relevant Administrative Procedures of the Kentucky Court of Justice.

III. SCR 2.042 Conditional admission, restoration and reinstatement

SCR 2.042 shall read:

- 1) As a part of its certification process for initial Applicants, the Character and Fitness Committee may require that an Applicant enter into an agreement as a condition of his/her admission to the Bar. The conditions of admission, as determined by the Character and Fitness Committee, shall be set forth in a written agreement with specific terms and conditions. These terms and conditions shall be monitored by the Committee or its agents or designees.
- 2) Upon failure to comply with the terms and conditions of the agreement, the Committee may:
 - a) extend the term and impose additional condition(s); or
 - b) recommend to the Court revocation of the license to practice law.
- 3) All information relating to conditional admission of an Applicant or an attorney shall remain confidential in accordance with SCR 2.008.
- 4) Any member whose license is revoked by the Court for failure to comply with the terms of a conditional admission agreement shall be deemed to have been suspended and restoration or reinstatement shall be subject to the rules set forth in SCR 3.501, et seq.

IV. SCR 2.112 Limited admission for attorney participants in a public defender program, legal services program, or Office of a Commonwealth's or County Attorney

Subsection (d) of Section 2 and Section 4 of SCR 2.112 shall read:

- 2) **General Rule.** An attorney to whom this rule applies shall be admitted to practice before the Courts of this Commonwealth in all matters within the professional responsibility of an organized public

defender program, the Office of a Commonwealth's or County Attorney, or an organized legal services program which program is sponsored, approved or recognized by the Kentucky Bar Association. Admission to practice under this rule shall be limited to the matters specified in the preceding sentence. An application for admission to practice under this rule shall include or be accompanied by:

- a) A certificate of the highest Court or agency of any other state having jurisdiction over admission to the bar and the practice of law stating that the applicant is in good standing at the bar of such Court or in such state.
 - b) A statement signed by the Commonwealth's or County Attorney, or a representative of the public defender program or legal services program, that has employed the attorney, showing compliance with paragraph (1) of this rule. Any such statement shall also acknowledge the duty of the office or the program to notify the Clerk of the Supreme Court immediately whenever the attorney ceases to be an employee of such program.
 - c) Such other affidavits or materials as shall be deemed necessary by the Character and Fitness Committee in order to satisfy the Committee of the applicant's moral character and fitness to practice before the Court of this Commonwealth.
 - d) Payment of a fee of one-hundred dollars (\$100.00) made payable to the Kentucky Office of Bar Admissions (cashier's or certified check or money order).
- 4) **Expiration of Admission.** When an attorney admitted under this rule ceases to be associated in the program or office for which limited admission was granted, a representative of the public defender program or legal services program or office of Commonwealth's or County Attorney shall immediately and in writing so notify the Clerk of the Supreme Court. Admission to practice under this rule shall expire (i) after 18 months or at the end of any renewal period of the 18-month term as provided for herein, or (ii) upon termination of the attorney's employment with the program or office, whichever shall first occur. The admission to practice under this rule for 18 months may be extended and renewed for additional terms of 18 months in the same manner as originally granted but only until such time as the attorney is otherwise eligible to obtain admission to practice in the Commonwealth of Kentucky without examination by reason of reciprocity or comity pursuant to SCR 2.110.

V. Delete [SCR 2.300 Reinstatement of persons to practice law scope and purpose of reinstatement guidelines]

SCR 2.300 shall be deleted in its entirety and replaced by new rules SCR 3.502 and SCR 3.503.

VI. SCR 3.023 Disclosure of Professional Liability Insurance

SCR 3.023 shall read:

- 1) On or before September 1 of each year, every active member of the Association shall certify to the Executive Director in such form and manner as the Board may designate:
 - a) Whether the member is engaged in the private practice of law;
 - b) If engaged in the private practice of law, whether the member is currently covered by a policy of professional liability insurance with minimum limits of \$100,000.00 per claim and \$300,000.00 aggregate for all claims during the policy term; and
 - c) Whether the member is exempt from the disclosure provisions of this Rule.
- 2) If any active member not exempt from the provisions of this Rule as provided in paragraph (5) fails to certify by October 1 of each year that the member is in compliance with this Rule, the member shall be assessed a late fee of fifty dollars (\$50.00).
- 3) Each member who has previously reported being covered by professional liability insurance as set forth in paragraph 1(b) of this Rule shall notify the Executive Director in writing in such form and manner as the Board may designate within 30 days if the insurance policy providing coverage lapses, terminates, or is no longer in effect for any reason.
- 4) The information disclosed pursuant to this Rule will be made available to the public by such means as the Board may designate.
- 5) The following members are exempt from the disclosure provisions of this Rule:

- a) Members who are employed by a government entity and who do not represent clients outside of that capacity; and
- b) Members who are employed by an organization client and who do not represent clients outside of that capacity.

VII. SCR 3.030 Membership, practice by nonmembers and classes of membership

Subsection (b) of Section 3 and Subsection (b) of Section 6 of SCR 3.030 shall read:

- 3) a) If any attorney continues to appear on the basis of pro hac vice admission per subsection (2), the attorney shall pay a renewal fee every year until the case is concluded. The renewal fee shall be due on the one-year anniversary of the attorney's original pro hac vice admission. Any subsequent renewal fees shall be due in subsequent years on the same calendar date. The renewal fee payment shall be equal to the annual dues paid by KBA members who have been admitted to practice for five years or more.
- b) Failure to pay the renewal fee within thirty (30) days of the due date will result in the attorney being suspended from appearing in any case in which he or she has been admitted pro hac vice. Upon notification of the failure of payment, members of the KBA serving as co-counsel shall immediately notify the court in which the case is pending.
- 6) a) A class of membership is established to be known as "Disabled Inactive Member." An attorney admitted to practice in this state who has been, because of a mental or physical condition, judicially declared to be a person under a legal disability, or for whom probable cause exists to believe that the attorney has a mental or physical condition that substantially impairs his/her ability to practice law shall provide to the Director of the Kentucky Bar Association a detailed written report from a licensed qualified health care provider who has examined the attorney setting out the findings of the health care provider, including the results of all tests made, diagnoses and conclusions. The Director shall present the matter to the Board who may enter an order transferring the attorney to Disability Inactive Status. An attorney classified under this subsection is not required to pay dues or obtain the annual CLE requirement pursuant to SCR 3.645. This status shall be reflected on the attorney's membership record. No attorney classified under this status may engage in the

practice of law in this state. Any disciplinary proceedings against the attorney shall be stayed while the attorney is on disability inactive status. Any report and supporting records from a health care provider regarding the treatment of the attorney shall be confidential and sealed.

b) An attorney transferred to disability inactive status may file a petition with the Court for restoration to active status. A copy of the petition shall be served on Bar Counsel, who shall have twenty (20) days to file a response to the petition. If Bar Counsel objects to the petition, the matter shall be referred to the Character and Fitness Committee to conduct proceedings under SCR 3.502 and SCR 3.503. If Bar Counsel has no objection to the petition the Court may enter an order restoring the attorney to active status with or without conditions or refer the matter to the Character and Fitness Committee to conduct proceedings under SCR 3.502 and SCR 3.503. If an attorney is restored to active status, any disciplinary proceedings that have been stayed will be resumed.

VIII. SCR 3.040 Dues: date of payment and amount

Section 2 of SCR 3.040 shall read:

2) Any member of the association shall be relieved of the payment of dues for any fiscal year in which the member serves actively in the armed services of the United States of America. The annual waiver of dues shall also apply to members who are spouses of active duty military servicemembers.

IX. SCR 3.050 Collection of dues; suspension for non-payment

SCR 3.050 shall read:

If dues are not paid on or before September 1, then an additional late payment fee of fifty dollars (\$50.00) shall be assessed. On or before September 15 of each year, the Treasurer shall notify a member in writing of his/her delinquency and late fee. On or before October 15 of each year, the Treasurer shall in writing certify to the Board the names of all members who remain delinquent. The Board shall cause to be sent to the member a notice of delinquency by certified mail, return receipt requested, at the member's bar roster address. Such notice shall require the member to show cause within thirty (30) days from the date of the mailing why the member's law license should not be suspended for failure to pay dues and the late fee under this rule or SCR 3.023. In

addition, such notice shall inform the member that if such dues and late fees, as well as costs in the amount of fifty dollars (\$50.00), are not paid within thirty (30) days, or unless good cause is shown within thirty (30) days that a suspension should not occur, the lawyer will be stricken from the membership roster as an active member of the KBA and suspended from the practice of law. At the conclusion of the thirty (30) days, unless the dues, late fees and additional costs payment have been received, or unless good cause has been shown as to why the member should not be suspended, the Board of Governors will vote to suspend any such member from the practice of law. A copy of the suspension notice shall be sent by the Director to the member, the Clerk of the Supreme Court of Kentucky, the Director of Membership, and the Circuit Clerk of the member's roster address district for recording and indexing. The suspended member may apply for restoration to membership under the provisions of SCR 3.504. A member may appeal to the Supreme Court of Kentucky from such suspension within thirty (30) days of the date the suspension notice is recorded in the membership records. Such appeal shall include an affidavit showing good cause why the suspension should be revoked.

X. SCR 3.130 Kentucky Rules of Professional Conduct

The year "2009" shall be removed under the Supreme Court Commentary to SCR 3.130(1.1) – (8.5).

XI. SCR 3.130(3.6) Trial publicity

Section (a) of SCR 3.130(3.6) and Section 5 of the Supreme Court Commentary shall read:

- a) A lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the lawyer knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.

Supreme Court Commentary:

- 5) There are, on the other hand, certain subjects that are more likely than not to have a material prejudicial effect on a proceeding, particularly when they refer to a civil matter triable to a jury, a criminal matter, or any other proceeding that could result in incarceration. These subjects relate to:

- a) the character, credibility, reputation or criminal record of a party, suspect in a criminal investigation or witness, or the identity of a witness, or the expected testimony of a party or witness;
- b) in a criminal case or proceeding that could result in incarceration, the possibility of a plea of guilty to the offense or the existence or contents of any confession, admission, or statement given by a defendant or suspect or that person's refusal or failure to make a statement;
- c) the performance or results of any examination or test or the refusal or failure of a person to submit to an examination or test, or the identity or nature of physical evidence expected to be presented;
- d) any opinion as to the guilt or innocence of a defendant or suspect in a criminal case or proceeding that could result in incarceration;
- e) information that the lawyer knows or reasonably should know is likely to be inadmissible as evidence in a trial and that would, if disclosed, create a substantial risk of prejudicing an impartial trial; or
- f) the fact that a defendant has been charged with a crime, unless there is included therein a statement explaining that the charge is merely an accusation and that the defendant is presumed innocent until and unless proven guilty.

XII. SCR 3.130(5.7) Activities of Suspended Lawyer

Section (b) of SCR 3.130(5.7) and Section 4 of the Supreme Court Commentary shall read:

- b) A lawyer shall not employ, associate professionally with or aid a person a lawyer knows or reasonably should know has been suspended to do any of the preceding described acts during a suspended lawyer's period of suspension. Further, a lawyer shall not employ or associate professionally with a member whose license to practice law has been suspended if the suspended lawyer was associated with such lawyer or law firm at the time of such member's suspension.

Supreme Court Commentary:

- 4) Examples of the type of work a suspended lawyer may perform include: (a) performing legal work of a preparatory nature for an active lawyer's review, such as legal research, gathering information, and drafting pleadings, briefs, and other similar documents; (b) communicating with a lawyer's client or third parties regarding matters such as scheduling, billing, updates on the status of a client's matters, fact gathering, and confirmation of receipt or sending of correspondence and messages; (c) accompanying an active lawyer to a deposition or other discovery proceeding for the limited purpose of providing clerical assistance to the lawyer who will appear as a client's representative. A suspended lawyer shall comply with the requirements of SCR 3.390 and take all reasonable steps to protect the interests of the lawyer's clients.

XIII. SCR 3.130(5.8): Responsibilities regarding law-related services

New Rule SCR 3.130(5.8) and the Supreme Court Commentary to SCR 3.130(5.8) shall read:

- 1) A lawyer shall be subject to the Rules of Professional Conduct with respect to the provision of law-related services, as defined in subsection (2), if the law-related services are provided:
 - a) by the lawyer in circumstances that are not distinct from the lawyer's provision of legal services to clients; or
 - b) in other circumstances by an entity controlled by the lawyer individually or with others if the lawyer fails to take reasonable measures to assure that a person obtaining the law-related services knows that the services are not legal services and that the protections of the client-lawyer relationship do not exist.
- 2) The term "law-related services" denotes services that might reasonably be performed in conjunction with and in substance are related to the provision of legal services, and that are not prohibited as unauthorized practice of law when provided by a nonlawyer.

Supreme Court Commentary:

- 1) A broad range of economic and other interests of clients may be served by lawyers engaging in the delivery of law-related services. Examples of law-related services include providing title insurance, financial planning, accounting, trust services, real estate counseling, mediation, legislative lobbying, economic analysis, social work, psychological counseling, tax preparation, and patent, medical or environmental consulting.
- 2) When a lawyer performs law-related services or controls an organization that does so, there exists the potential for ethical problems. Principal among these is the possibility that the person for whom the law-related services are performed fails to understand that the services may not carry with them the protections normally afforded as part of the client-lawyer relationship. The recipient of the law-related services may expect, for example, that the protection of client confidences, prohibitions against representation of persons with conflicting interests, and obligations of a lawyer to maintain professional independence apply to the provision of law-related services when that may not be the case.
- 3) Rule 5.8 applies to the provision of law-related services by a lawyer even when the lawyer does not provide any legal services to the person for whom the law-related services are performed and whether the law-related services are performed through a law firm or a separate entity. The Rule identifies the circumstances in which all of the Rules of Professional Conduct apply to the provision of law-related services. Even when those circumstances do not exist, however, the conduct of a lawyer involved in the provision of law-related services is subject to those Rules that apply generally to lawyer conduct, regardless of whether the conduct involves the provision of legal services. See, e.g., Rule 8.4.
- 4) When law-related services are provided by a lawyer under circumstances that are not distinct from the lawyer's provision of legal services to clients, the lawyer in providing the law-related services must adhere to the requirements of the Rules of Professional Conduct as provided in paragraph (1)(a). Even when the law-related and legal services are provided in circumstances that are distinct from each other, for example through separate entities or different support staff within the law firm, the Rules of Professional Conduct apply to the lawyer as provided in paragraph (1)(b) unless the lawyer takes reasonable measures to assure that the recipient of the law-related

services knows that the services are not legal services and that the protections of the client-lawyer relationship do not apply.

- 5) Law-related services also may be provided through an entity that is distinct from that through which the lawyer provides legal services. If the lawyer individually or with others has control of such an entity's operations, the Rule requires the lawyer to take reasonable measures to assure that each person using the services of the entity knows that the services provided by the entity are not legal services and that the Rules of Professional Conduct that relate to the client-lawyer relationship do not apply. A lawyer's control of an entity extends to the ability to direct its operation. Whether a lawyer has such control will depend upon the circumstances of the particular case.
- 6) When a client-lawyer relationship exists with a person who is referred by a lawyer to a separate law-related service entity controlled by the lawyer, individually or with others, the lawyer must comply with Rule 1.8(a).
- 7) In taking the reasonable measures referred to in paragraph (1)(b) to assure that a person using law-related services understands the practical effect or significance of the inapplicability of the Rules of Professional Conduct, the lawyer should communicate to the person receiving the law-related services, in a manner sufficient to assure that the person understands the significance of the fact, that the relationship of the person to the business entity will not be a client-lawyer relationship. The communication should be made before entering into an agreement for provision of or providing law-related services, and preferably should be in writing.
- 8) The burden is upon the lawyer to show that the lawyer has taken reasonable measures under the circumstances to communicate the desired understanding. For instance, a sophisticated user of law-related services, such as a publicly held corporation, may require a lesser explanation than someone unaccustomed to making distinctions between legal services and law-related services, such as an individual seeking tax advice from a lawyer-accountant or investigative services in connection with a lawsuit.
- 9) Regardless of the sophistication of potential recipients of law-related services, a lawyer should take special care to keep separate the provision of law-related and legal services in order to minimize the risk that the recipient will assume that the law-related services are legal services. The risk of such confusion is especially acute when the

lawyer renders both types of services with respect to the same matter. Under some circumstances the legal and law-related services may be so closely entwined that they cannot be distinguished from each other, and the requirement of disclosure and consultation imposed by paragraph (1)(b) of the Rule cannot be met. In such a case a lawyer will be responsible for assuring that both the lawyer's conduct and, to the extent required by Rule 5.3, that of nonlawyer employees in the distinct entity that the lawyer controls complies in all respects with the Rules of Professional Conduct.

- 10) When a lawyer is obliged to accord the recipients of such services the protections of those Rules that apply to the client-lawyer relationship, the lawyer must take special care to heed the proscriptions of the Rules addressing conflict of interest (Rules 1.7 through 1.11, especially Rules 1.7(a)(2) and 1.8(a), (b) and (f)), and to scrupulously adhere to the requirements of Rule 1.6 relating to disclosure of confidential information. The promotion of the law-related services must also in all respects comply with the Rules dealing with advertising and solicitation. In that regard, lawyers should take special care to identify the obligations that may be imposed as a result of a jurisdiction's decisional law.
- 11) When the full protections of all of the Rules of Professional Conduct do not apply to the provision of law-related services, principles of law external to the Rules, for example, the law of principal and agent, govern the legal duties owed to those receiving the services. Those other legal principles may establish a different degree of protection for the recipient with respect to confidentiality of information, conflicts of interest and permissible business relationships with clients. See also Rule 8.4 (Misconduct).

XIV. SCR 3.130(8.4) Misconduct

Section 2 of the Supreme Court Commentary to SCR 3.130(8.4) shall read:

Supreme Court Commentary:

- 2) Many kinds of illegal conduct reflect adversely on fitness to practice law, such as offenses involving fraud and the offense of willful failure to file an income tax return. However, some kinds of offenses carry no such implication. Traditionally, the distinction was drawn in terms of offenses involving “moral turpitude.” That concept can be construed to include offenses concerning some matters of personal morality, such

as adultery and comparable offenses, that have no specific connection to fitness for the practice of law. Although a lawyer is personally answerable for any crime that he or she commits, a lawyer should be professionally answerable only for offenses that indicate lack of those characteristics relevant to law practice. Offenses involving violence, dishonesty, breach of trust, or serious interference with the administration of justice are in that category. A pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation.

XV. SCR 3.140 Appointment of inquiry commission

Section 1 of SCR 3.140 shall read:

- 1) The Chief Justice, with the consent of the Court, shall appoint an Inquiry Commission consisting of nine persons, six of whom shall be lawyers possessing the qualifications of a Circuit Judge and three of whom shall be citizens of the Commonwealth of at least thirty (30) years of age who are not lawyers. One lawyer member shall be designated by the Chief Justice as Chair of the Commission, who shall appoint one lawyer member to serve as Chair of each panel identified in 3.140(2). No lawyer members shall serve more than two (2) consecutive terms of three (3) years. No non-lawyer member shall serve more than three (3) consecutive terms of two (2) years.

XVI. SCR 3.150 Access to disciplinary information

Sections 1, Subsection (b) to Section 2, Subsection (a)(iv) to Section 4, and Sections 5 and 6 of SCR 3.150 shall read:

- 1) Confidentiality. In a discipline matter, the proceeding is confidential prior to the filing of a verified answer to a Charge or, in the case of default, until thirty (30) days following service on the Respondent pursuant to SCR 3.164.
- 2) a) Notwithstanding subsection (1), the pendency, subject matter and status may be disclosed by Bar Counsel if:
 - i. The Respondent has waived confidentiality;
 - ii. The proceeding involves public reciprocal discipline;

- iii. The disclosure of any information is made for the purpose of conducting an investigation by the Inquiry Commission or the Office of Bar Counsel; or
 - iv. A Motion for Temporary Suspension is pending.
 - b) After considering the protection of the public, the interests of the Bar, and the interest of the Respondent in maintaining the confidentiality of the proceeding prior to the filing of a verified answer to a Charge or, in the case of default, until thirty (30) days following service on the Respondent pursuant to SCR 3.164, the pendency, subject matter and status may also be disclosed by Bar Counsel at the discretion of the Chair of the Inquiry Commission, or of the Chair's lawyer member designee, if:
 - i. The proceeding is based upon an allegation that the Respondent has been charged with a crime arising from the same nexus of facts; or
 - ii. The proceeding is based upon a finding by a court in a civil matter that an attorney has committed conduct that may constitute a violation of the Rules of Professional Conduct.
- 4) a) Request for Non-Public Information. A request for non-public information to the Office of Bar Counsel may be considered by the Inquiry Commission and may be granted if the request is made by:
- i. The Character and Fitness Committee;
 - ii. A Lawyer Disciplinary Enforcement Agency;
 - iii. A Judicial Disciplinary Enforcement Agency; or
 - iv. The Chief Justice of the Kentucky Supreme Court.
- b) A request for non-public information to the Office of Bar Counsel may be considered by the Court if the request is made by a Law Enforcement Agency, or other official authorized by federal or any state's law to investigate or prosecute misdemeanors or felonies, or the equivalent thereof, in any jurisdiction, provided that the agency or official certifies under oath with specificity that the information is necessary to a pending investigation. In this event the Respondent shall receive notice unless the Court determines that

disclosure of the request would seriously prejudice the investigation.

- c) In the absence of a third-party request, the Inquiry Commission may permit the disclosure of any non-public information to any of the entities listed in (4)(a) upon application to it by the Office of Bar Counsel.
 - d) In the event of a request under (4)(a) or (c) notice to the Respondent is not required, although the Inquiry Commission may require notice upon review of the application.
- 5) Public Proceedings. Upon the filing of a verified answer to a Charge or, in the case of default, thirty (30) days following service on the Respondent pursuant to SCR 3.164, or upon the filing of a petition for reinstatement, an application for restoration, or an affidavit of compliance pursuant to 3.501, the record of the Disciplinary Clerk, and any further proceedings before the Board or Court, shall be public except for:
- a) deliberations of the Inquiry Commission, Board of Governors, or the Court; or
 - b) information with respect to which a protective order has been issued.
- 6) Protective Orders. The Inquiry Commission, the Trial Commissioner, the Board, or the Court, which at the time the order is sought has the case pending before it, may, upon application of any person or entity, and for good cause shown, issue a protective order. Such an order may protect the interests of a Complainant, witness, third party, Respondent, Applicant or Bar Counsel. The order may prohibit the disclosure of specific information otherwise privileged or confidential and direct that the proceedings be conducted so as to implement the order, including requiring that the hearing be conducted in such a way as to preserve the confidentiality of the information that is the subject of the application.

XVII. SCR 3.160 Initiation of disciplinary cases

Sections 1 and 3 of SCR 3.160 shall read:

- 1) After review by Bar Counsel pursuant to subparagraph (3) of this Rule, any sworn written statement of complaint against an attorney

for unprofessional conduct shall be filed with the Office of Bar Counsel who shall promptly notify the attorney by certified mail, sent to the address maintained by the Director pursuant to SCR 3.035, or other means consistent with the Supreme Court Rules and Civil Rules, of the complaint, and that he/she has twenty (20) days to respond to the complaint. Upon completion of the investigation by the Office of Bar Counsel the matter shall be assigned to an Inquiry Commission panel by rotation.

- 3) a) Upon receipt of a verbal or written allegation of a violation of the Rules of Professional Conduct, or sworn complaint, the Office of Bar Counsel will initially determine, under the direction of the Chair and Inquiry Commission, whether the matter is appropriate for alternative disposition. Alternative disposition may include, but is not limited to:
 - i. Informal resolution;
 - ii. Referral to Fee Arbitration under SCR 3.810;
 - iii. Legal negligence arbitration under SCR 3.800;
 - iv. Legal or management education programs;
 - v. Remedial ethics education programs;
 - vi. Referral to KYLAP under SCR 3.970(1)(c); or
 - vii. Issuance of a warning letter.
- b) A complaint is not suitable for alternative disposition if it alleges serious misconduct in which the sanction would more than likely result in a suspension. Additionally, some ethical violations warranting a private or public reprimand may not, under all circumstances, be eligible for alternative disposition.
- c) After review and such preliminary investigation as may reasonably be necessary, the Office of Bar Counsel may attempt informal resolution and subsequently close the Complaint. If the acts or course of conduct complained of merit referral under 3(A)(ii)-(vi), and do not warrant a greater degree of discipline, the Office of Bar Counsel may issue a warning letter with or without conditions, which will be maintained in the investigative file of the Office of Bar Counsel but not be considered as discipline, or it may recommend

remedial ethics, related legal or management education programs, fee arbitration, or KYLAP, completion of which would result in the complaint being dismissed. The attorney who receives the warning letter may, within 30 days from the date of the letter, file a response thereto and may request reconsideration of the matter by the Inquiry Commission. Any response or request so submitted shall be retained in the Bar Counsel file.

- d) If Bar Counsel deems a written and sworn complaint to state an ethical violation, such that alternative disposition is not appropriate or the Respondent will not consent to or complete the alternative disposition program, the matter shall proceed under subsection (1) above.
- e) If Bar Counsel deems any written and sworn complaint against a member not to state an ethical violation and it is not suitable for alternative disposition, it may decline, without investigation, to entertain it.

XVIII. SCR 3.165 Temporary suspension by the Supreme Court

Section 5 of SCR 3.165 shall read:

- 5) Within twenty (20) days from the date of the entry of the order of temporary suspension, the attorney shall notify all courts or tribunals in which the attorney has matters pending and all clients in writing of his/her inability to continue to represent them and shall furnish copies of all such letters of notice to the Director.

XIX. SCR 3.166 Automatic suspension after conviction of a felony

Section 4 of SCR 3.166 shall read:

- 4) Any attorney suspended under this rule shall notify all courts or tribunals in which the attorney has matters pending and all clients in writing of the attorney's inability to continue to represent them and shall furnish copies of all such letters to the Director. These letters shall be mailed to the client within ten (10) days after the plea of guilty, conviction by judge or jury, or entry of judgment has been made. The attorney shall make arrangements to return all active files to the client or new counsel and shall return all unearned attorney fees and client property to the client and shall advise the Director of such arrangements within the same ten (10) day period.

XX. SCR 3.167 Indefinite suspension in default cases or for failure to participate after answer

New Rule SCR 3.167 and the Supreme Court Commentary to SCR 3.167 shall read:

- 1) The Court may in its discretion, sua sponte, or on motion by the Office of Bar Counsel, suspend the Respondent from the practice of law for an indefinite period of time in cases in which the Respondent has failed to file an answer to a Charge pursuant to SCR 3.164, or having answered, has thereafter failed to participate in the disciplinary process.
- 2) Motions filed by the Office of Bar Counsel for failure to file an answer to a Charge, or failure to participate in the disciplinary process shall state: (i) the history of the proceedings before the Inquiry Commission and the Respondent's participation therein; (ii) any communication between the Respondent and the Office of Bar Counsel; (iii) proof of service of the Charge; and (iv) whether KYLAP has been able to contact the Respondent.
- 3) Within ten (10) days after the entry of an order indefinitely suspending a Respondent pursuant to sections (1) and (2) above, the Respondent may file a Motion to Set Aside Indefinite Suspension. The Motion shall be verified by the Respondent. The Respondent shall provide an accounting for the failure to respond and/or participate in the disciplinary process. The burden is on the Respondent to show good cause. Bar Counsel may file a response to the Motion within ten (10) days.
- 4) Any disciplinary proceedings pending against a Respondent who has been indefinitely suspended or who has had an indefinite suspension set aside shall continue and proceed pursuant to SCR 3.160, et seq.
- 5) If a Respondent fails to seek reinstatement within five (5) years after entry of an Order of Indefinite Suspension, the Office of Bar Counsel shall move the Court for permanent disbarment.

Supreme Court Commentary

In the case of *Kentucky Bar Association v. Benton*, 449 S.W.3d 368, 369 (Ky. 2014), the Court rejected the Board's recommendation for a 181-day suspension and, instead, exercised its discretion to suspend Respondent indefinitely until he appeared and accounted for his failure to answer the

disciplinary charges. In so doing, the Court "acknowledge[d] that our rules do not expressly provide indefinite suspension as a final disciplinary sanction, although we have ordered indefinite suspensions as part of our orders imposing reciprocal discipline."

XXI. SCR 3.180 Investigations and trials to be prompt; subpoena power

Sections 2 and 4 of SCR 3.180 shall read:

- 2) Proceedings may be deferred by the Inquiry Commission if there is pending civil or criminal litigation or an investigation by another lawyer disciplinary jurisdiction directly involving the Respondent or proposed Respondent involving substantially similar material allegations to that or those in the disciplinary proceedings, provided, however, that the Respondent-attorney proceeds with reasonable dispatch to insure the prompt disposition of the pending litigation. Proceedings deferred pursuant to this subsection shall be reviewed quarterly by the Inquiry Commission.
- 4) If any witness refuses to testify concerning any matter for which he or she may lawfully be interrogated, upon application of the Inquiry Commission to the Circuit Court of the county in which the witness resides, the Circuit Court may compel obedience by proceedings for contempt as in the case of disobedience of a subpoena[s] issued from the Circuit Court.

XXII. SCR 3.370 Procedure before the Board and the Court

Sections 3, 4, 6, 7, 8, 9, 10 and 11 of SCR 3.370 shall read:

- 3) Within sixty (60) days of completion of briefing by the parties, the Board shall consider and act upon the entire record. Only the President, the President-Elect, the Vice-President, the fourteen (14) duly-elected members of the Board from their respective Supreme Court Districts, and four (4) adult citizens of the Commonwealth who are not lawyers appointed by the Chief Justice as hereinafter described, shall be eligible to be present, participate in and vote on any disciplinary or reinstatement case. Any member, including a non-lawyer member, who has participated in any phase of a disciplinary or reinstatement case submitted to the Board under this rule, or who has been challenged on grounds sufficient to disqualify a Circuit Judge shall be disqualified. If disqualification or absence results in lack of a quorum the Chief Justice shall appoint a member or members (or, if applicable, non-lawyer participants) sufficient to provide a quorum to consider and act on the

cases. Any challenge to a member's qualifications shall be determined by the Chief Justice in accordance with KRS 26A.015, et seq.

- 4) Eleven (11) of those qualified to sit in a disciplinary or reinstatement matter must be present to constitute a quorum for consideration of such matters.
- 6) In a reinstatement matter, the Board shall review the record, report and brief and recommend approval or disapproval of the application.
- 7) The Board shall issue a written decision within forty-five (45) days of voting on the cases. The Disciplinary Clerk shall mail copies of such report to the Respondent, counsel of record, and to each member of the Inquiry Commission. The Disciplinary Clerk shall place ten (10) copies of the report in the record and file the entire record of the case with the Court, unless the Board has taken actions under subsection (5)(d), in which case the matter will proceed in accordance with the Board's direction.
- 8) Within thirty (30) days after the Board's decision is filed with the Disciplinary Clerk, Bar Counsel or the Respondent may file with the Court a Notice for the Court to review the Board's decision stating reasons for review, accompanied by a brief, not to exceed thirty (30) pages in length, supporting his/her position on the merits of the case. The opposing party may file a brief, not to exceed thirty (30) pages in length, within thirty (30) days thereafter. No reply brief shall be filed unless by order of the Court.
- 9) If no notice of review is filed by either party, the Court may notify Bar Counsel and Respondent that it will review the decision. If the Court so acts, Bar Counsel and Respondent may each file briefs, not to exceed thirty (30) pages in length, within thirty (30) days, with no right to file reply briefs unless by order of the Court, whereupon the case shall stand submitted. Thereafter, the Court shall enter such orders or opinion as it deems appropriate on the entire record.
- 10) If no notice of review is filed by either of the parties, or the Court under subsection (8) of this rule, the Court shall enter an order adopting the decision of the Board, Trial Commissioner, or the Character and Fitness Committee, whichever the case may be, relating to all matters.
- 11) In each disciplinary case to be presented to the Trial Commissioner, there shall be supplied with the Disciplinary Clerk's file a sealed envelope containing a statement of the Respondent's years of membership in the

Association, all orders of unprofessional conduct, and all withdrawals from the association and reasons therefor. The envelope will be opened only if the Trial Commissioner makes a finding of a violation and may be considered in deciding what discipline to impose. Such statement will become part of the record of the case and be transmitted with the rest of the file to the Disciplinary Clerk, Board and/or Supreme Court. Before submission of a case to the Trial Commissioner or the Board a copy of said statement shall be sent to the Respondent, who may review documents relative to it at the Bar Center and may comment to the Trial Commissioner or the Board upon the statement and point out errors contained in it.

XXIII. SCR 3.380 Degrees of discipline

SCR 3.380 shall read:

Upon findings of a violation of these rules, discipline may be administered by way of public reprimand, suspension from practice for a definite time, all of which may be with or without such conditions as the Court may impose, or permanent disbarment.

XXIV. SCR 3.390 Effective date; duties upon suspension or disbarment (Title change effective April 1, 2022; rule change effective January 1, 2023)

SCR 3.390 shall read:

- 1) Any order suspending a lawyer from the practice of law, other than an order of suspension under SCR 3.165 or 3.166, shall take effect on the twentieth (20th) day following its entry unless otherwise provided within the order. The suspended lawyer shall promptly take all reasonable steps to protect the interests of the lawyer's clients. A lawyer suspended from the practice of law shall not during the term of suspension accept new clients or collect unearned fees and shall comply with the provisions of SCR 3.130(7.50(5)).
- 2) Within twenty (20) days after the issuance of an order of disbarment, or suspension under SCR 3.167, SCR 3.050 or SCR 3.675(4), or upon issuance of an order of suspension from the practice of law for more than sixty (60) days, the disbarred or suspended lawyer shall notify, by letter duly placed with the United States Postal Service, all courts or other tribunals in which that lawyer has matters pending, and all clients of the lawyer's inability to represent them and of the necessity and urgency of promptly retaining new counsel. The lawyer shall

simultaneously provide a copy of all such letters of notification to the Office of Bar Counsel. Upon issuance of an order of disbarment or suspension, the affected lawyer shall immediately cancel any pending advertisements, to the extent possible, and shall terminate any advertising activity for the duration of the term of suspension or disbarment.

XXV. Delete [SCR 3.500 Restoration to membership]

SCR 3.500 shall be deleted in its entirety and replaced by new rule SCR 3.504.

XXVI. SCR 3.501 Reinstatement after a disciplinary suspension prevailing fewer than 181 days

New rule SCR 3.501 shall read:

- 1) If the period of suspension has prevailed fewer than 181 days, a suspended member (“Applicant”) may request reinstatement upon the filing of an affidavit of compliance with the Disciplinary Clerk. The affidavit of compliance shall be on a form or forms provided by the Inquiry Commission. An Applicant shall certify that a copy of the affidavit was mailed to Bar Counsel. The affidavit shall be filed no earlier than ten (10) days before the end of the suspension period and shall be accompanied by a filing fee as established by the Inquiry Commission pursuant to SCR 3.140(4) and payable to the Kentucky Bar Association.
- 2) The affidavit of compliance shall contain the following information, statements, and attachments:
 - a) That the Applicant has complied with all terms and conditions in the Court’s suspension order(s);
 - i. If the Applicant was ordered to make a refund to a client or other person(s), proof of such refund(s) shall be attached along with a certification from the KBA Accounting Department that all costs of the disciplinary proceedings have been paid;
 - ii. If the Applicant was ordered to comply with any conditions involving the Kentucky Lawyer Assistance Program (KYLAP), Applicant shall attach a statement from the KYLAP Director that he/she is in compliance with the Court’s suspension order and any KYLAP agreement(s);

- b) A certification from the Office of Bar Counsel that:
 - i. The Applicant has no pending Client Security Fund claims, nor any unpaid Client Security Fund awards;
 - ii. The Applicant is not the subject of any pending disciplinary matters in any jurisdiction;
 - c) A certification from the CLE Commission that the suspended member is in compliance with SCR 3.685;
 - d) That the Applicant is not the subject of any pending criminal matter in any jurisdiction, nor were any criminal matters in which the Applicant was a defendant concluded during the period of suspension;
 - e) A disclosure of whether the Applicant is a defendant or respondent in any civil or administrative matter where it is alleged the Applicant committed acts of dishonesty, fraud, deceit, or misrepresentation;
 - f) That the Applicant has not been found in contempt of court during the period of suspension, nor has the Applicant become the subject of a domestic violence order; and
 - g) That the Applicant appreciates the wrongfulness of his/her prior adjudicated misconduct.
- 3) The Inquiry Commission shall deny reinstatement if the Applicant fails to provide the complete, required information listed in subsection (2) or demonstrates a lack of candor in the materials provided. An Applicant has a continuing obligation to update and supplement all materials submitted throughout the entire reinstatement process.
- 4) Within ten (10) days after the filing of a completed affidavit of compliance, Bar Counsel may file an objection to the Applicant's reinstatement, stating its grounds for the objection. Bar Counsel shall certify that a copy of its objection is sent to the Applicant at the address provided on the affidavit of compliance. The Applicant may file a response to the objection or supplement the application within twenty (20) days of the filing of the objection.
- 5) If Bar Counsel does not file an objection to an Applicant's reinstatement, the Disciplinary Clerk shall notify the Registrar of the

- Association. The Registrar shall make appropriate entries in the Association's records reflecting that the Applicant has been reinstated and shall file a notice of reinstatement with the Disciplinary Clerk. The Disciplinary Clerk shall provide a copy of the notice to the Applicant and Bar Counsel. An Applicant shall not resume practice until the notice of reinstatement is filed with the Disciplinary Clerk.
- 6) If Bar Counsel files an objection to an Applicant's reinstatement, the matter shall be placed on the Inquiry Commission's docket within thirty (30) days.
- a) If the Inquiry Commission determines that the Applicant should be reinstated, the Inquiry Commission shall file an order approving the Applicant's reinstatement with the Disciplinary Clerk. The order shall authorize the Registrar to make appropriate entries in the Association's records reflecting that the Applicant has been reinstated and shall file a notice of reinstatement with the Disciplinary Clerk. The Disciplinary Clerk shall provide a copy of the notice to the Applicant and Bar Counsel. An Applicant shall not resume practice until the notice of reinstatement is filed with the Disciplinary Clerk.
- b) If the Inquiry Commission determines that the Applicant should not be reinstated, the Inquiry Commission shall file an order denying reinstatement with the Disciplinary Clerk.
- 7) An Applicant may file a request for review of the Inquiry Commission's order denying with the Disciplinary Clerk within thirty (30) days. The request for review shall be accompanied by a complete application for reinstatement, on a form or forms provided by the Inquiry Commission, and a filing fee as established by the Inquiry Commission pursuant to SCR 3.140(4) and payable to the Kentucky Bar Association. The matter shall then proceed to the Character and Fitness Committee for hearing consistent with SCR 3.502(6).

XXVII. SCR 3.502 Reinstatement after a disciplinary suspension 181 days or more

New rule SCR 3.502 shall read:

- 1) No former member of the Association who has been suspended for disciplinary reasons for 181 days or more, or whose suspension has prevailed for 181 days or more, shall resume practice until he/she is reinstated by order of the Court.

- 2) An application for reinstatement shall be on a form or forms provided by the Inquiry Commission and filed with the Disciplinary Clerk. The application shall be accompanied by the following items:
 - a) A certification from the KBA Accounting Department that all costs of the disciplinary proceedings and all applicable Bar dues have been paid;
 - b) A certification from the Office of Bar Counsel that:
 - i. There are no pending disciplinary matters against the Applicant;
 - ii. There are no pending Client Security Fund claims against the Applicant; and
 - iii. There are no unpaid Client Security Fund awards against the Applicant.
 - c) A certification from the CLE Commission that the Applicant is in compliance with SCR 3.685; and
 - d) A filing fee as established by the Inquiry Commission pursuant to SCR 3.140(4) and payable to the Kentucky Bar Association.
- 3) If the application is not accompanied by the items listed above, the Disciplinary Clerk shall reject the application and issue a notice to Applicant and the Office of Bar Counsel, that the application is incomplete. The notice shall list the missing item(s).
- 4) Within sixty (60) days after the filing of an application that is accepted by the Disciplinary Clerk, the Inquiry Commission shall review the application. Bar Counsel shall have the right to file a notice identifying any deficiencies in the application. If the Commission determines that deficiencies exist in the application and/or additional information is required from the Applicant, it shall issue a notice listing the deficiencies and/or the additional required information. An Applicant shall have no longer than 180 days to cure any deficiencies. If an Applicant fails to cure any deficiencies within the time allowed by this Rule, the Commission shall enter an order denying the application for reinstatement from which there will be no appeal.

- 5) If the Inquiry Commission determines an application is complete, a scheduling order shall be entered setting out the time for the Office of Bar Counsel to investigate the application, which may involve the use of independent investigators. Failure of an Applicant to cooperate or participate in the investigative process may result in the denial of the application for reinstatement. The burden of proof shall rest upon the Applicant to prove by clear and convincing evidence that he/she possesses the requisite character, fitness and moral qualification for re-admission to the practice of law.
- 6) Upon completion of the investigatory process, the matter shall proceed to the Character and Fitness Committee to conduct a formal hearing on the record. The Executive Director and Disciplinary Clerk shall transmit the record to the Committee for its review.
 - a) A formal hearing on the record will not be required if the Applicant, Office of Bar Counsel, and a majority of the Committee all agree within thirty (30) days of receipt of the matter from the Inquiry Commission that based upon the record, the Applicant has met his/her burden and should be reinstated to practice. In that event, the matter shall proceed directly from the Committee to the Court for its review. The Committee shall return the record to the Executive Director and Disciplinary Clerk to file with the Court.
 - b) If there is no agreement pursuant to subsection (a) above, the Committee shall hold a formal hearing on the record within ninety (90) days of receipt of the record from the Disciplinary Clerk. Notice of the hearing date will be served on the parties not less than fourteen (14) days before the hearing. The parties shall be allowed to file post-hearing memoranda. The Committee shall file its report and the record with the Disciplinary Clerk within sixty (60) days of receipt of the hearing transcript.
 - c) Prior to the formal hearing, the Committee may request the parties to file a pre-hearing memorandum to address any issues of fact or law and/or may identify certain issues of law or fact the Committee would like addressed at the formal hearing.
 - d) Either party may file a notice of appeal of the Committee's report within thirty (30) days after the filing with the Disciplinary Clerk. If no notice of appeal is timely filed, the entire record shall be forwarded to the Court for entry of a final order pursuant to SCR 3.370(9).

- e) If a notice of appeal to the Board of Governors is timely filed pursuant to subsection (6)(d), the matter shall proceed to the Board of Governors pursuant to SCR 3.370. The Board of Governors by a vote of a majority of the Board of Governors present and voting may remand the case to the Character and Fitness Committee for clarification of the report or for an evidentiary hearing on points specified in the order of remand. The Board of Governors may order the parties to file additional briefs on specific issues.

XXVIII. SCR 3.503 Reinstatement standards

New rule SCR 3.503 shall read:

- 1) The burden of proof shall rest upon the Applicant throughout the entire reinstatement process to prove by clear and convincing evidence that he/she possesses the requisite character, fitness and moral qualifications for re-admission to the practice of law. Issues to be considered include, but are not limited to, those listed below:
 - a) The nature of the misconduct for which the Applicant was suspended; an Applicant for reinstatement shall be held to a substantially more rigorous standard than a first-time Applicant. The prior determination that the Applicant engaged in professional misconduct continues to be evidence against him/her and the proof presented must be clear and convincing to overcome the prior adverse judgment against Applicant's good moral character;
 - b) Whether the Applicant has presented clear and convincing evidence that he/she has complied with every term of the order of suspension;
 - c) Whether the Applicant has presented clear and convincing evidence that his/her conduct while under suspension shows that he/she is worthy of the trust and confidence of the public;
 - d) Whether the Applicant has presented clear and convincing evidence that he/she possesses sufficient professional capabilities to serve the public as a lawyer;
 - e) Whether the Applicant has presented clear and convincing evidence that he/she presently exhibits good moral character;

- f) Whether the Applicant has presented clear and convincing evidence that he/she appreciates the wrongfulness of his/her prior professional misconduct, including the Applicant's sense of wrongdoing and conception of the serious nature of the misconduct, and has rehabilitated himself/herself from past derelictions;
 - g) The Applicant's previous and subsequent conduct and attitude toward the courts and the practice;
 - h) The time elapsed since Applicant's suspension; and
 - i) The Applicant's candor in the reinstatement process, including whether the Applicant has timely and completely provided required information and supplemented his/her application for reinstatement throughout the process.
- 2) Failure to meet any of the criteria in subsection (1) shall constitute a sufficient basis for denial of an application for reinstatement.
 - 3) Following a formal hearing, the Character and Fitness Committee shall issue a report containing specific findings whether an Applicant has met his/her burden of proof on each issue listed in subsection (1). The Committee shall, at the formal hearing, inquire fully into all matters at issue, and shall not be bound by common law or statutory rules of evidence, or by technical or formal rules of procedure. The Committee shall receive into evidence the testimony of the witnesses and parties, the evidence of record, any such additional evidence as may be submitted. However, the Committee may entertain the objections of any party to the evidence submitted under this subsection.
 - 4) When the mental and/or physical fitness of an Applicant pursuant to subsection (1)(d) above is identified as an issue by the Inquiry Commission, Committee, or Office of Bar Counsel, the Inquiry Commission or Committee, for good cause shown, may order the Applicant to submit to a physical and/or mental health examination by a physician or qualified health care or mental health care provider. The order shall specify the purpose and extent of the examination(s). Any reports pursuant to such order shall become part of the reinstatement record and subject to SCR 3.150(6) upon proper motion by the Applicant or the Office of Bar Counsel. An Applicant's failure to comply with such an order shall constitute grounds to deny the

application. Cost of the examination(s) shall be paid by the KBA and certified as costs of the proceedings.

- 5) Costs of reinstatement proceedings pursuant to SCR 3.501 and SCR 3.502 beyond the amount of any filing fees shall be certified as in SCR 3.450(1) and paid by the Applicant.
- 6) If the period of suspension has prevailed for more than five (5) years, and the Committee recommends approval of the application and no appeal is taken to the Board of Governors, or if the Board recommends approval of the application upon appeal from the Committee, the Disciplinary Clerk shall issue a notice of recommended approval to the Board of Bar Examiners. The Board of Bar Examiners shall administer to the Applicant a written examination which includes the subject of professional ethics and 5 of the subjects listed in SCR 2.080(1). A general average score of 75% or higher shall be deemed passing. Any required fees shall be paid by an Applicant prior to taking the examination. The Board of Bar Examiners shall certify the results of the examination to the Disciplinary Clerk and the Court. If the Applicant successfully completes the examination, the Court may, at its discretion, enter an order reinstating the suspended member to the practice of law. However, if the Applicant fails to pass the examination, the Court shall enter an order denying the application.
- 7) A suspended member of the Association who desires to resume practice as quickly as possible following a period of suspension may file an application to do so at any time during the last ninety (90) days of the period of suspension.
- 8) If the Committee and Board recommend approval of reinstatement with conditions, the Court may include such conditions in any order of reinstatement.
- 9) In the event of failure to comply with any conditions imposed by the Court upon reinstatement, the Office of Bar Counsel may:
 - a) Request that the Court extend the term and impose additional condition(s); or
 - b) Recommend to the Court revocation of the license to practice law.

XXIX. SCR 3.504 Restoration to membership

New rule SCR 3.504 shall read:

- 1) A former member who has withdrawn from membership pursuant to SCR 3.480(1), or who was suspended for failure to pay dues as provided by SCR 3.050, or for failure to comply with the continuing legal education requirements of SCR 3.645 may be restored to membership upon compliance with the conditions set forth in this rule. No application for restoration shall be effective until entry of an order of restoration by the Board of Governors or the Court, as provided herein. Until the entry of such an order, the suspension or withdrawal from membership remains in force.
- 2) A former member whose withdrawal or suspension from membership has prevailed for less than 5 years may apply for restoration by:
 - a) Submitting an application for restoration using the forms provided by the Director, with a fee as established by the Inquiry Commission pursuant to SCR 3.140(4) and all applicable unpaid Bar Association dues; and
 - b) Submitting with the application a certificate from the Office of Bar Counsel that the former member has no pending disciplinary matters; and
 - c) Submitting with the application a certificate from the Director of Continuing Legal Education pursuant to SCR 3.685.
 - d) Upon the filing of the foregoing items, the Office of Bar Counsel shall present the matter to the Board at its next meeting, or, if not contested, at any time by mail or electronic means. Within 30 days of its review of the complete application materials, the Board may restore the Applicant to membership or refer the matter to the Inquiry Commission for proceedings pursuant to SCR 3.502, et seq. If the matter is referred to the Inquiry Commission, the Applicant shall pay a fee as established by the Inquiry Commission pursuant to SCR 3.140(4) to the Kentucky Bar Association.
- 3) A former member whose withdrawal or suspension from membership has prevailed for 5 years or longer may apply for restoration by:
 - a) Submitting an application for restoration using the forms provided by the Director, with a fee as established by the Inquiry

Commission pursuant to SCR 3.140(4) and all applicable unpaid Bar Association dues; and

- b) Submitting with the application a certificate from the Office of Bar Counsel that the former member has no pending disciplinary matters; and
- c) Submitting with the application a certificate from the Director of Continuing Legal Education pursuant to SCR 3.685.
- d) Upon the filing of the foregoing items, the Director shall refer the application to the Inquiry Commission for proceedings pursuant to SCR 3.502, et seq. An additional fee as established by the Inquiry Commission pursuant to SCR 3.140(4) shall be paid to the Kentucky Bar Association.
- e) If, after review of the application pursuant to SCR 3.502, the Character and Fitness Committee recommends approval of the application after proceedings pursuant to SCR 3.502(6) and no appeal is taken to the Board of Governors, within 30 days the application shall be referred to the Disciplinary Clerk, who shall issue a notice of recommended approval to the Board of Bar Examiners of the Kentucky Office of Bar Admissions, for the administration of a written examination which includes the subject of professional ethics and 5 of the subjects listed in SCR 2.080(1). A general average score of 75% or higher shall be deemed a passing score. Any required fees shall be paid prior to taking the examination. As an alternative and upon referral from the Board of Governors, if the Applicant has practiced in a reciprocal jurisdiction after withdrawal pursuant to SCR 3.480 and meets all requirements of SCR 2.110, the Applicant may elect to have the Character and Fitness Committee consider an application for admission without examination. All fees required shall be paid prior to the processing of the application, instead of the fee referenced in subsection 3(d) of this rule. If the Applicant passes the examination or is approved for admission without examination, such fact shall be certified to the Court and to the Director, together with a recommendation for the Applicant's restoration to membership. Upon this certification, the Disciplinary Clerk shall transmit the record to the Court for its consideration of the application for restoration. If the Applicant fails the examination, the Board of Bar Examiners shall certify the fact of the failure to the Court and the Director. Upon that certification, the Disciplinary Clerk shall transmit the record to the Court for entry

of an order denying restoration. The provisions of SCR 2.015, SCR 2.080, and SCR 2.110 shall apply where not inconsistent with these provisions.

- 4) All costs incurred in excess of the filing fee shall be paid by the Applicant.
- 5) The burden of proof for establishing the Applicant's present qualifications to practice law in Kentucky is on the Applicant.
- 6) If the Inquiry Commission or the Board of Governors recommends restoration of membership on conditions, such conditions may be imposed by the Board for an application processed by it under subsection (2)(d) of this rule, or by the Court in any order of restoration.
- 7) In the event of failure to comply with any conditions imposed by the Board or the Court upon restoration, the Office of Bar Counsel may:
 - a) Request that the Board or the Court extend the term and impose additional condition(s); or
 - b) Recommend to the Court revocation of the license to practice law.

XXX. Delete [SCR 3.505 Character and Fitness Committee; reinstatements]

SCR 3.505 shall be deleted in its entirety and replaced by new rules SCR 3.502 and SCR 3.503.

XXXI. Delete [SCR 3.510 Reinstatement in case of disciplinary suspension]

SCR 3.510 shall be deleted in its entirety and replaced by new rules SCR 3.501, SCR 3.502, and SCR 3.503.

XXXII. SCR 3.530 Ethics Committee and Unauthorized Practice Committee—advisory opinions—informal and formal

Sections 6 and 7 of SCR 3.530 shall read:

- 6) Any attorney licensed in Kentucky or admitted to practice law in another state who is in doubt as to the propriety of any course of conduct or act of any person or entity which may constitute the unauthorized practice of law in Kentucky may make a request in

writing, or in emergencies, by telephone, to the Chair of the Unauthorized Practice Committee, or such other members of the Unauthorized Practice Committee as are designated by the Chair, for an advisory opinion thereon. Local bar associations may also request advisory opinions. The Committee member to whom the request is directed shall bring this matter to the attention of the Committee at its next meeting. The Committee may attempt to furnish the requesting attorney with a prompt telephonic answer and written informal letter opinion as to whether the conduct constitutes the unauthorized practice of law. A copy of such informal opinion shall be provided to the Director and the Chair of the Unauthorized Practice Committee.

- 7) Any attorney licensed in Kentucky or admitted under SCR 3.030(2) who is in doubt as to the ethical propriety of any professional act contemplated by that attorney with respect to the unauthorized practice of law shall be referred to the Ethics Committee district member for an informal opinion as set forth in (2) and (3). Communications about such an inquiry between the requesting attorney and the unauthorized practice committee member, and between the committee members of the two committees, shall be confidential, but confidentiality may be waived by the requesting attorney.

XXXIII. SCR 3.660 Procedure for accreditation of continuing legal education activities and obligations of sponsors

SCR 3.660 shall read:

- 1) Application for accreditation of continuing legal education activities shall be made by members, former members or activity sponsors using forms provided by the Commission or using uniform applications adopted by the Commission. Applications must provide all information required by the form in order to be reviewed. All applications shall be accompanied by an application fee, as determined by the Commission.
- 2) Activity sponsors that apply for accreditation and receive approval prior to the activity may announce in advertising materials, "This activity has been approved by the Kentucky Bar Association Continuing Legal Education Commission for a maximum of XX.XX credits, including XX.XX ethics credits." Sponsors who have made application for accreditation of activities that have not yet been approved may announce in advertising materials, "Application for approval of this activity for a maximum of XX.XX credits, including XX.XX ethics

credits, is PENDING before the Kentucky Bar Association Continuing Legal Education Commission." Sponsors may not advertise accreditation if accreditation has not been granted by the Commission and notice of such accreditation received by the sponsor.

- 3) Technologically transmitted activities produced from live programs or studio productions must be accredited separately from the live or studio activity from which they were produced.
- 4) Sponsors of accredited activities shall comply with the obligations and requirements set forth below.
 - a) Ensure that all education activities comply with SCR 3.650.
 - b) Permit Commission members and staff or their designees to monitor without payment of registration or other fees, any approved activity.
 - c) When possible, utilize the activity code provided by the Kentucky Bar Association in its notification of accreditation in identifying the activity in all correspondence regarding the activity and provide the activity code to members for use in reporting credits
 - d) Advise attorneys that it is their duty to report and certify attendance directly to the CLE Commission.

XXXIV. SCR 3.690 Continuing legal education award

SCR 3.690 shall read:

- 1) Any member who completes a minimum of 20 credit hours approved by the Commission within one (1) educational year, is eligible for a Continuing Legal Education Award.
- 2) The Commission shall notify the member and issue the award.
- 3) Approved awards are valid for one (1) year, beginning on the first day of July of the year of award notification.
- 4) Each member who holds a valid, unexpired award shall receive a 25% discount from the normal registration fee for the Kentucky Bar Association Annual Convention.

- 5) The Association may publish annually an announcement of the members who during the preceding educational year have earned the Continuing Legal Education Award. The announcement shall describe the basis of the award and shall set forth in alphabetical order the name of each recipient.

XXXV. Delete [SCR 3.815 Mediation and arbitration]

SCR 3.815 shall be deleted in its entirety.

XXXVI. SCR 6.030 Time constraints

SCR 6.030 shall read:

The Chief Justice or his designee may in the interest of good order establish the latest date by which names shall be submitted and questionnaires returned.

XXXVII. SCR 6.060 Records of the commission

SCR 6.060 shall read:

The official records of the commission shall consist of a dated copy of the call for nominations, the minutes of the commission's meetings and a copy of the letter of submittal from the Chief Justice to the governor. The official records shall be destroyed eight years after the commission's meeting. All other records generated in connection with the commission's work shall be destroyed one year after the meeting.

XXXVIII. SCR 7.030 Nomination and election – Regular elections of bar representatives to judicial nominating commissions

SCR 7.030 shall read:

- 1) Candidates for election as bar representatives to the judicial nominating commission shall be nominated by the board or by electronic petition as provided in these rules.
- 2) On or before August 1 of the years in which regular elections are to be held under this rule the board shall by majority vote nominate candidates for election to the various commissions as specified in subsection 3 of this rule. The board shall immediately certify the names of its nominees to the director. On or before September 1 the director shall post to the website of the Kentucky Bar

Association and send electronically to each member residing in the Commonwealth of Kentucky a list or lists of the candidates nominated.

- 3) a) For the commission for the Supreme Court and the Court of Appeals the board shall nominate one (1) qualified member from each appellate district. The director shall post to the website of the Kentucky Bar Association and send electronically to each member residing in the Commonwealth of Kentucky a list of the candidates nominated.
- b) For the commissions for each judicial circuit or district, the board shall nominate two (2) qualified members. To the extent practicable, in multi-county circuits or districts, the board shall nominate candidates from different counties in the circuit. The director shall post to the website of the Kentucky Bar Association and send electronically to each member residing in the circuit or district a list of the candidates nominated.
- c) Lists of the board's nominees for election to the various commissions may be combined as one list and may be included in one publication of names.
- 4) Any other qualified member may file an electronic petition for candidacy for the commission for the Supreme Court and the Court of Appeals, or may file an electronic petition for candidacy for the commission for a judicial circuit or district. In the petition, the member shall state that he or she does not hold any other public office or any office in a political party or organization. All such petitions shall be electronically filed on or before September 15 of the year in which the regular election for members of the commissions is to be held. The director shall acknowledge receipt of each candidate's petition. All petitions shall be considered public records and shall be available for inspection at reasonable hours.
- 5) On or before September 30, the director shall post to the website of the Kentucky Bar Association and send electronically to each member residing in the Commonwealth of Kentucky a list or lists of the candidates, including those nominated by the board and those nominated by petition.
- 6) The eligibility of a candidate in a regular election may be challenged by any member entitled to vote in the election of the commission for which the challenged party is a candidate. Such

challenge shall be sent electronically to the director, with a copy to the challenged party or parties, on or before October 15 of the year in which the election is to be held. It shall be summarily heard by a hearing committee consisting of three (3) disinterested members appointed by the president. The parties shall be entitled to appear in person or by or with counsel. The hearing shall be held and a final decision rendered in writing on or before October 25. The party or parties aggrieved by such decision may appeal to the Supreme Court by a petition for review filed with the clerk of that court on or before November 1 and certifying that a copy has been served on the adversary party or parties. The matter shall be summarily heard and determined as ordered by the court.

- 7) All voting for the regular election of bar representatives to the judicial nominating commissions shall be conducted electronically. On or before November 1, the director shall post to the website of the Kentucky Bar Association and send electronically to each member residing in the Commonwealth of Kentucky a list or lists of the candidates, including those nominated by the board and those nominated by petition, excluding those who have been subjected to a successful challenge. Members may only cast two votes for candidates for the judicial nominating commission for the Court of Appeals and Supreme Court and two votes for the judicial nominating commission for the circuit or district in which they reside.
- 8) Following the close of voting, the electronic ballots will be tallied, and a report of the results will be generated to the director. The two (2) candidates for each commission receiving the highest number of votes shall be elected. If two (2) or more candidates are found to have received an equal number of votes, the election shall be fairly determined by random draw under the supervision of and in the presence of the director.
- 9) The director shall immediately certify the results of the election to the Chief Justice and promptly notify each candidate of the results of the election.
- 10) The results of the election will be posted to the website of the Kentucky Bar Association and sent electronically to each member residing in the Commonwealth of Kentucky.
- 11) On or before December 10 following the election any defeated candidate may contest the election of his successful opponent or

opponents. Such contest shall be by written petition to the Supreme Court stating the grounds of contest and certifying that a copy has been served on the adversary party or parties. The matter shall be summarily heard and determined in such manner, and relief granted or denied upon such grounds, as the court shall deem fair and equitable.

- 12) As soon as practicable after the election the director shall certify to the Supreme Court for its approval an itemization of all costs incurred in the election of members to the commission. Upon its approval of such costs the court shall order payment to the association out of the state treasury.

XXXIX. SCR 7.040 Special elections

SCR 7.040 shall read:

Whenever a vacancy occurs in the office of bar representative to a judicial nominating commission for any reason other than the expiration of a term, the Chief Justice shall appoint a successor from a list of nominees chosen by the board. The successor shall serve until the expiration of the regular term of office. If a vacancy occurs in the office of bar representative to a judicial nominating commission less than 30 days before the next regular election, there shall be no appointment of a successor to fill the unexpired term.

This Order shall be effective April 1, 2022, and until further Orders of this Court.

All sitting; all concur.

Entered this 11th day of March 2022.


CHIEF JUSTICE