

**Supreme Court Rules
2021 Proposed Amendments**

***Written comments to these proposed amendments
to the Supreme Court Rules must be submitted by December 31, 2021 to
ruleamendments@kycourts.net.***

Proposed Amendments		
SCR 1.050	The Administrative Office of the Courts	Amend
SCR 1.060	Circuit court clerks	Amend
SCR 2.042	Conditional admission, restoration and reinstatement	Amend
SCR 2.112	Limited admission for attorney participants in a public defender, legal services program, or Office of a Commonwealth's or County Attorney	Amend
SCR 2.300	Reinstatement of persons to practice	Delete in entirety
SCR 3.023	Disclosure of Professional Liability Insurance	Amend
SCR 3.030	Membership, practice by nonmembers and classes of membership	Amend
SCR 3.040	Dues: date of payment and amount	Amend
SCR 3.050	Collection of dues; suspension for non-payment	Amend
SCR 3.130(1.1)	Competence	Amend
SCR 3.130(3.6)	Trial publicity	Amend
SCR 3.130(5.7)	Activities of suspended lawyer	Amend
SCR 3.130(5.8)	Responsibilities regarding law-related services	New rule
SCR 3.330(8.4)	Misconduct	Amend
SCR 3.140	Appointment of inquiry commission	Amend
SCR 3.150	Access to disciplinary information	Amend
SCR 3.160	Initiation of disciplinary cases	Amend
SCR 3.165	Temporary suspension by the Supreme Court	Amend
SCR 3.166	Automatic suspension after conviction of a felony	Amend
SCR 3.167	Indefinite suspension in default cases or for failure to participate after answer	New rule
SCR 3.180	Investigation and trials to be prompt; subpoena power	Amend
SCR 3.370	Procedure before the Board and the Court	Amend
SCR 3.380	Degrees of discipline	Amend
SCR 3.390	Notice to client of suspension or disbarment	Amend
SCR 3.500	Restoration to membership	Delete in entirety
SCR 3.501	Reinstatement after a disciplinary suspension prevailing fewer than 181 days	New rule
SCR 3.502	Reinstatement after a disciplinary suspension 181 days or more	New rule
SCR 3.503	Reinstatement standards	New rule

SCR 3.504	Restoration to membership	New rule
SCR 3.505	Character and Fitness Committee; reinstatements	Delete in entirety
SCR 3.510	Reinstatement in case of disciplinary suspension	Delete in entirety
SCR 3.530	Ethics Committee and Unauthorized Practice Committee—advisory opinions—informal and formal	Amend
SCR 3.660	Procedure for accreditation of continuing legal education activities and obligations of sponsors	Amend
SCR 3.690	Continuing legal education award	Amend
SCR 3.815	Mediation and arbitration	Delete in entirety
SCR 6.030	Time constraints	Amend
SCR 6.060	Records of the commission	Amend
SCR 7.030	Nomination and election—Regular elections of bar representatives to judicial nominating commissions	Amend
SCR 7.040	Special elections	Amend

SCR 1.050 The Administrative Office of the Courts

- 1) The Administrative Office of the Courts shall act as the administrative and fiscal agency of the Court of Justice. Policies and procedures developed by the Administrative Office of the Courts and issued by it with the approval of the Supreme Court shall have the same effect as if issued by the Supreme Court.
- 2) All personnel actions shall conform to the requirements of the judicial personnel system approved by the Supreme Court.
- 3) No funds, excepting in-state travel, shall be expended or otherwise obligated without prior review and approval of the Administrative Office of the Courts.
- 4) All courts~~[,]~~ **and** clerks ~~[and court reporters]~~ 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.
- 5) The internal management of juries shall be in accordance with the Rules of Civil and Criminal Procedure as implemented by the procedures issued by the Administrative Office of the Courts with the approval of the Supreme Court.
- 6) Requests ~~[for branch court sites]~~ **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.
- 7) Requests for certification of necessity for trial commissioners or new judicial positions shall be submitted to the chief justice with a copy to the Administrative Office of the Courts.
- 8) ~~[All attorneys shall notify the Administrative Office of the Courts forthwith, in writing and with a copy to the judge, when any action stands submitted for final adjudication. When the decision has been rendered, the circuit clerk shall notify the Administrative Office of the Courts.]~~

~~The Administrative Office of the Courts shall keep records of all cases under submission and report monthly to the chief justice on the status of cases under submission.~~

~~The chief justice shall report to the judicial retirement and removal commission regarding any case under submission for longer than ninety~~

~~(90) days in which the district or circuit judge has not reported the reason for the delay to the chief justice as required by KRS 454.350.]~~

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.

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.

- 9) The Administrative Office of the Courts shall make available, at least once every two years, a training program designed for Circuit and Deputy Circuit Clerks which focuses on the dynamics and effects of domestic violence including the availability of community resources, victims' services and reporting requirements.

SCR 1.060 Circuit court clerks

- 1) Pursuant to Section 100 of the Constitution of Kentucky no person shall be eligible to seek the office of circuit clerk unless he shall have procured from a judge of the Court of Appeals, or a judge of the circuit court, a certificate that he has been examined by the clerk of his court under his supervision, and that he is qualified for the office for which he is a candidate.
- 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, ~~and~~ the Personnel Policies of the Court of Justice, **and relevant Administrative Procedures of the Kentucky Court of Justice.**
- 3) The examination shall be given once not less than 30 days nor more than 60 days before the deadline for filing for election in the year in which circuit clerks are elected. No person shall be eligible to appear on any election ballot for the office for circuit clerk who has not successfully completed an examination and been so certified, except no incumbent circuit clerk shall be required to be re-certified.
- 4) In the event of a vacancy in the office of circuit clerk, a special examination shall be prepared by the Administrative Office of the Courts to be administered to such person or persons designated by the chief circuit judge responsible for filling the vacancy by appointment, and to be administered to prospective candidates for election to fill the unexpired term.

SCR 2.042 Conditional admission, restoration and reinstatement

- 1) As a part of its certification process for all *initial* Applicants, ~~[including applicants for restoration or reinstatement under SCR 3.500 or 3.510]~~ the Character and Fitness Committee may require that an ~~[a]~~ 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) [Additionally, in the event of failure to comply with the conditions of the agreement, or other conditions imposed by the Court upon admission, restoration or reinstatement, the Office of Bar Counsel may:
 - a) request that the Court extend the term and impose additional condition(s).
 - b) recommend to the Court revocation of the license to practice law.]~~
- 3) ~~[4]~~ All information relating to conditional admission of an ~~[a]~~ Applicant or an attorney shall remain confidential in accordance with SCR 2.008.
- 4) ~~[5]~~ 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 subject to a disciplinary action and restoration or reinstatement shall be subject to the rules set forth in ~~[SCR 3.510]~~ **SCR 3.501, et seq.**

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

- 1) **Scope.** This rule applies to an attorney who is not a member of the Bar of this Commonwealth but who, after having completed the study of law in a law school approved by the American Bar Association or by the Association of American Law Schools and having been admitted to practice in the highest Court of another state, wishes to become an employee of an organized public defender program, the office of a Commonwealth's Attorney or County Attorney, or an organized legal services program in this Commonwealth providing legal assistance to indigent persons.
- 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 \$100.00 made payable to the Kentucky Office of Bar Admissions (cashier's or certified check or money order).

- 3) **Subscription and Action.** The application for admission shall be subscribed to by a member of the bar of this Commonwealth in good standing. If the application and related documents are in proper order and if the Character and Fitness Committee finds that the applicant has the moral character and fitness to practice before the Courts of this Commonwealth, the Clerk of the Supreme Court shall enter the name of the applicant upon the docket of persons specially admitted to the bar of this Commonwealth subject to the restrictions of this rule and shall issue an appropriate certificate in evidence thereof.
- 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 for so long as and until such time as the attorney is otherwise eligible to obtain admission to practice in the Commonwealth of Kentucky without examination by reason or reciprocity or comity pursuant to SCR 2.110.***
- 5) **Rules Governing the Practice of Law.** Except for Rules 2.110 and 3.030(2), the Rules governing the practice of law shall be applicable to an attorney admitted under this rule.

~~SCR 2.300 Reinstatement of persons to practice law scope and purpose of reinstatement guidelines~~

~~The guidelines set forth in SCR 2.300 apply to applications for reinstatement filed by any person who has been suspended from the practice of law, who seeks reinstatement under the provisions of SCR 3.510, and whose application is referred by the Kentucky Bar Association to the Office of Bar Admissions, Character and Fitness Committee, or to petitions for restoration filed by any person who has been transferred to disability inactive status pursuant to SCR 3.030.~~

~~These guidelines have been formulated to govern the manner in which Reinstatement Applications are processed so that all parties, including the public at large, are insured that a systematic and thorough character and fitness investigation is conducted and applicants are assured that their applications are addressed in a timely and procedurally consistent manner.~~

~~1) Initial Reinstatement Application Process:~~

- ~~a) The initial forms necessary to apply for reinstatement may be obtained from the Kentucky Bar Association. Completed applications for reinstatement, along with the necessary fees, must be delivered or mailed to the Kentucky Bar Association in accordance with SCR 3.500 and SCR 3.510.~~
- ~~b) Any applicant for reinstatement who is a member of the bar in any other jurisdiction must provide, along with the application, a statement from the disciplinary authority of each jurisdiction listing any complaint or charge that has been filed against the applicant and its disposition. Reciprocal discipline, based on a Kentucky disciplinary order, shall also be disclosed.~~
- ~~c) Any applicant who is permanently disbarred in another jurisdiction is not eligible to apply for reinstatement in Kentucky.~~
- ~~d) Upon receipt of a complete application for reinstatement and payment of necessary fees by an applicant who has been suspended more than one hundred eighty (180) days (and in some cases where the suspension has been less than one hundred eighty (180) days) the Kentucky Bar Association will refer the application to the Kentucky Office of Bar Admissions, Character and Fitness Committee for investigation, for a hearing, if necessary, and for a formal recommendation regarding the disposition of the application in accordance with SCR 3.500, SCR 3.505, and SCR 3.510.~~
- ~~e) Upon receipt of a Reinstatement Application from the Kentucky Bar Association, the Kentucky Office of Bar Admissions, Character and~~

~~Fitness Committee will instruct the applicant to electronically file a Character and Fitness Certification for Reinstatement Form in accordance with the instructions contained on it from the Office of Bar Admissions website, www.kyoba.org.~~

- ~~f) The submission of an incomplete application or the failure of an applicant to submit necessary documentation and/or fees will delay the Character and Fitness Committee's ability to render a timely recommendation. Failure of an applicant to submit the application for admission to the Bar within thirty (30) days or failure of an applicant to perfect an application within thirty (30) days of the date a notice of deficiency is sent to the applicant by the Committee may result in an unfavorable recommendation.~~

~~2) Investigative Process:~~

~~Upon receipt of a fully complete application the Character and Fitness Committee will immediately begin the necessary investigatory process, which may or may not involve the use of independent investigators. During this initial investigative period the applicant will be notified that he/she has sixty (60) days to obtain and submit any additional evidence he/she wants considered. The initial sixty (60) day period may be extended upon proper justification being submitted to the Committee in a written request by the applicant.~~

~~3) Informal Hearings:~~

~~At the conclusion of the investigative period a member of the Character and Fitness Committee, may elect to conduct an informal hearing in an effort to clarify or narrow issues. The informal hearing proceeding shall not be stenographically reported and sworn testimony shall not be taken. The applicant shall be given written notice of the date, time and place of any informal hearing. Notice shall be given no less than fourteen days before the hearing. Failure of the Applicant to fully cooperate with and participate in the informal hearing process shall be a basis for an unfavorable recommendation regarding the application for readmission.~~

~~4) Formal Hearings:~~

- ~~a) At the conclusion of the investigative period, and following the informal hearing, if one is held, the applicant and Kentucky Bar Association Counsel will be given a right to request a formal hearing before the Committee pursuant to SCR 3.505(3). If a formal hearing is not requested, the Committee may elect to hold a hearing or act upon the evidence of record and issue a decision within sixty (60) days of the day the parties decline a formal hearing.~~

- ~~b) If the applicant or Bar Counsel requests a formal hearing then such a hearing will be held within sixty (60) days of the request. Notice of the hearing date will be served on the parties not less than fourteen days before said hearing. The hearing shall be of record and the applicant may have counsel present and present testimony. The costs involved in this hearing shall be included with costs outlined in SCR 2.040(7) and will be paid by the applicant.~~
- ~~c) The Character and Fitness Committee shall, at the 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, and such additional evidence as may be submitted. However, the Committee may entertain the objections of any party to the evidence submitted under this section.~~
- ~~d) The conduct of the hearings and the order in which allegations and evidence shall be presented shall be within the discretion of the Character and Fitness Committee.~~

~~5) Formal Recommendation:~~

~~Following the Formal Hearing if there are material factual disputes, the Character and Fitness Committee must resolve them by making findings of fact. Such findings of fact must be supported by the existence or absence of clear and convincing evidence. Such findings will be set forth in a formal recommendation. A formal recommendation will be issued within 60 days of the date of receipt of the hearing transcript.~~

~~6) Burden of Proof:~~

~~While the burden of proof in a disciplinary proceeding rests with the KBA, in reinstatement cases the applicant has the burden of proving by clear and convincing evidence that he/she possesses the requisite character, fitness and moral qualification for re-admission to the practice of law. (SCR 3.330) Issues that will be considered include, but are not limited to, the following:~~

- ~~a) Whether the applicant has presented clear and convincing evidence that he/she has complied with every term of the order of suspension or disbarment.~~

- ~~b) 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.~~
- ~~c) Whether the applicant has presented clear and convincing evidence that he/she possesses sufficient professional capabilities to serve the public as a lawyer.~~
- ~~d) Whether the applicant has presented clear and convincing evidence that he/she presently exhibits good moral character.~~
- ~~e) Whether the applicant has presented clear and convincing evidence that he/she appreciates the wrongfulness of his/her prior misconduct, that he/she has manifest contrition for his/her prior professional misconduct, and has rehabilitated himself/herself from past derelictions.~~

~~Failure to meet any of these criteria may constitute a sufficient basis for denial of a petitioner's application.~~

~~7) Presumptions and Weight of Evidence:~~

~~A petitioner for reinstatement will be held to a substantially more rigorous standard than a first-time applicant for an initial admission to the Bar. The prior determination that he/she engaged in professional misconduct continues to be evidence against him or her and the proof presented must be sufficient to overcome that prior adverse judgment. Among the considerations to be weighed are:~~

~~The nature of the misconduct for which the applicant was suspended or disbarred.~~

~~The applicant's conception of the serious nature of his or her act.~~

~~The applicant's sense of wrongdoing.~~

~~The applicant's previous and subsequent conduct and attitude toward the courts and the practice, including the element of time elapsed since disbarment.~~

~~The applicant's candor in dealing with the Character and Fitness Committee.~~

~~The relevant knowledge of witnesses called by the applicant.]~~

SCR 3.023 Disclosure of Professional Liability Insurance

- 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 they are in compliance with this Rule, they shall be assessed a late fee of \$50.00.***
- 3) ~~{2}~~ 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) ~~{3}~~ The information disclosed pursuant to this Rule will be made available to the public by such means as the Board may designate.
- 5) ~~{4}~~ 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~~;~~.

SCR 3.030 Membership, practice by nonmembers and classes of membership

- 1) All persons admitted to the practice of law in this state shall be, and they are, members of the association.
- 2) A person admitted to practice in another state, but not in this state, shall be permitted to practice a case in this state only if that attorney subjects himself or herself to the jurisdiction and rules of the Supreme Court of Kentucky, pays a one-time per case fee equal to the annual dues paid by those KBA members who have been admitted to practice law for five years or more to the Kentucky Bar Association and engages a member of the association as co-counsel, whose presence shall be necessary at all trials and at other times when required by the court. No motion for permission to practice in any state court in this jurisdiction shall be granted without submission to the admitting court of a certification from the Kentucky Bar Association of receipt of this fee.
- 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/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.
- 4) The association, by its bylaws, may create honorary memberships.
- 5) A class of membership is established to be known as "Senior Retired Inactive Member." Any member who reaches the age of 70 years and no longer is actively practicing law and who has met the necessary CLE requirements for inactive status pursuant to SCR 3.665(2), shall upon notification to the Executive Director be classified as Senior Retired Inactive and shall not be required to pay annual dues. Any member who has been classified as Senior Retired Inactive may donate legal services through a duly organized legal aid program offering pro bono representation, or a local bar association legal pro bono program or initiative.

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 or 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 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 2.300]~~ **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 2.300]~~ **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.

SCR 3.040 Dues: date of payment and amount

- 1) On or before July 1 of each year every member of the Association, including every justice or judge of the Kentucky Court of Justice and United States judge in or who is appointed from or maintains a residence in Kentucky, except board-designated honorary members, shall be assessed dues for the ensuing twelve months. Dues shall be fixed by the Supreme Court on recommendation of the Board. Dues shall be paid to the treasurer on or before September 1 of each year.
- 2) Any member of the association shall be relieved of the payment of dues for any fiscal year in which the member serves actively for a period of not less than six months in the armed services of the United States of America, other than as a career member of the armed forces.
- 3) The class of membership designated Senior Retired Inactive Member, established by the Supreme Court in SCR 3.030, shall not be required to pay annual dues.
- 4) Unless the member has been classified under Senior Retired Inactive Member pursuant to SCR 3.030(4) or Disabled Inactive Member pursuant to SCR 3.030(5), the member may apply in writing to the Kentucky Bar Association to be relieved of the payment of dues by reason of undue hardship arising from disability, sickness, [ø] financial condition, **active military service, or as the spouse of an active military service member**. The application shall be copied to the Governors from the district in which the attorney lives, who may or may not recommend in writing to the President that such relief be granted, giving the reasons therefor. Thereupon the President shall have the authority to rule on the application and to notify the Treasurer by written order that the attorney is relieved of the payment of dues. The President shall file the order with the registrar along with the recommendation(s) of the Governor(s).

SCR 3.050 Collection of dues; suspension for non-payment

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 or 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 (\$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 3.500. 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.

SCR 3.130 (1.1) Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

Supreme Court Commentary

Legal Knowledge and Skill

- 1) In determining whether a lawyer employs the requisite knowledge and skill in a particular matter, relevant factors include the relative complexity and specialized nature of the matter, the lawyer's general experience, the lawyer's training and experience in the field in question, the preparation and study the lawyer is able to give the matter and whether it is feasible to refer the matter to, or associate or consult with, a lawyer of established competence in the field in question. In many instances, the required proficiency is that of a general practitioner. Expertise in a particular field of law may be required in some circumstances.
- 2) A lawyer need not necessarily have special training or prior experience to handle legal problems of a type with which the lawyer is unfamiliar. A newly admitted lawyer can be as competent as a practitioner with long experience. Some important legal skills, such as the analysis of precedent, the evaluation of evidence and legal drafting, are required in all legal problems. Perhaps the most fundamental legal skill consists of determining what kind of legal problems a situation may involve, a skill that necessarily transcends any particular specialized knowledge. A lawyer can provide adequate representation in a wholly novel field through necessary study. Competent representation can also be provided through the association of a lawyer of established competence in the field in question.
- 3) In an emergency, a lawyer may give advice or assistance in a matter in which the lawyer does not have the skill ordinarily required where referral to or consultation or association with another lawyer should be impractical. Even in an emergency, however, assistance should be limited to that reasonably necessary to the circumstances, for ill-considered action under emergency conditions can jeopardize the client's interest.
- 4) A lawyer may accept representation where the requisite level of competence can be achieved by reasonable preparation. This applies as well to a lawyer who is appointed as counsel for an unrepresented person. See also Rule 6.2.

Thoroughness and Preparation

- 5) Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners. It also includes adequate preparation. The required attention and preparation are determined in part by what is at stake; major litigation and complex transactions ordinarily require more extensive treatment than matters of lesser complexity and consequence. An agreement between the lawyer and the client regarding the scope of the representation may limit the matters for which the lawyer is responsible. See Rule 1.2(c).

Maintaining Competence

- 6) To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.
- 7) ***A lawyer's well-being is an important aspect of maintaining competence. A lawyer's mental, emotional, and physical well-being may impact the lawyer's ability to represent a client and practice law. This comment is not intended to subject a lawyer to disciplinary action for showing signs of not being physically, emotionally, or mentally well. Nor is it intended to expose a lawyer to discipline for not seeking help if struggling with depression, substance use disorder, or other mental health conditions or unhealthy behaviors.***

SCR 3.130(3.6) Trial publicity

- 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 [i] and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.
- b) Notwithstanding paragraph (a), a lawyer may state:
 - 1) the claim, offense or defense involved and, except when prohibited by law, the identity of the persons involved;
 - 2) information contained in a public record;
 - 3) that an investigation of the matter is in progress;
 - 4) the scheduling or result of any step in litigation;
 - 5) a request for assistance in obtaining evidence and information necessary thereto;
 - 6) a warning of danger concerning the behavior of a person involved, when there is reason to believe that there exists the likelihood of substantial harm to an individual or to the public interest; and
 - 7) in a criminal case, in addition to subparagraphs (1) through (6):
 - i. the identity, residence, occupation and family status of the accused;
 - ii. if the accused has not been apprehended, information necessary to aid in apprehension of that person;
 - iii. the fact, time and place of arrest; and
 - iv. the identity of investigating and arresting officers or agencies and the length of the investigation.
- c) Notwithstanding paragraph (a), a lawyer may make a statement that a reasonable lawyer would believe is required to protect a client from the substantial undue prejudicial effect of recent publicity not initiated by the lawyer or the lawyer's client. A statement made pursuant to this paragraph shall be limited to such information as is necessary to mitigate the recent adverse publicity.
- d) No lawyer associated in a firm or government agency with a lawyer subject to paragraph (a) shall make a statement prohibited by paragraph (a).

Supreme Court Commentary
2009:

- 1) It is difficult to strike a balance between protecting the right to a fair trial and safeguarding the right of free expression. Preserving the right to a fair trial necessarily entails some curtailment of the information that may be disseminated about a party prior to trial, particularly where trial by jury is involved. If there were no such limits, the result would be the practical nullification of the protective effect of the rules of forensic decorum and the exclusionary rules of evidence. On the other hand, there are vital social interests served by the free dissemination of information about events having legal consequences and about legal proceedings themselves. The public has a right to know about threats to its safety and measures aimed at assuring its security. It also has a legitimate interest in the conduct of judicial proceedings, particularly in matters of general public concern. Furthermore, the subject matter of legal proceedings is often of direct significance in debate and deliberation over questions of public policy.
- 2) Special rules of confidentiality may validly govern proceedings in juvenile, domestic relations and mental disability proceedings, and perhaps other types of litigation. Rule 3.4(c) requires compliance with such Rules.
- 3) The Rule sets forth a basic general prohibition against a lawyer making statements that the lawyer knows or should know will have a substantial likelihood of materially prejudicing an adjudicative proceeding. Recognizing that the public value of informed commentary is great and the likelihood of prejudice to a proceeding by the commentary of a lawyer who is not involved in the proceeding is small, the Rule applies only to lawyers who are, or who have been involved in the investigation or litigation of a case, and their associates.
- 4) Paragraph (b) identifies specific matters about which a lawyer's statements would not ordinarily be considered to present a substantial likelihood of material prejudice, and should not in any event be considered prohibited by the general prohibition of paragraph (a). Paragraph (b) is not intended to be an exhaustive listing of the subjects upon which a lawyer may make a statement, but statements on other matters may be subject to paragraph (a).
- 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) ~~1~~ 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) ~~2~~ 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) ~~3~~ 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) ~~4~~ 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) ~~5~~ 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) ~~6~~ 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.
- 6) Another relevant factor in determining prejudice is the nature of the proceeding involved. Criminal jury trials will be most sensitive to extrajudicial speech. Civil trials may be less sensitive. Non-jury hearings and arbitration proceedings may be even less affected. The Rule will still place limitations on prejudicial comments in these cases, but the likelihood of prejudice may be different depending on the type of proceeding.
- 7) Finally, extrajudicial statements that might otherwise raise a question under this Rule may be permissible when they are made in response to statements made publicly by another party, another party's lawyer, or third persons, where a reasonable lawyer would believe a public response is required in order to avoid prejudice to the lawyer's client. When prejudicial statements have been publicly made by others, responsive statements may have the salutary effect of lessening any resulting adverse impact on the adjudicative proceeding. Such responsive

statements should be limited to contain only such information as is necessary to mitigate undue prejudice created by the statements made by others.

- 8) See Rule 3.8(e) for additional duties of prosecutors in connection with extrajudicial statements about criminal proceedings.

SCR 3.130(5.7) Activities of Suspended Lawyer

- a) During a period of suspension a suspended lawyer may not perform any of the following acts:
- 1) render legal consultation or legal advice to any person;
 - 2) appear on behalf of another person in any hearing or proceeding or before any judicial officer, arbitrator, mediator, court, public agency, referee, magistrate, commissioner, or hearing officer, unless the rules of the tribunal involved permit representation by non-lawyers and the represented person has been fully informed of the lawyer's suspension;
 - 3) appear as a representative of another person at a deposition or other discovery matter;
 - 4) negotiate or transact any matter for or on behalf of another person with third parties;
 - 5) receive, disburse, or otherwise handle a client's funds; or
 - 6) engage in activities that constitute the practice of law.
- b) A lawyer shall not employ, associate professionally with or aid a person a lawyer knows or reasonably ~~y~~ 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.
- c) Except as provided in paragraph (a) and (b), a suspended lawyer may perform research, draft documents, perform clerical functions, and similar activities for the use by a lawyer who assumes professional responsibility for the suspended lawyer's activities.
- d) Prior to or at the time of employing a suspended lawyer, the employing lawyer shall serve upon Bar Counsel written notice of the employment of the suspended lawyer, including a description of such suspended member's current license status. The notice shall include a statement that the suspended lawyer shall not be employed to perform any of the activities prohibited by paragraph (a). Upon terminating the employment of a suspended lawyer, the employing lawyer shall promptly serve written notice of such termination upon Bar Counsel.

Supreme Court Commentary

- 1) A lawyer's suspension may be as a result of a suspension in any jurisdiction including those suspended for failure to pay Bar dues as provided by SCR 3.050 or for failure to comply with continuing legal education requirements as provided by SCR 3.661.
- 2) The term "employ" means engaging the services of a suspended lawyer, whether for pay as an employee or independent contractor, or volunteer, or accepting any service from the suspended lawyer. The requirements of the Rule apply to all attorneys in the employing firm. In all employment situations permitted by this Rule the employing lawyer shall assure that the suspended lawyer does not have any interaction with the public from which it might reasonably appear that the suspended lawyer is a lawyer in good standing. This includes, but is not limited to, communication with any clients of the employing attorney, or communications with any attorneys other than the employing attorney.
- 3) An employing lawyer shall take appropriate actions to assure that the suspended lawyer does not receive, disburse, or otherwise handle any client or attorney client escrow funds.
- 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.

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

- 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) 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.**
- 2) 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.

- 3) 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.***
- 4) 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.***
- 5) 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).***
- 6) 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.***

- 7) *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.*
- 8) *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.*
- 9) *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.*
- 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).***

SCR 3.130(8.4) Misconduct

It is professional misconduct for a lawyer to:

- a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
- c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- d) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law; or
- e) knowingly assist a judge or judicial officer in conduct that is a violation of applicable Rules of Judicial Conduct or other law; **or**
- f) ***engage in conduct that is prejudicial to the administration of justice.***

Supreme Court Commentary
2009:

- 1) Lawyers are subject to discipline when they violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so or do so through the acts of another, as when they request or instruct an agent to do so on the lawyer's behalf. Paragraph a), however, does not prohibit a lawyer from advising a client concerning action the client is legally entitled to take.
- 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 [~~to the entire criminal law~~] ***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.

- 3) A lawyer may refuse to comply with an obligation imposed by law upon a good faith belief that no valid obligation exists. The provisions of Rule 1.2(d) concerning a good faith challenge to the validity, scope, meaning or application of the law apply to challenges of legal regulation of the practice of law.

SCR 3.140 Appointment of inquiry commission

- 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).*** ~~[and of each panel.]~~ 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.
- 2) The Commission shall meet and act in panels of three (3) persons comprised of two (2) lawyers and one (1) non-lawyer to promptly dispose of all complaints and matters referred to it pursuant to SCR 3.170. When the Commission meets in a panel of three (3), any two (2) members must be present in order that a quorum exist. At least one (1) panel of the Commission shall meet each month if there is unresolved business to conduct.
- 3) The terms of the lawyer and non-lawyer members of the Inquiry Commission shall be appointed by the Chief Justice, with the consent of the Court, in such a manner that their terms shall be staggered.
- 4) The Inquiry Commission may adopt administrative regulations for the discharge of its responsibility subject to approval of the Court during its regular term. The Commission shall meet as a whole for administrative purposes, at which six (6) persons shall constitute a quorum. The Commission, through its administrative regulations, will provide for the rotation of its members among the different panels.

SCR 3.150 Access to disciplinary information

- 1) Confidentiality. In a discipline matter, ~~prior to a rendition of a finding of a violation of these Rules by the Trial Commissioner or the Board and the recommendation of the imposition of a public sanction,~~ the proceeding is confidential **prior to the filing of a verified answer to a Charge or, in the case of default, (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, (30) days following service on the Respondent pursuant to SCR 3.164** ~~a finding of a violation of the Rules,~~ 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.

- 3) Duty of Participants. All Participants in a proceeding under these Rules shall conduct themselves so as to maintain the confidentiality requirement of this Rule. Nothing in the rule shall prohibit the Respondent from discussing the disciplinary matter with any potential witness or entity in order to respond in a disciplinary proceeding, or to disclose to any tribunal, or to disclose any information for the purpose of conducting a defense. This provision shall not apply to the Complainant

or the Respondent after the Inquiry Commission or its Chair has taken action on a Complaint including the issuance of a charge, the issuance of a private admonition, or a dismissal, including those pursuant to SCR 3.160(3).

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 ~~relates to an investigation by the requestor and~~ 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) no notice to the Respondent is 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, (30) days following service on the Respondent pursuant to SCR 3.164*** ~~a finding by the Trial Commissioner or the Board that an attorney has committed a violation of these rules meriting public discipline,~~ 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.
- 7) Notice to National Discipline Data Bank. The Disciplinary Clerk shall transmit notice of all public discipline imposed against a lawyer and reinstatements to the National Discipline Data Bank maintained by the American Bar Association.

SCR 3.160 Initiation of disciplinary cases

- 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 ~~[3.175]~~ **3.035**, or other means consistent with the Supreme Court Rules and Civil Rules, of the complaint, and that he/she has 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.
- 2) Notwithstanding the provisions of paragraph (1), when it comes to the attention of the Inquiry Commission from any source that an attorney may have engaged in unprofessional conduct, the Inquiry Commission, or a three-person panel thereof, may initiate and conduct an investigation, and if it believes from its investigation that there is sufficient evidence to justify its filing a complaint against the attorney it may file such a complaint.
- 3) a) ~~[(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) ~~[(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) ~~{(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) ~~{(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) ~~{(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.
- 4) Neither the Association, the Board, the Director, the Inquiry Commission, the Trial Commission, the Office of Bar Counsel, nor their officers, employees, agents, delegates or members shall be liable, to any person or entity initiating a complaint or investigation, or to any member of the bar or any other person or entity being charged or investigated by, or at the direction of, the Inquiry Commission, for any damages incident to such investigation or any complaint, charge, prosecution, proceeding or trial.

SCR 3.165 Temporary suspension by the Supreme Court

- 1) On petition of the Inquiry Commission, authorized by its Chair, or the Chair's lawyer member designee, and supported by an affidavit, an attorney may be temporarily suspended from the practice of law by order of the Court provided:
 - a) It appears that probable cause exists to believe that an attorney is or has been misappropriating funds the attorney holds for others to his/her own use or has been otherwise improperly dealing with said funds; or
 - b) It appears that probable cause exists to believe that an attorney's conduct poses a substantial threat of harm to his clients or to the public; or
 - c) An attorney has been convicted of a crime as set out in SCR 3.320 and it appears from the record of such conviction that the attorney has so acted as to put in grave issue whether he/she has the moral fitness to continue to practice law; or,
 - d) It appears that probable cause exists to believe that an attorney is mentally disabled or is addicted to intoxicants or drugs and probable cause exists to believe he/she does not have the physical or mental fitness to continue to practice law. If the attorney denies that he/she is mentally disabled or denies that he/she is addicted to intoxicants or drugs, the Court may order the attorney to submit to a physical or mental examination by a physician or other health care professional appointed by the Court. The examining health care professional shall file with the Clerk of the Court a detailed written report setting out the findings of the health care professional, including results of all tests made, diagnosis and conclusions, together with like reports of all earlier examinations by any health care professional of the same condition. The Clerk of the Court shall furnish a copy of the examining health care professional's entire report to the attorney and to Bar Counsel. The Court may order the attorney to produce to the Court and Bar Counsel any relevant medical, psychiatric, psychological or other health care or treatment records, including alcohol or drug abuse patient records, evidencing prior or ongoing treatment for mental disability or addiction to drugs or to execute appropriate releases which would comply with applicable federal and state law in order to permit the treating health care professional to release those records to the Court and

Bar Counsel. Any such order and the resulting records regarding the treatment shall be confidential and sealed in the record.

- 2) Any such order of temporary suspension may restrict the attorney in dealing with client funds and shall, when served on any bank maintaining any account upon which said attorney may make withdrawals, serve as an injunction to prevent said bank from making further payment from such account or accounts on any obligation except in accordance with restrictions imposed by the Court, and shall direct such bank not to disclose (except to those entitled to withdraw from the account or accounts or to receive payment of such obligation, or upon the express written permission of at least one of such persons as to each such account or obligations) that such order has been received or the contents thereof. Any fees tendered to such attorney thereafter shall be deposited in a trust fund from which withdrawals may be made only in accordance with restrictions imposed by the Court. The Court may appoint a trustee to receive, transfer, or disburse any funds that are in the possession of or are under the control of the attorney if the funds came into the attorney's possession from the attorney's clients or from third parties during or as a result of the practice of law prior to suspension. The Court may require the trustee to render an accounting of said funds to the Court and to furnish a copy of the accounting to the Director.
- 3) The petition of temporary suspension authorized by this rule shall be filed with the Clerk of the Court. The Chair of the Commission, or the Chair's designee, or the Commission's counsel, shall certify that a copy of the petition has been served on the Respondent or Respondent's attorney at his/her bar roster address. The Respondent shall file a response to the petition within twenty (20) days of the date the petition was filed with the Clerk. The Court may schedule an oral argument or a show cause hearing after the filing of the response or after the expiration of the time for a response to be filed.
- 4) The Respondent may for good cause request dissolution or amendment of any such temporary order by petition filed with the Court, a copy of which will be served on the Director and on Bar Counsel, who shall respond on behalf of the Association. The Court may refer such petition for dissolution to a person who possesses the qualifications of a Trial Commissioner under Rule 3.230 sitting as a Special Commissioner for immediate hearing. The Special Commissioner shall hear evidence and argument upon such petition forthwith and submit his/her report and recommendations to the Court within thirty (30) days. Upon receipt of the foregoing report, the Court may refer the matter to the Character and Fitness Committee for recommendation and/or may modify its order if

deemed appropriate until final disposition of all pending disciplinary charges against said attorney.

- 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.
- 6) Upon the issuance of an order of temporary suspension, the attorney affected shall immediately, to the extent reasonably possible, cancel and cease any advertising activities in which the attorney is engaged, and remove the attorney's name from any firm with which the attorney is associated.
- 7) Failure to comply with this rule shall subject the Respondent to a charge of contempt of court.

SCR 3.166 Automatic suspension after conviction of a felony

- 1) Any member of the Kentucky Bar Association who pleads guilty to a felony, including a no contest plea or a plea in which the member allows conviction but does not admit the commission of a crime, or is convicted by a judge or jury of a felony, in this State or in any other jurisdiction, shall be automatically suspended from the practice of law in this Commonwealth. "Felony" means an offense for which a sentence to a term of imprisonment of at least one (1) year is authorized by law. The imposition of probation, parole, diversion or any other type of discharge prior to the service of sentence, if one is imposed, shall not affect the automatic suspension. The suspension shall take effect automatically beginning on the day following the plea of guilty or finding of guilt by a judge or jury or upon the entry of judgment whichever occurs first. The suspension under this rule shall remain in effect until dissolved or superseded by order of the Court. Within thirty (30) days of the plea of guilty, or the finding of guilt by a judge or jury, or entry of judgment, whichever occurs first, the suspended attorney may file a motion with the Clerk of the Supreme Court of Kentucky setting forth any grounds which the attorney believes justify dissolution or modification of the suspension.
- 2) The attorney prosecuting the case to a plea of guilty, conviction by judge or jury or entry of judgment, whichever occurs first, shall immediately notify Bar Counsel and the Clerk of the Supreme Court that such plea, finding or entry of judgment has been made.
- 3) The suspended attorney shall serve a copy of any motion filed under paragraph (1) above on Bar Counsel by mailing a copy to 514 West Main Street, Frankfort, Kentucky 40601. Bar Counsel shall file a response to the suspended attorney's motion within twenty (20) days of receipt of the motion.
- 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.
- 5) Any attorney suspended under this rule shall immediately, to the extent possible, cancel and cease any advertising activities in which the

attorney is engaged, and remove the attorney's name from any firm with which the attorney is associated.

- 6) Disciplinary proceedings against such attorney shall be initiated by the Inquiry Commission pursuant to SCR 3.160, unless already begun or unless the suspended attorney resigns under terms of disbarment.

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

- 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 filed pursuant to SCR 3.200, 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; and (iii) proof of service of the Charge.**
- 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.

SCR 3.180 Investigations and trials to be prompt; subpoena power

- 1) All investigations and the trial of all disciplinary cases shall be begun, prosecuted, and completed as promptly as the ends of justice will permit. Neither the unwillingness of the complainant to prosecute, nor an offer of settlement, compromise or restitution shall delay the investigation, trial or report to the Board.
- 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.
- 3) Upon application of Bar Counsel to the Inquiry Commission and after a hearing of which Respondent is given at least five (5) days' notice, for good cause shown the Inquiry Commission may authorize the Director or the Disciplinary Clerk to issue a subpoena to a Respondent, or any other person or legal entity, to produce to Bar Counsel any evidence deemed by the Inquiry Commission to be material to the investigation of a complaint and to testify regarding such production. Such an application may be made in connection with complaints against more than one Respondent if the complaints are based on the same or a related set of facts. The person or entity so subpoenaed will not divulge, except to his/her own attorney, that such a subpoena has been served nor what evidence is sought or obtained. The Respondent may be present at the time the evidence or material is examined or obtained by Bar Counsel and will be furnished copies of all documents obtained, unless obtained from the Respondent.
- 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.

SCR 3.370 Procedure before the Board and the Court

- 1) Thirty days after the filing of the notice of appeal, the Appellant shall file a brief supporting his/her position on the merits of the case. Fifteen days thereafter, the Appellee shall file his/her brief. Briefs shall not exceed 30 pages. No reply brief shall be permitted.
- 2) Upon motion by the parties or upon the Board's own motion, oral arguments may be scheduled before the Board. The oral argument proceedings shall be electronically recorded and be considered a part of the record.
- 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.
- 5) a) The Board, after deliberation, and consideration of oral argument, if any, shall decide, by a roll call vote:
 - i. To accept the Trial Commissioner's Report as to the guilt, innocence, and the discipline imposed, by concluding that the Trial Commissioner's report is supported by substantial evidence and is not clearly erroneous as a matter of law; or
 - ii. To conduct a *de novo* review, in its discretion. In that event it shall make findings as to the guilt or innocence on each Count, and the appropriate discipline to be imposed, if any, and take separate votes as to each. If the

Board votes to take de novo review of the case, said review shall be confined to the evidence presented and the record of the case. The Board may consider the admissibility of evidence as well as the appropriate weight of it. The Board shall state, in its written report required by subsection (8), the difference between its findings and recommendations and the report of the Trial Commissioner.

- b) In the event of a case submitted under SCR 3.210, the Board shall decide, by a roll call vote, guilt or innocence on each Count and the appropriate discipline to be imposed, if any. It shall make findings of fact in the event of a disputed fact and make conclusions of law. Failure to answer may be deemed an admission of the facts stated in the charge.
 - c) Each roll call vote under (5)(a) or (b) shall be agreed upon by 11 or 3/4 of the members of the Board present and voting on the proceedings, whichever is less.
 - d) At any time during deliberations the Board by a vote of a majority of the Board present and voting, may remand the case to the Inquiry Commission for reconsideration of the form of the charge or remand the case to the Trial Commissioner for clarification of the Trial Commissioner's report or for an evidentiary hearing on points specified in the order of remand. The Board may order the parties to file additional briefs on specific issues.
- 6) ***In a reinstatement matter, the Board shall review the record, report and brief and recommend approval or disapproval of the application.***
- 7) ~~{6}~~ 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) ~~{7}~~ 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) ~~{8}~~ 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) ~~{9}~~ If no notice of review is filed by either of the parties, or the Court under paragraph eight (8) of this rule, the Court shall enter an order adopting the decision of the Board, ~~or the Trial Commissioner,~~ **or the Character & Fitness Committee**, whichever the case may be, relating to all matters.
- 11) ~~{10}~~ 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.

SCR 3.380 Degrees of discipline; indefinite suspension in default cases

~~{1} Upon findings of a violation of these rules, discipline may be administered by way of private reprimand, 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.~~

~~{2} In cases in which the Respondent has failed to answer a charge filed pursuant to Rule 3.200, or having answered, has thereafter declined to participate in the disciplinary process 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. Reinstatement following an indefinite suspension imposed under this Rule, may be initiated by motion of the Respondent accounting for the failure to respond and requesting a final determination of the matter, and shall be subject to the reinstatement requirements of SCR 3.510. If respondent fails to seek reinstatement within 5 years, Bar Counsel shall move for permanent disbarment.~~

~~Supreme Court Commentary
2015~~

~~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." Subsection (2) of SCR 3.380 now formally identifies the indefinite suspension as a mode of discipline within the Court's authority under §116 of the Kentucky Constitution to "govern admission to the bar and the discipline of members of the bar.]~~

SCR 3.390 Notice to client of suspension or disbarment

- 1)** ~~[(a)]~~ 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 ~~[tenth (10th)]~~ **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)** ~~[(b)]~~ Within ~~[10]~~ **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 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.

~~[SCR 3.500 Restoration to membership~~

- ~~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 of three hundred fifty dollars (\$350.00) 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 Character and Fitness Committee of the Kentucky Office of Bar Admissions for proceedings pursuant to SCR 2.040 and SCR 2.011, and subsequent review by the Supreme Court. If the matter is referred to the Character and Fitness Committee, the applicant shall pay a fee of \$450.00 to the Kentucky Office of Bar Admissions. Upon completion of its review, the Character and Fitness Committee shall submit its recommendation to the Board for its action and recommendation to the Court.~~~~
- ~~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 of seven hundred fifty dollars (\$750.00) 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~~
- ~~e) 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 Character and Fitness Committee of the Kentucky Office of Bar Admissions for proceedings pursuant to SCR 2.040 and SCR 2.011. An additional fee of \$750.00 shall be paid to the Kentucky Office of Bar Admissions. Upon completion of its review, the Character and Fitness Committee shall submit its recommendation to the Board of Governors for its action and recommendation to the Court.~~
- ~~e) If the Character and Fitness Committee recommends approval of the application and the Board concurs, the application shall be referred 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. Fees required by SCR 2.022, and SCR 2.023 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 under SCR 2.110. All fees required by that rule 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.~~
- ~~f) If the Character and Fitness Committee recommends disapproval of the application, the matter shall be referred to the Board of Governors~~

~~for its review. The Applicant and the KBA may file briefs and an oral argument may be held upon the request of either party. If, after its consideration, the Board concurs in the disapproval of the application, its findings and recommendation shall be filed with the Disciplinary Clerk, and the record shall be sent to the Clerk of the Supreme Court. Upon receipt of the record, the Clerk of the Supreme Court shall send notice of the filing by certified mail, return receipt requested, to the Applicant's bar roster address. Within twenty (20) days, the Applicant may petition the Court for review of the action of the Board. If the Court reverses the Board's disapproval of the application, it shall refer the matter to the Board of Bar Examiners for the procedure set forth above in paragraph 3(e).~~

- ~~4) All costs incurred in excess of the filing fee shall be paid by the Applicant. Upon referral to the Character and Fitness Committee, if pursuing restoration through subsection (3)(d) of this rule, a cash or corporate surety bond in the amount of \$2500.00 to secure the costs to be incurred shall be paid to the Office of Bar Admissions 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 Character and Fitness Committee or the Board of Governors recommends restoration of membership on conditions as provided in SCR 2.042, such conditions may be imposed by the Board, for application processed by it under subsection (2)(d) of this rule, or by the Court in any order of restoration.]~~

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

- 1) If the period of suspension has prevailed fewer than 181 days, a suspended member (“Applicant”) may request reinstatement upon the filing 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 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 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 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 (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 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).

SCR 3.502 Reinstatement after a disciplinary suspension 181 days or more

- 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;**
 - 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 presenting 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.***

SCR 3.503 Reinstatement standards

- 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;**

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.***

SCR 3.504 Restoration to membership

- 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 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.****

~~[SCR 3.505 Character and Fitness Committee; reinstatements~~

- ~~1) The Character and Fitness Committee created by SCR 2.040 shall, in addition to the powers and duties conferred in that rule, consider all applications for reinstatement to the practice of law by persons who: (a) have been suspended for more than one hundred eighty (180) days; (b) have been suspended for one hundred eighty (180) days or less, but whose reinstatement has been opposed by Bar Counsel. (c) Have been transferred to disabled inactive status pursuant to SCR 3.030.~~
- ~~2) The Character and Fitness Committee may act upon the application and such investigative material as it may gather or Bar Counsel may tender to it, all of which information not submitted by the Applicant shall be made available to the Applicant.~~
- ~~3) The Applicant or Bar Counsel shall have the right to a hearing before the Character and Fitness Committee prior to the issuance of its decision. The hearing shall be held within 60 days from the request. The formal recommendation of the Committee shall be filed within 60 days of the filing of the record.~~
- ~~4) If either party requests a hearing before the Character and Fitness Committee, the Applicant shall have the rights accorded a Respondent in a disciplinary proceeding pursuant to SCR 3.300, except that the Character and Fitness Committee shall hold the hearing rather than a Trial Commissioner. The burden of proof of one's good character and fitness to practice law shall be on the Applicant.]~~

~~SCR 3.510 Reinstatement in case of disciplinary suspension~~

- ~~1) No former member of the Association who has been suspended for a disciplinary case for more than 180 days shall resume practice until he/she is reinstated by order of the Court. Application for reinstatement shall be on forms provided by the Director and Continuing Legal Education Commission, filed with the Director, and shall be accompanied by a filing fee of \$250.00 which shall be made payable to the Kentucky Bar Association. An additional filing fee of \$1500.00 shall be made payable to the Kentucky Office of Bar Admissions. The Director shall not accept an application for filing unless all costs incurred in the suspension proceeding have been paid by the former member, the Office of Bar Counsel has certified to the Applicant that there is no pending disciplinary file, and the costs in the reinstatement proceeding (whether costs of the Association or of the Character and Fitness Committee or of the Kentucky Office of Bar Admissions) have been secured by the posting of a cash bond of \$2500.00. Any additional costs will be paid by Applicant. The Director shall refer the application to the Continuing Legal Education Commission within 10 days of receipt for certification under Rule 3.685. The Continuing Legal Education Commission shall make its certification within 20 days of the referral which shall be added to the record in the reinstatement proceedings.~~

- ~~2) If the period of suspension has prevailed for 180 days or less, the suspension shall expire by its own terms upon the filing with the Clerk and Bar Counsel of an affidavit of compliance with the terms of the suspension, which must include a certification from the CLE Commission that the Applicant has complied with SCR 3.685. The Registrar of the Association will make an appropriate entry in the records of the Association reflecting that the member has been reinstated; provided, however, that such suspension shall not expire by its own terms if, not later than 10 days preceding the time the suspension would expire, Bar Counsel files with the Inquiry Commission an opposition to the termination of suspension wherein Bar Counsel details such information as may exist to indicate that the member does not, at that time, possess sufficient professional capabilities and qualifications properly to serve the public as an active practitioner or is not of good moral character. A copy of such objection shall be provided to the Character and Fitness Committee, to the member concerned, and to the Registrar. Within 90 days after the filing of the objection, the Respondent shall have the opportunity to show Bar Counsel that he/she possesses the sufficient professional capabilities and qualifications to serve the public as an active practitioner or is of good moral character. Upon such showing, Bar Counsel shall withdraw its objection. If the objection has not been withdrawn, the Character and Fitness Committee shall conduct proceedings under SCR 2.300. In cases where a suspension has~~

~~prevailed for 180 days or less and the reinstatement application is referred to the Character and Fitness Committee, a fee of \$1500.00 shall be made payable to the Kentucky Office of Bar Admissions.~~

- ~~3) If the period of suspension has prevailed for more than 180 days, the matter shall be referred to the Character and Fitness Committee for proceedings under SCR 2.300. The Character and Fitness Committee will determine whether the application of a member who has been suspended 180 days or less but whose termination of suspension has been objected to, or a member who has been suspended for more than 180 days, should be approved. The Character and Fitness Committee shall file with the Director and the Clerk the entire record, including a written report and recommendation by the Character and Fitness Committee. Thirty days after the filing of the report, Bar Counsel and the applicant may each file briefs, not to exceed 30 pages in length. No further briefs may be filed. Upon motion of the parties or upon the Board's own motion, oral arguments may be scheduled before the Board. The Board shall review the record, report and briefs and recommend approval or disapproval of the application to the Court. The Court may enter an order reinstating the Applicant to the practice of law or deny the application.~~
- ~~4) If the period of suspension has prevailed for more than 5 years, the Director shall refer the application to the Character and Fitness Committee for proceedings under SCR 2.300. The Committee shall file a written report and recommendation with the Director and the Clerk. Thirty days after the filing of the report, Bar Counsel and the applicant may each file briefs, not to exceed 30 pages in length. No further briefs may be filed. Upon motion of the parties or upon the Board's own motion, oral arguments may be scheduled before the Board. The Board shall review the record, report and briefs and recommend approval or disapproval of the application to the Court. If the Committee and the Board recommend approval of the application, the Committee shall refer the application to the Board of Bar Examiners for processing in accordance with Rule 3.500(3) and shall file the entire record with the Clerk, including the written report and recommendation of the Committee. The Board of Bar Examiners shall certify the results of the examination to the Director 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.~~
- ~~5) 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.~~

6) ~~If the Committee and Board recommend approval of reinstatement on conditions, as provided in SCR 2.042, or approval with such additional conditions as the Board may recommend, the Court may include such conditions in any order of reinstatement.]~~

**SCR 3.530 Ethics Committee and Unauthorized Practice Committee--
advisory opinions--informal and formal**

- 1) The Ethics Committee and the Unauthorized Practice Committee are authorized to issue informal opinions, and to submit to the Board for its action formal opinions, on questions of ethics or unauthorized practice, as applicable.
- 2) 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 may request an informal opinion. The President shall designate members of the Ethics Committee to respond to such requests. Ordinarily, the request shall be directed to a member of the requestor's Supreme Court district. Such request shall be in writing or by telephone followed by a request in writing. The committee member to whom the request is directed shall attempt to furnish the requesting attorney with a prompt telephonic answer and written informal letter opinion as to the ethical propriety of the act or course of conduct in question. A copy of any such informal opinion shall be provided to the Director for safekeeping and statistical purposes, and to the Chair of the Ethics Committee, to determine whether the informal opinion has broader application.
- 3) Communications between the requesting attorney and the Ethics Committee member shall be confidential, but confidentiality may be waived by the requesting attorney. However, the requesting and giving of advice under this Rule does not create an attorney-client relationship. In order to promote uniformity of advice, redacted copies of informal opinions may be circulated among members of the Ethics Committee, as applicable, provided that such confidentiality is preserved.
- 4) If the Ethics Committee determines an ethical issue to be of sufficient importance, the Committee may issue and furnish to the Board of Governors a proposed opinion authorized by such Committee for approval as a formal opinion. Such approval shall require a vote of three-fourths of the voting members present at the meeting of the Board. If the Board is unable to approve of the opinion as written, then the Board may return the matter to the Committee for further review and consideration, or may modify the opinion and approve the opinion as modified by the three-fourths vote, or may direct the Committee to furnish the requesting attorney, if any, with an informal opinion in the form of a Chair's letter opinion, with a copy to the Director.
- 5) Both informal and formal opinions shall be advisory only; however, no attorney shall be disciplined for any professional act performed by that attorney in compliance with an informal opinion furnished by the Ethics

Committee member pursuant to such attorney's written request, provided that the written request clearly, fairly, accurately and completely states such attorney's contemplated professional act.

- 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. ~~[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 in Kentucky 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.]~~
- 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.**
- 8) The requesting and giving of advice by the Unauthorized Practice Committee under this Rule does not create an attorney/client relationship.
- 9) If the Unauthorized Practice Committee determines an issue regarding the unauthorized practice of law to be of sufficient importance, the Committee may issue and furnish to the Board of Governors a proposed opinion authorized by such Committee for approval as a formal opinion. Such approval shall require a vote of three-fourths of the voting members

present at the meeting of the Board. If the Board is unable to approve the opinion as written, then the Board may return the matter to the Committee for further review and consideration, or may modify the opinion and approve the opinion as modified by the three-fourths vote, or may direct the Committee to furnish the requesting attorney, if any, with an informal opinion in the form of a Chair's letter opinion, with a copy to the Director.

- 10) Ethics Committee and Unauthorized Practice Committee members shall be immune from suit for advice given in the performance of duties under this Rule. Ethics Committee and Unauthorized Practice Committee members shall be immune from process and shall not otherwise be compelled to testify or give an opinion in connection with any advice given in the performance of duties under this rule.
- 11) All formal opinions of the Board arising from either Committee shall be published in full or in synopsis form, as determined by the Director, in the edition of the KENTUCKY BENCH & BAR next issued after the adoption of the opinion.
- 12) Any person or entity aggrieved or affected by a formal opinion of the Board may file with the clerk within thirty (30) days after the end of the month of publication of the KENTUCKY BENCH & BAR in which the full opinion or a synopsis thereof is published, a copy of the opinion, and, upon motion and reasonable notice in writing to the Director, obtain a review of the Board's opinion by the Court. The Court's action thereon shall be final and the Clerk shall furnish copies of the formal order to the original petitioner, if any, the movant and the Director. The movant shall file a brief in support of the review, and the Director may file a response brief thirty days thereafter.
- 13) The filing fee for docketing a motion under paragraph (7) of this Rule 3.530 shall be as provided by Civil Rule 76.42(1) for original actions in the Supreme Court.

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

~~{(1) Educational activities may be approved for credit upon application to the Commission. Application for accreditation may be made by a member or former member without involving the sponsor, or application for accreditation may be made by an activity sponsor.}~~

- 1) ~~{(2)}~~ 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) ~~{(3)}~~ 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) ~~{(4)}~~ 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) ~~{(5)}~~ 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**, ~~{U}~~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.** [~~Provide to each Kentucky attorney completing an approved activity a Commission approved credit reporting form and activity code. Credit reporting forms and activity numbers shall be made available to sponsors upon request from the Commission for use at approved activities.~~

- e) ~~Collect credit reporting forms from Kentucky attorneys and submit to the Commission all forms received within 30 days of completion of the program. Failure to submit completed credit reporting forms within 30 days of the activity shall be accompanied by a late filing fee from the sponsor of \$10.00 per form or certificate. Submit all attendance forms or certificates for activities held during the month of June no later than July 10th, immediately following the end of the educational year on June 30th. For programs held during June this provision of the rule supersedes the 30 day submission deadline provided above.~~

- f) ~~Sponsors may submit member activity certifications to the Director of CLE as required by SCR 3.645(2), via electronic means so long as the sponsor maintains the member's original certification, or a copy thereof, on file for 2 subsequent educational years following the year in which the activity was completed.]~~

SCR 3.690 Continuing legal education award

- 1) Any member who completes a minimum of **20** ~~[60]~~ credit hours approved by the Commission within **1** ~~[a period of 3 or fewer]~~ educational years, 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 1 year, beginning on the first day of July of the year of award notification.
- ~~4) [The validity of an award may be renewed for an additional year following the initial award date, in which the member who holds the award completes a minimum of 20 approved credits.]~~
- ~~5) Failure to earn 20 credits in any educational year following the initial award date shall disqualify the member from further renewals of that award. The member may only become eligible for another award by earning 60 approved credit hours in a period separate and distinct from the period for which a prior award was issued.]~~
- 4) ~~[(6)]~~ 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) ~~[(7)]~~ 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.

~~[SCR 3.815 Mediation and arbitration~~

~~(1) Purpose.~~

~~The purpose of this Rule 3.815 is to establish a procedure whereby disputes arising among attorneys from their professional and economic relationships may be resolved by submission to mediation, binding arbitration, or non-binding arbitration.~~

~~(2) Definitions.~~

~~(A) "Attorney" means an attorney at law who is a member in good standing of the Kentucky Bar Association.~~

~~(B) "Association" means the Kentucky Bar Association.~~

~~(C) "Director" means the Director of the Kentucky Bar Association.~~

~~(D) "Vice President" means the Vice President of the Kentucky Bar Association.~~

~~(E) "Controversy" means a dispute or disagreement between attorneys relative to questions of representation of clients, questions arising when law firms or other legal associations between attorneys are dissolved or otherwise terminated, or other economic disputes between attorneys.~~

~~(F) "Panel" means the arbitrator or arbitrators appointed or designated to assist in resolving the controversy as hereinafter provided.~~

~~(3) Scope of Authority.~~

~~(A) The Rules and Procedures herein set forth shall be available to settle or resolve any controversy as herein defined only when all parties to the controversy agree and bind themselves in writing to submit such controversy to the arbitration or mediation procedures herein set forth and further, agree in writing that they shall be fully bound by the decision and award of the arbitrator(s);~~

~~(B) The provisions of these Rules shall not be used unless the parties to the dispute certify in writing that a good faith effort has been made by them to resolve the dispute and has failed.~~

~~(C) The provisions of these Rules shall not be used if the dispute proposed to be submitted is the subject matter of a pending lawsuit, unless the parties follow the procedures of KRS 417.060.~~

~~(4) Institution of Proceedings.~~

~~(A) Proceedings hereunder shall be begun by completing three copies of a petition. The petition must be signed by one of the parties to the dispute. The petition shall state the origin and details of the dispute, acts or omissions deemed to be in controversy, and the relief desired from the mediation or arbitration. Upon the filing of the petition, the petitioner shall also sign three~~

~~copies of an arbitration or mediation agreement, as applicable. The petition and agreement shall be on forms provided by the Association and when completed shall be filed in the office of the Association.~~

~~(B) Upon the filing of the petition, the Director of the Association shall forward a copy of the petition to the Vice President. The Vice President, upon receipt of the petition, shall determine whether the plan and this rule apply, and the Vice President's decision on that matter shall be final. The Vice President shall have full power to require additional information from the petition in all disputes wherein additional information is deemed desirable or necessary.~~

~~(C) In the event the Vice President determines that the Association shall not accept jurisdiction of a controversy, the petition shall be returned to the Director, or other designated employee of the Association with a brief explanation as to why jurisdiction has been refused. The Director shall then notify the petitioner that the Association has not accepted jurisdiction and will not arbitrate or~~

~~(5) Arbitration panel.~~

~~(A) Composition.~~

~~(i) Where the matter is to be mediated, the mediator shall consist of one person who shall be a practicing Attorney.~~

~~(ii) Where the matter is to be arbitrated, the arbitration panel shall consist of one practicing Attorney, if the amount in controversy is \$2,500.00 or less, or if it exceeds \$2,500.00, the panel shall consist of three persons, all of whom shall be practicing Attorneys.~~

~~(iii) The practicing Attorney(s) referred to in paragraph (5)(A)(i) and (5)(A)(ii) above, shall each:~~

~~(a) be a member in good standing of the Association;~~

~~(b) be appointed or designated for a particular controversy by the Vice President;~~

~~(c) if a panel member or sole arbitrator is engaged in the private practice of law shall maintain or carry on a private law practice in an office more than fifty (50) miles from the county seat of the county where the attorneys who are parties to the controversy maintain their principal offices for the practice of law.~~

~~(iv) Any attorney appointed or designated by the Vice President may refuse to serve. Such refusal shall be by written notice to the Director within ten (10) days of the appointment.~~

~~(v) The Vice President, in cases of a three member panel, shall designate one member of the panel as Chairperson of the panel.~~

~~(B) Objections.~~

~~(i) Either party to a controversy may object for cause to any of the panel members. Such objection shall be in writing and shall be made within twenty (20) days of written notification of the names of the panel members. Failure to object within twenty (20) days shall constitute a waiver of any objection to the composition of the panel. The following shall constitute grounds for objection for cause to a proposed panel member serving:~~

~~(a) If the member is associated in any business or profession with or related in any way to any of the parties or their attorneys;~~

~~(b) If the member has a personal or financial interest or any bias or prejudice regarding any of the parties or the nature of the controversy;~~

~~(c) If the member has pending any business transactions or controversy as a party with any party to the controversy or their attorney or has then pending any business transactions or controversies as an attorney with any party to the controversy or any attorney for a party, and there is such a conflict that it would render the arbitrator incapable of fairly exercising independent judgment.~~

~~(ii) Objections to panel members shall be made to the Chair of the panel and shall be ruled upon by the Chair of the panel whose decision shall be final. Each side may have one preemptory strike.~~

~~(C) Compensation.~~

~~Members of the panel shall not be paid or compensated for their services.~~

~~(D) Vacancies.~~

~~If any arbitrator or mediator should resign, die, withdraw, refuse to act or be disqualified or unable to act, the Vice President shall declare the office vacant and, if the matter has already been heard, shall be reheard, unless the parties otherwise agree. In the absence of such agreement, a new arbitration panel shall be selected in accordance with these Rules.~~

~~(E) Communication Between the Parties and Panel Members.~~

~~There shall be no communication between the parties and the members of the arbitration or mediation panel upon the subject matter of the arbitration or mediation other than at arbitration or mediation proceedings. Copies of any written communication between members of the panel and any party, or any attorney for any parties or between parties or their attorneys and the panel shall be furnished contemporaneously to each participant in the proceeding and filed with the Director.~~

~~(6) Hearings.~~

~~(A) The mediation shall be held in the county where the attorneys involved in the controversy maintain their principal offices for the practice of law, or in the event the dispute is between two or more attorneys, the hearings shall be held in the county where the attorney petitioning for arbitration maintains that attorney's principal office for the practice of law.~~

~~(B) Arbitration hearings shall be held and conducted as follows:~~

~~(i) Notice: The Chair of the panel shall fix the time and place for the hearing and shall cause written notice of time and place to be served upon all parties to the dispute by Certified Mail not less than ten (10) days prior to the time set for the hearing. Such notice of hearing shall also inform the parties of their right to be represented by an attorney and their right to present evidence in support of their respective positions.~~

~~(ii) Stenographic Record: Any party may have a hearing before a panel reported by a Certified Shorthand Reporter at their expense by written request presented to the Director at least four (4) days prior to the date of the hearing. In such event, any other party to the arbitration or mediation shall be entitled to acquire, at their own expense, a copy of the reporter's transcript of the testimony by arrangements made directly with the reporter. When no party to the arbitration or mediation requests that the hearing be reported, and the panel or sole arbitrator deems it necessary to have the hearing reported, the panel or sole arbitrator may record the proceedings or employ a Certified Shorthand Reporter for such purpose if authorized to do so by the Director. Costs of making a record will be assessed by the panel or sole arbitrator as a part of the award. Prior to assessment of such costs, the Association will pay same upon notice to the Director.~~

~~(iii) Subpoenas: The provisions of KRS 417.110 shall apply to proceedings under these Rules.~~

~~(iv) Oath of Panel Members: Panel members shall take a written oath to be filed with the Director to decide the controversies submitted to them according to the law and evidence and the equity of the case to the best of their judgment without favor, affection or prejudice.~~

~~(v) Conduct of Hearings:~~

~~(a) The testimony of all witnesses shall be given under oath. When so requested, the member of the panel presiding at the hearing may administer oaths to witnesses.~~

~~(b) The panel Chair, or sole arbitrator, shall preside at the hearing. The member of the panel who is presiding shall be the judge of the relevancy and materiality of the evidence offered and shall rule on questions of procedure and shall exercise all powers relating to the conduct of the hearing. However, strict conformity to rules of evidence shall not be required.~~

~~(c) In cases involving a three (3) member panel, if at the time set for any hearing all three members of the panel are not present, the hearing shall be postponed, or, with consent of the parties to proceed with the hearing with one (1) member of the panel chosen by the parties as the sole arbitrator. In no event shall a hearing be conducted by or proceed with two (2) members of the panel acting as arbitrators.~~

~~(d) If any party to an arbitration or mediation who has been duly notified fails to appear at a scheduled hearing, the panel may proceed with the hearing and determine the controversy upon the evidence produced, notwithstanding such failure to appear.~~

~~(e) The panel Chair, or if the hearing is conducted by a sole arbitrator, then the latter, may adjourn the hearing from time to time as necessary. Upon request of a party to the arbitration for good cause, or upon their own determination, the panel Chair or sole arbitrator may postpone the hearing from time to time.~~

~~(f) No briefs or legal memorandum shall be submitted by the parties unless specifically requested by the panel or a majority thereof.~~

~~(7) The Award.~~

~~(A) If the mediator is able to mediate the controversy successfully and the parties are able to reach agreement, that agreement shall be reduced to a written agreement and executed by the parties. The agreement shall consist of a preliminary statement reciting the jurisdictional facts, the nature of the controversy, and the specific agreement reached. The agreement will be thereafter enforceable and have the same force and effect as a judgment in a court of law in the Commonwealth of Kentucky.~~

~~*(B) Arbitration Award Rendition and Form.*~~

~~(i) The panel shall render its award within fifteen (15) days after the close of the hearing or final hearing if more than one has been held. The award of the panel shall be made by a majority of the panel when heard by three (3) members, or by the sole arbitrator.~~

~~(ii) The original and four (4) copies of the award shall be in writing and shall be signed by the members of the panel concurring therein unless the hearing shall have been conducted by a sole arbitrator, in which event the original and copies of the award shall be signed only by the sole arbitrator. The award shall include a determination of all questions submitted to the panel, the decision of which shall be necessary to resolve the controversy.~~

~~(iii) While it is not required that the award be in any particular form, it should, in general, consist of a preliminary statement reciting the jurisdictional facts, i.e., that a hearing was held upon notice pursuant to a written agreement to arbitrate, the parties were given an opportunity to testify and cross-examine, etc., a brief statement of the dispute, findings, conclusions, and the amount to~~

~~be paid or reimbursed. The panel shall avoid reciting information in the text of the award that is privileged unless the client specifically waives any privilege.~~

~~(iv) An award may also be entered by consent of all parties to the dispute.~~

~~(C) *Effect and Enforcement.*~~

~~The provisions of KRS 417.180 and of the arbitration agreement of the parties shall govern and determine the effect and enforcement of the award. The law of the Commonwealth of Kentucky will govern the award of interest on any judgment.~~

~~(D) If the parties selected non-binding arbitration, they may agree to have the award be binding and entered as a judgment.~~

~~(8) Confidentiality.~~

~~By agreeing to participate in the proceedings authorized by this rule, the parties agree to hold in confidence the award, all records, documents, files, proceedings and other matters pertaining to the procedures authorized herein, and such records shall not be opened to the public or to any person not involved in the dispute.~~

~~(9) Death or Incompetence of a Party.~~

~~In the event of the death or incompetence of a party to the arbitration proceedings, during the course of arbitration but prior to the rendering of a decision, the proceedings shall be abated without prejudice to either party to proceed in a court of proper jurisdiction to seek such relief as may be proper. In the event of death or incompetence of a party after the close of the proceedings but prior to a decision, the decision rendered shall be binding upon the heirs, administrators, or executors of the deceased and on the estate or guardian of the incompetent.~~

~~(10) Indemnity Provision.~~

~~By agreeing to the procedures authorized herein, the parties further agree to indemnify and hold harmless the hearing officer, arbitrator, mediator or presiding officer or panel concerning any action arising out of the procedures set forth by this rule and for any and all conduct of the hearing officer, arbitrator, mediator or presiding officer or panel presiding over the procedures herein.~~

~~(11) Costs.~~

~~(A) Costs shall be allowed to the prevailing party unless otherwise directed by the mediator/sole arbitrator/panel. In the event of a partial award in favor of a party, or of an award in which neither party prevails entirely against the other, costs of the proceeding may be apportioned and shall be borne as directed by the mediator/sole arbitrator/panel.~~

~~(B) A party to a mediation/arbitration procedure entitled to recover costs shall prepare and serve promptly upon the party liable for costs a bill itemizing the costs incurred in the mediation/arbitration proceeding, including fees incident to summoning witnesses, transmittal of documents to the parties and the mediator/sole arbitrator/panel, the cost of depositions used in lieu of live testimony at any hearing, if permitted by the mediator/sole arbitrator/panel, the costs associated with the location of the hearing, if any, except that no costs for the location will be assessed for any hearing conducted on the premises of the Kentucky Bar Center, travel, lodging and meal expenses of the mediator/sole arbitrator/panel, and fees for extraordinary services, if specifically awarded by the mediator/sole arbitrator/panel. If a stenographic record of the hearing has been ordered by the mediator/sole arbitrator/panel pursuant to paragraph (6)(B)(ii), and the costs billed to or paid by the Association, the mediator/sole arbitrator/panel shall assess the costs in accordance with this rule. Any party to the mediation/arbitration who requests a stenographic or other record pursuant to paragraph (6)(B)(ii) shall bear the cost of that record.~~

~~(C) Prohibited recovery: Notwithstanding the provisions of paragraph (B) above, no award of costs shall be made to any party for attorney's fees incurred in the mediation/arbitration, nor shall any recovery be allowed to any party or witness for lost wages or other expenses incurred as a result of attendance at the hearing.]~~

SCR 6.030 Time constraints

The chief justice or his designee may in the interest of good order establish the latest date by which names [~~should~~] **shall** be submitted and questionnaires returned. [~~However, the date shall be merely directory, and no name or questionnaire shall be withheld from the commission for failure to meet such date.~~]

SCR 6.060 Records of the commission

The ~~[permanent]~~ **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 seven 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.

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

- 1) Candidates for election as bar representatives ~~[on the]~~ **to the judicial nominating** commission shall be nominated by the board or by **electronic** ~~[written]~~ petition as ~~[herein]~~ provided **in these rules**.
- 2) On or before ~~[June 1]~~ **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 ~~[July 1]~~ **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** ~~[publish by appropriate means to the members specified in (3)(c) of this rule]~~ a list or lists of the candidates ~~[so]~~ 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** ~~[publish by appropriate means]~~ a list of the candidates ~~[so]~~ nominated. ~~[to each member residing in the Commonwealth of Kentucky.]~~
 - 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** ~~[publish by appropriate means]~~ a list of the candidates ~~so~~ nominated ~~[to each member residing in the circuit.]~~
 - 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 ~~[a written]~~ **an electronic** petition for candidacy for the commission for the Supreme Court and the Court of Appeals, ~~[signed by himself and not less than 10 other members residing in the Commonwealth of Kentucky,]~~ or may file ~~[a written]~~ **an electronic** petition for candidacy for the commission for a judicial circuit **or district** ~~[signed by himself and not less than 2 other members residing in the~~

circuit]. In [his] **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 [with the director] on or before [August 15] **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 [by return mail.] All petitions shall be considered public records and shall be available for inspection at reasonable hours.

- 5) On or before [September 1] **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** [publish by appropriate means to the members specified in (3)(c) of this rule] 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**, [in writing signed by the challenger, certifying that a copy has been served upon the challenged party or parties, and filed with the director] on or before [September] **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 [the following September] **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 [the following October] **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) [~~Ballots shall be prepared by the director. The various commissions shall be on separate ballots but may be included in one mailing. The ballot for each commission shall include the names of the candidates listed in alphabetical order, and the addresses at which they reside. There shall be printed on each ballot in boldface type the words "This ballot must be received by the director on or before the first Tuesday following the first Monday in November" and the words, "You must vote for two and two only or your ballot will not be counted."~~]
- 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, and deleting 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) ~~[On or before October 10 of the year in which the election is to be held the ballots shall be mailed, with return envelopes, to the following members: A ballot for the commission for the Supreme Court and the Court of Appeals shall be sent to each member residing in the Commonwealth of Kentucky; a ballot for the commission for each judicial circuit shall be sent to each member residing in the circuit.]~~
- 8) ~~[9)]~~ ***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 ~~[lot]~~ ***random draw*** under the supervision of and in the presence of the ~~[canvassing board]~~ ***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.

13) ~~Within sixty (60) days after the election the director shall transmit all petitions, ballots and other applicable records to the administrative director of the courts.~~

SCR 7.040 [~~Nomination & elections~~] *Special elections*

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.

~~[1) On or before ten (10) days after receipt of the notice to the director (hereinafter referred to as "Director's notice") of the need for a special election, to fill an unexpired term resulting from a vacancy in the bar representation on the commission, the board shall nominate the bar representative for each vacancy in the same manner as provided in Rule 7.030(2) and (3).~~

~~2) On or before twenty (20) days after the director's notice, the director shall cause to be published by appropriate means to each member residing in the circuit or jurisdiction concerned a list of candidates nominated by the board.~~

~~3) Between 20 and 30 days after the director's notice, other nominating petitions conforming to the requirements of Rule 7.030(4) may be filed with the director.~~

~~4) On or before 40 days after the director's notice, the director shall cause the appropriate ballots to be prepared and mailed in the manner provided by Rule 7.030(6) and (7). He shall use first class postal service.~~

~~5) All ballots to be counted must be received by the director on or before 50 days after the director's notice.~~

~~6) On or before 54 days after the director's notice, a canvassing board constituted in the manner as set forth in Rule 7.030(9) shall meet and tabulate the ballots, and upon completion thereof shall certify the results in the manner provided by Rule 7.030(11).~~

~~7) On or before 65 days of the director's notice, the director shall certify the costs of the election in the manner provided by Rule 7.030(13).]~~