

Supreme Court of Kentucky

2007-01

ORDER

To allow the Kentucky Bar Association to work to develop and implement a protocol and pilot project for alternative disposition for discipline cases, SCR 3.160 and SCR 3.185 are hereby amended to be effective April 1, 2007. Said effective date shall extend through December 31, 2007, unless adopted as a permanent rule amendment by this Court.

SCR 3.160 Initiation of disciplinary cases (through December 31, 2007)

(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 Disciplinary Clerk who shall promptly notify the attorney by certified mail, sent to the address maintained by the Director pursuant to SCR 3.175, or other means consistent with the Supreme Court Rules and Civil Rules, of the complaint, and that he/she has twenty (20) days to respond to the complaint. Upon completion of the investigation by the Office of Bar Counsel the matter shall be assigned to an Inquiry Commission panel by rotation.

(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) 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. Mediation and consumer assistance
- 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)
- vii. Issuance of a warning letter.

(B) A complaint is not suitable for alternative disposition if it alleges serious misconduct in which the sanction would more than likely result in a suspension. Additionally, some ethical violations warranting a private or public reprimand may not, under all circumstances, be eligible for alternative disposition.

(C) After review and such preliminary investigation as may reasonably be necessary, if mediation is appropriate, the Office of Bar Counsel may attempt resolution through mediation, and subsequently close the Complaint. If it appears that the acts or course of conduct complained of require referral under 3(A)(ii)-(vii), but are shown not to warrant a greater degree of discipline, the Office of Bar Counsel may issue a warning letter, 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.

(D) If Bar Counsel deems a written and sworn complaint against a member not to state an ethical violation, such that alternative disposition is not appropriate or the Respondent will not consent to or complete the alternative disposition program, the matter shall proceed under subsection (1) above.

(E) If Bar Counsel deems any written and sworn complaint against a member not to state an ethical violation and it is not suitable for alternative disposition, it may decline, without investigation, to entertain it.

(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 3.185 Informal admonition procedure

After a complaint against an attorney for unprofessional conduct is investigated and a response filed, the Inquiry Commission may direct a private

admonition to the attorney where the acts or course of conduct complained of are shown not to warrant a greater degree of discipline. The attorney so admonished may, within twenty (20) days from the date of the admonition, answer and request that the private admonition be treated as if a charge had been filed against the attorney as is provided by Rule 3.190; whereupon, the issues shall be processed under the applicable rules. The Inquiry Commission may also issue a warning or a conditional dismissal letter including, but not limited to, conditions such as referral to KYLAP, or attendance at a remedial ethics program as directed by the Office of Bar Counsel, or related classes.

ENTERED: March 22, 2007.



CHIEF JUSTICE