

Supreme Court of Kentucky

IN RE:
ORDER AMENDING
RULES OF THE SUPREME COURT (SCR)

2007-007

The following rules' amendments shall become effective February 1, 2008.

2007 AMENDMENTS TO THE RULES OF THE SUPREME COURT

1. SCR 2.011 Moral character and fitness

Section (3) and new section (4) of SCR 2.011 shall read:

(3) If the Committee's initial review and investigation into the character and fitness of an applicant reveals any of the following conduct, further detailed investigation shall be undertaken, as determined to be warranted, prior to the Committee's determination regarding whether the applicant possesses the requisite character and fitness to practice law in Kentucky:

- A. Unlawful conduct
- B. Academic misconduct
- C. Making a false statement, including omissions of material information
- D. Misconduct in employment
- E. Acts involving dishonesty, fraud, deceit or misrepresentation
- F. Abuse of legal process
- G. Neglect of financial responsibilities
- H. Neglect or disregard of ethical or professional obligations
- I. Violation of an order of court
- J. Conduct indicating mental or emotional instability impairing the ability of an applicant to perform the functions of an attorney
- K. Conduct indicating substance abuse impairing the ability of an applicant to perform the functions of an attorney
- L. Denial of admission to the bar in another jurisdiction on character and fitness grounds
- M. Disciplinary complaints or disciplinary action by an attorney disciplinary agency or a professional disciplinary agency of any jurisdiction.

(4) Each applicant for admission to the Kentucky Bar shall pay all investigative fees, reporting fees or other expenses required and assessed by the Character and Fitness

Committee as deemed necessary in determining the character and fitness of the applicant.

2. SCR 3.150 Access to Disciplinary Information

SCR 3.150 shall read:

(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.

(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 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;

(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 Court may permit the disclosure of any non-public information to any of the entities listed in (4)(a) or (b) 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 either the Inquiry Commission or Court may require notice upon review of the application.

(5) Public Proceedings. Upon 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, 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, 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.

3. SCR 3.157 Appointment and duties of Disciplinary Clerk

SCR 3.157 shall read:

The Board shall appoint a Disciplinary Clerk and such Deputy Clerks as may from time to time become appropriate. The Disciplinary Clerk shall have such qualifications as the Board deems appropriate, and shall be responsible for accepting the filing of charges issued by the Inquiry Commission, pleadings or other paper, issuing process, and the preparation and maintenance of the records of each disciplinary proceeding, other than the files of the Office of Bar Counsel, and other duties as are assigned by the Board.

4. SCR 3.160 Initiation of disciplinary cases

Sections (1) and (3) of SCR 3.160 shall read:

(1) After review by Bar Counsel pursuant to subparagraph (3) of this Rule, any sworn written statement of complaint against an attorney for unprofessional conduct shall be filed with the 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.

(3) (A) Upon receipt of a verbal, or written allegation of a violation of the Rules of Professional Conduct, or sworn complaint, the Office of Bar Counsel will initially determine, under the direction of the Chair and Inquiry Commission, whether the matter is appropriate for alternative disposition. Alternative disposition may include, but is not limited to:

- i. Informal resolution
- ii. Referral to Fee Arbitration under SCR 3.810
- iii. Legal negligence arbitration under SCR 3.800
- iv. Legal or management education programs
- v. Remedial ethics education programs
- vi. Referral to KYLAP under SCR 3.970(1)(c)
- vii. Issuance of a warning letter.

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

(C) After review and such preliminary investigation as may reasonably be necessary, the Office of Bar Counsel may attempt informal resolution and subsequently

close the Complaint. If the acts or course of conduct complained of merit referral under 3(A)(ii)-(vii), and do not 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 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.

5. SCR 3.165 Temporary suspension by the Supreme Court

Sections (1), (2), (3) and (6) of SCR 3.165 shall read:

(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.

(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.

6. SCR 3.166 Automatic suspension after conviction of a felony

Sections (1) and (5) of SCR 3.166 shall read:

(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.

(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.

7. SCR 3.185 Informal admonition procedure

SCR 3.185 shall read:

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 if 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 or related classes as directed by the Office of Bar Counsel.

8. SCR 3.190 Charges; form; by whom and where filed

SCR 3.190 shall read:

If a panel of or the entire Inquiry Commission determines, by a majority vote, that probable cause exists for a charge to be filed, it shall cause to be prepared such charge stating the name and bar roster address of the attorney and facts alleged to constitute unprofessional conduct. The charge shall be signed by a member of the panel which considers the case. It shall then be filed with the Disciplinary Clerk within twenty (20) days. Upon notice to the respondent, the Inquiry Commission may amend the charge upon its own motion, or that of the Office of Bar Counsel, or the Respondent, at any time before hearing or submission by default.

9. SCR 3.200 Notice of filing charges; time to answer

SCR 3.200 shall read:

Upon the filing of a charge, the Disciplinary Clerk shall furnish the Respondent with a copy, by certified mail return receipt requested to the Respondent's bar roster address, or by service on the Director as set forth in SCR 3.175, and notify the Respondent that within twenty (20) days after receipt of the notice, he/she must file an answer and three (3) copies with the Disciplinary Clerk for transmittal to the Inquiry Commission. The Inquiry Commission may rule on motions to file late answers for good cause shown as set forth in CR 6.02.

10. SCR 3.230 Procedure when answer raises issues of fact

SCR 3.230 shall read:

After an answer is filed raising issues of fact, the Disciplinary Clerk shall appoint the next available member of the Trial Commission to serve as a commissioner upon approval by the Chief Justice. The Trial Commissioner shall reside in a different Supreme Court district from that of the Respondent. The Disciplinary Clerk shall immediately notify the Trial Commissioner of his/her appointment and provide the Trial Commissioner a copy of the pleadings.

11. SCR 3.260 Joinder and consolidation

Section (2) of SCR 3.260 shall read:

(2) A charge may be filed against two or more attorneys if based on the same or related state of facts, and separate charges against two or more attorneys based upon the same or related state of facts may, by order of the Inquiry Commission, be consolidated and tried as a single disciplinary proceeding. Where two or more attorneys are proceeded against in the same proceeding, the Trial Commissioner shall report to the Board as to each.

12. SCR 3.300 Rights of respondent against whom a charge has been filed

SCR 3.300 shall read:

The Respondent against whom a charge has been filed shall have the right to be represented by counsel. The Respondent shall have all the rights secured to a party by the Rules of Civil Procedure and Kentucky Rules of Evidence with respect to the introduction of evidence. The Respondent shall have the right to compel the attendance of witnesses and the production of books, papers and documents or other writings, except those contained in the investigative file of Bar Counsel, to the hearing or to such depositions as are permitted under SCR 3.340. The Respondent shall have the right to an oral argument or to file a brief before the Trial Commissioner. The Respondent shall

be afforded a full opportunity to defend himself/herself by the introduction of evidence, and to cross-examine witnesses. If the facts in the charge would give rise to a criminal proceeding, respondent shall not be compelled to give evidence against himself or herself. If the Respondent is unable to employ counsel, the Chair, or Chair's lawyer member designee, upon written request accompanied by an *in forma pauperis* affidavit, made within twenty (20) days after service of the charge, shall appoint counsel for the Respondent.

13. SCR 3.330 Order of proceedings and burden of proof

SCR 3.330 shall read:

The Trial Commissioner shall determine and regulate the order of proceedings at the hearing. Upon the application of a party or upon direction of the Trial Commissioner, the Disciplinary Clerk shall issue subpoenas for the attendance of witnesses or the production of evidence at the hearing. Prehearing discovery shall proceed in accordance with this rule as directed by the Trial Commissioner rather than by the Kentucky Rules of Civil Procedure. If reasonably necessary to prepare the case for hearing, the Trial Commissioner may allow the taking of depositions and require the production of documents. The burden of proof shall rest upon the Association in a disciplinary proceeding, and the facts must be proven by a preponderance of the evidence. In reinstatement hearings the burden shall rest upon the Applicant, and he/she must demonstrate by clear and convincing evidence his/her suitability for reinstatement. Before submission the Trial Commissioner may direct such oral argument as he/she deems appropriate and receive briefs from all parties on such terms as he/she may impose.

14. SCR 3.340 Introduction and admissibility of evidence, evidence taken in other proceedings

SCR 3.340 shall read:

The testimony at all hearings shall be in person, except that the parties may use depositions under the same standards as those prescribed by the Kentucky Rules of Civil Procedure. The rules of evidence applicable in civil actions shall apply, and the Trial Commissioner will rule on all evidentiary issues.

Where, in any proceeding, evidence has been taken under oath upon due notice to the Respondent, and at the taking of which Respondent has appeared, either in person or by counsel, or as attorney for any party, a duly certified transcript, videotape or digital recording made by a court reporter or official of a court, of all, or the essential portions, of such proceedings may be used as evidence in any hearing or in any investigation antecedent to or in connection with any disciplinary case involving the same charge, or any charge growing out of the matters connected therewith. Such transcript, tapes, or digital recordings of the record, or parts thereof, may be made a part of the record on any hearing or investigation.

15. SCR 3.652. New Lawyer Skills Program.

Sections (8) and (9) of SCR 3.652 shall read:

(8) The time for completion and certification set forth in paragraphs (5) and (6) of the Rule may, upon written application to and approval by the Commission or its designee, be extended. Written applications for an extension under this paragraph must be received by the Commission no later than thirty (30) days after the member's deadline to complete the Program as set forth in paragraph (5) of this Rule. All applications must be signed by the member and notarized. The Commission may approve extensions for completing the Program under the following circumstances:

(a) Where the member demonstrates hardship or other good cause clearly warranting relief. Requests for relief under this subsection must set forth all circumstances upon which the request is based, including supporting documentation. In this circumstance, the member shall complete the requirement set forth in paragraphs (5) and (6) as soon as reasonably practicable as determined by the Commission or its designee; or

(b) Where the member fails to demonstrate hardship or other good cause clearly warranting relief. In this circumstance, the member must pay a fee of \$250.00 and complete the requirement set forth in paragraphs (5) and (6) at the next regularly scheduled New Lawyer Skills Program.

(9) Failure to complete and certify attendance for the New Lawyer Skills Program pursuant to paragraphs (5), (6), or (8) of this Rule shall be grounds for suspension from the practice of law in the Commonwealth or other sanctions as deemed appropriate by the Court. Ninety (90) days prior to the end of the twelve (12) month period all individuals not certifying completion of the New Lawyer Skills Program pursuant to paragraphs (5), (6) or (8) shall be notified in writing that the program must be completed before the end of the twelve (12) month period, indicating the date. Names of all individuals not submitting certification of completion of the New Lawyer Skills Program within the twelve (12) month period or not being granted an extension of time, pursuant to paragraph (8) of this Rule, shall be submitted to the Court by the Director, certifying the member's failure to comply with the New Lawyer Skills Program requirement. The Clerk shall docket the matter and the Court shall issue each such member a rule returnable within twenty (20) days thereafter to show cause why the member should not be suspended from the practice of law or otherwise sanctioned as deemed appropriate by the Court. The Commission shall be permitted to file a reply within ten (10) days following the filing of a response by a member. Unless good cause be shown by the return date of the rule, or within such additional time as may be allowed by the Court, an Order shall be entered suspending respondent from the practice of law or imposing such other sanctions as may be deemed appropriate by the Court. An attested copy of the Order shall forthwith be delivered by the Clerk to the member, the Director, and in the case of suspension, to the Circuit Clerk of the district wherein the member resides for recording and indexing as required by Rule 3.480.

16. SCR 3.800 Legal Negligence Arbitration

SCR 3.800 shall read:

(1) Purpose.

The purpose of this Rule 3.800 is to establish a procedure whereby claims of legal negligence in the amount of fifty thousand dollars (\$50,000.00) or less arising from attorney and client relationships may be resolved by submission to binding arbitration.

(2) Definitions.

(A) "Attorney" means an attorney-at-law who is a member in good standing of the Association, or an attorney admitted to practice pursuant to SCR 3.030 when the dispute arises from that representation.

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

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

(D) "Dispute" shall mean any claim of legal negligence in the amount of fifty thousand dollars (\$50,000.00) or less. This includes a matter that is the subject of a diversion pursuant to SCR 3.160(3), or a matter referred for negligence arbitration by the Court.

(E) "Amount in Controversy" means the amount of direct loss claimed as a result of the claimed negligence of an attorney.

(F) "Panel" means the arbitrator or arbitrators appointed to arbitrate a claim of legal negligence.

(3) Scope of Authority.

(A) The Rules and Procedures herein shall be available to resolve any dispute as herein defined only when the amount in controversy exceeds the jurisdictional maximum specified in KRS 24A.230 and all parties to the dispute agree in writing to submit the claim of negligence to the arbitration procedures herein and further, agree in writing that they shall be fully bound by the decision and award of the Panel.

(B) 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.

(C) These Rules shall not be used if the dispute is the subject matter of a pending lawsuit, unless the parties follow the procedures of KRS 417.060(4).

(D) Except as otherwise provided herein, the substantive law of the Commonwealth of Kentucky will apply to any dispute arbitrated under this plan.

(4) Institution of Proceedings.

(A) Proceedings hereunder shall be begun by the filing of a petition with the Association. The signed petition shall state the origin and details of the dispute, the acts or omissions deemed to be negligent, and the amount claimed due as a result of the negligence alleged. The petitioner shall also sign an arbitration agreement. The petition and arbitration agreement shall be on forms provided by the Association.

(B) Upon the filing of the petition, the Director shall determine whether it presents a dispute under these Rules. The decision of the Director on that matter shall be final. The Director shall have full power to require additional information from the petitioner as is deemed necessary.

(C) If the Director determines that the Association shall not accept jurisdiction, the petition shall be returned to the petitioner indicating why the Association has not accepted jurisdiction and will not arbitrate the matter.

(D) If the Director determines that the Association shall accept jurisdiction, a copy of the petition and the arbitration agreement signed by the petitioner shall be forwarded to the other party to the dispute to sign and return to the Director with the answer to the petition. Twenty (20) days shall be allowed in which to answer unless additional time is requested. Upon receipt of the answer, the Director shall forward to the petitioner a signed copy of the arbitration agreement and the answer submitted by the other party to the dispute.

(E) If the other party to the dispute refuses to submit to arbitration, or fails to sign and return the arbitration agreement and answer within the time allowed, the Director shall so notify the petitioner, and the file of the Association shall be closed.

(F) If the dispute is referred to arbitration as referenced in 2(D) above, then sections 4(B) and (C) of this rule are not applicable. The attorney involved in the dispute shall be deemed the petitioner and shall file a petition with the Director.

(G) Upon the filing of a petition with the Association, any applicable statute of limitations is tolled until dismissal or final award is entered.

(5) Arbitration Panel.

(A) *Composition.*

(i) Where the amount in controversy is ten thousand dollars (\$10,000.00) or less, the Panel shall consist of one (1) practicing attorney.

(ii) Where the amount in controversy exceeds ten thousand dollars (\$10,000.00), but is not in excess of fifty thousand dollars (\$50,000.00), the Panel shall consist of three (3) practicing attorneys.

(iii) The practicing attorneys 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 for a particular dispute by the Director;

(c) if engaged in the private practice of law, maintain an office and carry on such practice within a reasonable proximity to the county in which the petitioner resides.

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

(v) The Director, in cases of a three-member Panel, shall designate one member of the Panel as Chair of the Panel.

(B) Objections.

Either party to the dispute 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 composition of the Panel. Failure to object within twenty (20) days shall constitute a waiver of any objection to the composition of the Panel.

Objections to Panel members shall be made to the Director and shall be determined in accordance with KRS 26A.015 et seq. The decision of the Director shall be final.

(C) Compensation.

The Panel shall not be compensated for its services. Reasonable transportation costs may be reimbursed.

(D) Vacancies.

If any arbitrator should be unable to act, the Director shall declare the office vacant and, if the matter has already been heard by the Panel, it shall not be

reheard if the remaining members concur in the Award. If the sole member of the Panel is unable to act or the remaining members of the Panel do not concur in the Award, a new member shall be selected and the matter will be reheard. If the Panel has not yet heard the matter a new arbitration Panel member shall be selected in accordance with these Rules.

(E) Communication Between the Parties and Panel Members.

There shall be no ex parte communication between the parties and the Panel upon the subject matter of the arbitration other than at arbitration proceedings, or in documents filed with the Association as part of the proceedings. This limitation does not apply to administrative communications between the Panel and the parties regarding the scheduling of the hearing.

(6) Hearings.

(A) Location.

Hearings shall be held in a county that reasonably limits the travel required by the parties to attend the hearing.

(B) Notice.

The Chair of the Panel shall fix the time and cause written notice of time and place to be served upon all parties to the dispute by Certified Mail not fewer 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.

(C) Stenographic Record.

(i) Any party may have a hearing before a Panel reported by a Certified Shorthand Reporter at the expense of the requesting party by written notice presented to the Panel Chair at least seven (7) days prior to the date of the hearing. Any other party to the arbitration 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.

(ii) In the event the Panel determines it appropriate or necessary to record the hearing, it may be recorded by digital or video means with costs being assessed as the Panel deems just. A party to the dispute, at its own expense, may request a copy of the record so recorded.

(D) Production of Records and Subpoenas.

(i) The parties to a dispute have the obligation to provide all documents needed for the Panel to resolve the questions presented for resolution. The discovery provisions of the Kentucky Rules of Civil Procedure are not strictly applicable. When a party fails to provide documents determined necessary by the Panel, the Panel may accept the negative factual inferences created by the failure to provide the requested documents.

(ii) When the Panel determines the provisions of KRS 417.110 should be utilized, it may request permission in writing from the Director for the authority to issue a subpoena for the documents specified in its request.

(E) Oath of Panel Members.

The Panel shall take a written oath to be filed with the Director to decide the dispute 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.

(F) Conduct of Hearings.

(i) The testimony of all witnesses shall be given under oath. The Panel Chair shall administer oaths to witnesses.

(ii) The Panel Chair shall preside at the hearing and shall be the judge of the relevancy and materiality of the evidence offered, shall rule on questions of procedure, and shall exercise all powers relating to the conduct of the hearing. Strict compliance with the rules of evidence shall not be required.

(iii) In cases involving a three (3) member Panel, if at the time set for any hearing all three members of the Panel are not available to participate, the hearing shall be postponed, or, with consent of the parties shall proceed with the hearing with one (1) member of the Panel chosen by the parties as the sole arbitrator.

(iv) If any party to an arbitration who has been duly notified fails to appear at a scheduled hearing, the Panel may proceed with the hearing and determine the dispute upon the evidence produced.

(v) The Panel Chair may adjourn the hearing from time to time as necessary. Upon request of a party to the arbitration for good cause, the Panel Chair may postpone the hearing from time to time.

(vi) 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) Rendition and Form.

(i) The Panel shall render its award within thirty (30) days after the close of the hearing. The Award shall be made by a majority of the Panel.

(ii) The original Award shall be in writing and shall be signed by the member(s) of the Panel concurring therein. The Award shall include a determination of all questions submitted to the Panel, the decision of which shall be necessary to resolve the dispute. Copies of the Award shall have the same legal force and effect as the original.

(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, if any, to be paid or reimbursed. The Panel shall avoid reciting information in the text of the Award that is privileged unless the parties specifically waive any privilege.

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

(v) The Award signed by the member(s) of the Panel shall be provided to the Director, who shall cause it to be mailed to the parties by Certified Mail.

(B) Correction of Errors.

If, upon receiving the Award, a party determines it contains significant factual or accounting errors or omissions, the party may bring this information to the attention of the Director within fifteen (15) days from the receipt of the Award. The Director will present the information to the other party and to the Panel for consideration along with the comments from the other party to the dispute. If the Panel determines that modification of the Award is appropriate, the Panel will issue a modified Award reflecting any changes made and will provide the modified Award to the Director for service on the parties as indicated above. This procedure is not intended to provide a party the opportunity to submit new evidence or to reargue the merits of 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 of any judgment.

(8) Records.

With the exception of the Award itself all records, documents, files, proceedings and hearings pertaining to arbitration of any dispute under these Rules shall not be open to the public or to any person not involved in the dispute with the exception of disputes referred to arbitration as stated in section 2(D) above. In that circumstance, a copy of the Award may be provided to the referring activity or agency.

(9) Death or Incompetence of a Party.

In the event of the death or incompetence of a party to the arbitration proceedings before the hearing has been concluded, the proceedings shall be abated without prejudice to either party to seek such relief as may be proper. In the event of death or incompetence of a party after the close of the hearing, but prior to issuance of the Award, 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) No Charge for Arbitration Services.

No charge or fee shall be required of any party requesting or making use of the arbitration services provided by these Rules.

(11) Indemnity Provision.

By agreeing to the procedures authorized herein, the parties further agree to indemnify and hold harmless the Association, its employees and the Panel concerning any action arising out of the procedures set forth by this rule and for any and all conduct of the Panel in the exercise of the procedures herein.

17. SCR 3.810 Legal Fee Arbitration

SCR 3.810 shall read:

(1) Purpose.

The purpose of this Rule 3.810 is to establish a procedure whereby fee disputes arising from attorney and client relationships may be resolved by submission to binding arbitration.

(2) Definitions.

(A) "Attorney" means an attorney-at-law who is a member in good standing of the Kentucky Bar Association, or an attorney admitted to practice pursuant to SCR 3.030 when the dispute arises from that representation.

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

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

(D) "Dispute" means a disagreement between an attorney and a client relative to the fee due the attorney for particular legal services rendered, or a disagreement between attorneys concerning the amount of the fees due each attorney for particular legal services rendered. This includes a matter that is the subject of a diversion pursuant to SCR 3.160(3), or a matter referred for fee arbitration by the Court.

(E) "Amount in controversy" means the difference between the sum of money an attorney proposes to charge for legal services and the sum of money the client offers to pay for such services, or the total amount of the fee to be divided between attorneys.

(F) "Panel" means the arbitrator or arbitrators appointed to arbitrate the dispute.

(3) Scope of Authority.

(A) The Rules and Procedures herein set forth shall be available to resolve any dispute when the amount in controversy exceeds the jurisdictional maximum specified in KRS 24A.230 and all parties to the dispute agree in writing to submit the dispute to these Rules and further agree in writing that they shall be fully bound by the decision and Award of the Panel.

(B) 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.

(C) These Rules shall not be used if the dispute is the subject matter of a pending lawsuit, unless the parties follow the procedures of KRS 417.060(4).

(4) Institution of Proceedings.

(A) Proceedings hereunder shall be begun by the filing of a petition with the Association. The signed petition shall state the origin and details of the dispute, the nature and degree of legal services rendered, and the amount claimed due as a result of the dispute alleged. The petitioner shall also sign an arbitration agreement. The petition and arbitration agreement shall be on forms provided by the Association.

(B) Upon the filing of the petition, the Director shall determine whether it presents a dispute under these Rules. The decision of the Director on that matter shall be final. The Director shall have full power to require additional information from the petitioner

as is deemed necessary to determine whether the Association shall accept jurisdiction of the dispute under these Rules.

(C) If the Director determines that the Association shall not accept jurisdiction of a fee dispute, the petition shall be returned to the petitioner indicating why the Association has not accepted jurisdiction of the matter.

(D) If the Director determines that the Association shall accept jurisdiction, a copy of the petition and the arbitration agreement signed by the petitioner shall be forwarded to the other party to the dispute to sign and return to the Director with the answer to the petition. Twenty (20) days shall be allowed in which to answer, unless additional time is requested. Upon receipt of the answer, the Director shall forward to the petitioner a signed copy of the arbitration agreement and of the answer submitted by the other party to the dispute.

(E) If the other party to the dispute refuses to submit the fee dispute to arbitration, or fails to sign and return the arbitration agreement and answer within the time allowed, the Director shall so notify the petitioner and the file of the Association shall be closed.

(F) If the dispute is referred to arbitration as referenced in 2(D) above, then sections 4(B) and (C) of this rule are not applicable. The attorney involved in the dispute shall be deemed the petitioner and shall file a petition with the Director.

(G) Upon the filing of a petition with the Association, any applicable statute of limitations is tolled until dismissal or a final award is entered.

(5) Arbitration Panel.

(A) Composition.

(i) Where the amount in controversy is ten thousand dollars (\$10,000.00) or less, the Panel shall consist of one (1) person who shall be a practicing Attorney.

(ii) Where the amount in controversy exceeds ten thousand dollars (\$10,000.00), the Panel shall consist of three (3) persons, two (2) of whom shall be practicing Attorneys and the third (3rd) member shall be a non-lawyer.

(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 for a particular dispute by the Director; and

(c) if engaged in the private practice of law shall maintain an office and carry on

such practice within a reasonable proximity to the county in which the petitioner in the dispute resides.

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

(v) The non-lawyer referred to in paragraph (5)(A)(ii) shall be selected by the senior presiding judge or Chief Circuit Judge of the county where the attorney involved in the fee dispute maintains a principal office for the practice of law. If the dispute is between two attorneys, the selection of the non-lawyer member of the Panel shall be made by the senior presiding judge or Chief Circuit Judge of the county where the attorney petitioning for arbitration maintains a principal office for the practice of law.

(vi) In cases of a three-member Panel, the Director shall designate one member of the Panel as Chair of the Panel.

(B) Objections.

Either party to a fee dispute 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 composition of the Panel. Failure to object within twenty (20) days shall constitute a waiver of any objection to the composition of the Panel.

Objections to Panel members shall be made to the Director and shall be determined in accordance with KRS 26A.015 et seq. The decision of the Director shall be final.

(C) Compensation.

The Panel shall not be compensated for its services. Reasonable transportation expenses may be reimbursed.

(D) Vacancies.

If any arbitrator should be unable to act, the Director shall declare the office vacant and, if the matter has already been heard by the Panel, it shall not be reheard if the remaining members concur in the Award. If the sole member of the Panel is unable to act or the remaining members of the Panel do not concur in the Award, a new member shall be selected and the matter will be reheard. If the Panel has not yet heard the matter a new arbitration Panel member shall be selected in accordance with these Rules.

(E) Communication Between the Parties and Panel Members.

There shall be no ex parte communication between the parties and the Panel upon the subject matter of the arbitration other than at arbitration proceedings, or in documents filed with the Association as part of the proceedings. This limitation does

not apply to administrative communications between the Panel and the parties regarding the scheduling of the hearing.

(6) Hearings.

(A) Location.

Hearings shall be held in a county that reasonably limits the travel required by the parties to attend the hearing.

(B) 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 fewer 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.

(C) Stenographic Record.

(i) Any party may have a hearing before a Panel reported by a Certified Shorthand Reporter at the expense of the requesting party by written notice presented to the Panel Chair at least seven (7) days prior to the date of the hearing. Any other party to the arbitration 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.

(ii) In the event the Panel determines it appropriate or necessary to record the hearing, it may be recorded by digital or video means with costs being assessed as the Panel deems just. A party to the dispute, at its own expense, may request a copy of the record so recorded.

(D) Production of Records and Subpoenas.

(i) The parties to a dispute have the obligation to provide all documents needed for the Panel to resolve the questions presented for resolution. The discovery provisions of the Kentucky Rules of Civil Procedure are not strictly applicable. When a party fails to provide documents determined necessary by the Panel, the Panel may accept the negative factual inferences created by the failure to provide the requested documents.

(ii) When the Panel determines the provisions of KRS 417.110 should be utilized, it may request permission in writing from the Director for the authority to issue a subpoena for the documents specified in its request.

(E) Oath of Panel Members.

The Panel shall take a written oath to be filed with the Director to decide the dispute 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.

(F) Conduct of Hearings.

(i) The testimony of all witnesses shall be given under oath. The Panel Chair shall administer oaths to witnesses.

(ii) The Panel Chair shall preside at the hearing and shall be the judge of the relevancy and materiality of the evidence offered, shall rule on questions of procedure, and shall exercise all powers relating to the conduct of the hearing. Strict compliance with the rules of evidence shall not be required.

(iii) In cases involving a three (3) member Panel, if at the time set for any hearing all three members of the panel are not available to participate, the hearing shall be postponed, or, with consent of the parties shall proceed with the hearing with one (1) member of the panel chosen by the parties as the sole arbitrator.

(iv) If any party to an arbitration who has been duly notified fails to appear at a scheduled hearing, the Panel may proceed with the hearing and determine the dispute upon the evidence produced.

(v) The Panel Chair may adjourn the hearing from time to time as necessary. Upon request of a party to the arbitration for good cause, the Panel Chair may postpone the hearing from time to time.

(vi) 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) Rendition and Form.

(i) The Panel shall render its Award within thirty (30) days after the close of the hearing. The Award of the Panel shall be made by a majority of the Panel.

(ii) The original Award shall be in writing and shall be signed by the member(s) of the Panel concurring therein. The Award shall include a determination of all questions submitted to the Panel, the decision of which shall be necessary to resolve the controversy. Copies of the Award shall have the same legal force and effect as the original.

(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 parties specifically waive any privilege.

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

(v) The award signed by the member(s) of the Panel shall be provided to the Director, who shall cause it to be mailed to the parties by Certified Mail.

(B) Correction of Errors.

If, upon receiving the Award, a party determines it contains significant factual or accounting errors or omissions, the party may bring this information to the attention of the Director within fifteen (15) days from the receipt of the Award. The Director will present the information to the other party and to the Panel for consideration along with any comments by the other party to the dispute. If the Panel determines that modification of the Award is appropriate, the Panel will issue a modified Award reflecting any changes made and will provide the modified Award to the Director for service on the parties as indicated above. This procedure is not intended to provide a party the opportunity to submit new evidence or to reargue the merits of 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.

(8) Records.

With the exception of the Award itself all records, documents, files, proceedings and hearings pertaining to arbitration of any fee dispute under these Rules shall not be open to the public or to any person not involved in the dispute with the exception of disputes referred to arbitration as stated in section 2(D) above. In that circumstance, a copy of the Award may be provided to the referring activity or agency.

(9) Death or Incompetence of a Party.

In the event of the death or incompetence of a party to the arbitration proceedings before the hearing has been concluded, the proceedings shall be abated without prejudice to either party to seek such relief as may be proper. In the event of death or incompetence of a party after the close of the hearing but prior to issuance of the Award, 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) Arbitration of Fee Disputes Between and Among Attorneys.

(A) The Association may accept jurisdiction of any fee dispute between or among attorneys when such a dispute has been submitted to the Association in accordance with these Rules.

(B) These Rules shall be applied by the Association in the resolution of fee disputes between and among attorneys except that in rendering its Award the Panel shall determine whether the fee in dispute should be divided and if so, in what proportions it should be divided between or among the parties to the arbitration.

(C) Service of a copy of such Award on the attorneys shall conclusively limit all claim and interest of the participating attorneys in the disputed fee in accordance with the division of the fee, if any, set forth in the Award.

(11) No Charge for Arbitration Service.

No charge or fee shall be required of any party requesting or making use of the fee arbitration services provided by these Rules.

(12) Indemnity Provision.

By agreeing to the procedures authorized herein, the parties further agree to indemnify and hold harmless the Association, its employees and the Panel concerning any action arising out of the procedures set forth by this rule and for any and all conduct of the Panel in the exercise of the procedures herein.

18. SCR 3.820 Client's Security Fund

Section (10) of SCR 3.820 shall read:

(10) Eligible Claims

(a) The loss must be caused by the dishonest conduct of the lawyer and shall have arisen out of or in the course of a lawyer-client relationship between the lawyer and the claimant.

(b) The claim shall have been filed no later than two years after the claimant knew or should have known of the dishonest conduct of the lawyer.

(c) As used in these Rules, "dishonest conduct" means: (1) Wrongful acts committed by a lawyer in the nature of theft or embezzlement of money or the wrongful taking or conversion of money, property or other things of value, or

(2) Refusal to refund unearned fees received in advance where the lawyer performed no services or such an insignificant portion of the services that the refusal to refund the unearned fees constitutes a wrongful taking or conversion of money.

(d) Except as provided by section (e) of this Rule, the following losses shall not be reimbursable:

(1) Losses incurred as a result of any negligent act of malpractice,

(2) Losses incurred by spouses, children, parents, grandparents, siblings, partners, associates and employees of lawyer(s) causing the losses;

(3) Losses covered by any bond, surety agreement, or insurance contract to the extent covered thereby, including any loss to which any bonding agent, surety or insurer is subrogated, to the extent of that subrogated interest;

(4) Losses incurred by any financial institution which are recoverable under a "banker's blanket bond" or similar commonly available insurance or surety contract;

(5) Losses incurred by any business entity controlled by the lawyer, any person or entity described in section (d)(1), (2), or (3) hereof;

(6) Losses incurred by any governmental entity or agency.

(e) In cases of extreme hardship or special and unusual circumstances, the panel of Trustees may, in its discretion, recognize a claim which would otherwise be excluded under these Rules.

(f) In cases where it appears that there would be unjust enrichment, or the claimant unreasonably or knowingly contributed to the loss, the panel of Trustees may in its discretion, deny the claim.

All sitting. All concur.

ENTERED: DECEMBER 12, 2007.



CHIEF JUSTICE