

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

2011-11

Upon review of this Court, the following amendment to SCR 3.370 of the Rules of the Supreme Court shall become effective November 15, 2011.

AMENDMENT TO THE RULES OF THE SUPREME COURT

SCR 3.370 Procedure before the Board and the Court

SCR 3.370 shall read:

(1) Thirty (30) 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 (15) days thereafter, the Appellee shall file his/her brief. 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.

(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 case. Any member, including a non-lawyer member, who has participated in any phase of a disciplinary 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 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)(b) shall be agreed upon by eleven (11) or three-fourths (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) 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.

(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.

(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.

(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, whichever the case may be, relating to all matters.

(10) When the Respondent is proceeded against by warning order, the notice in paragraph two (2) and paragraph eight (8) of this rule shall be deemed to have been served thirty (30) days after the date of the making of the warning order.

(11) In each 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.

All sitting. All concur.

ENTERED: November 15, 2011.

CHIEF JUSTICE