

Supreme Court of Kentucky

2022-43

ORDER

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

The following amendments to the Supreme Court Rules shall be effective August 15, 2022:

I. SCR 2.002 Fiscal provisions

SCR 2.002 shall read:

- (1) The fees collected by the Kentucky Office of Bar Admissions shall be made payable to the Kentucky State Treasurer and be deposited in a restricted fund account held by the Administrative Office of the Courts to provide for the ordinary and necessary expenses of the administration of the bar examination and the operation of both the Board of Bar Examiners and the Character and Fitness Committee.
- (2) An annual budget including all income and expenditures shall be prepared by the Board and the Committee in consultation with the Budget Director for the Judicial Branch and submitted to the Supreme Court not less than one month prior to the commencement of the next fiscal year. The budget shall distinctly set forth expected revenues according to source, together with carryover funds from the previous year, and shall list budgeted amounts for each category of expenditure in sufficient detail to clearly identify the nature of the respective expenditures.
- (3) Upon approval by the Court, the budget shall govern the fiscal operation of the Board and the Committee. Expenditures may exceed the authorized budget by not more than ten percent subject to availability of funds. Expenditures exceeding the authorized budget by more than ten percent may be made only upon approval of the Court.
- (4) At least once each quarter a financial report shall be prepared and transmitted to the Board, the Committee, and the Court.
- (5) The restricted fund account held by the Administrative Office of the Courts to provide for the expenses of the administration of the bar examination and the operation of the Board and the Committee shall be included in the annual financial statements for the Judicial Branch of the Commonwealth of Kentucky, prepared by the Administrative Office of

the Courts and subject to annual external audit pursuant to the Rules of Administrative Procedure Part XIX.

- (6) The Board and the Committee may employ such personnel as the Court authorizes. Their compensation shall be fixed by the Board and the Committee subject to approval by the Court. The compensation of members of the Board and Committee shall be fixed by the Court.
- (7) Printing and purchasing shall be regulated by procedures established through the Administrative Office of the Courts except that the duplicating of bar examinations shall be accomplished in such manner as the Board designates in order to preserve the security thereof.

II. SCR 2.007 Qualification, compensation, expenses, and assistants of board of bar examiners and committee on character and fitness

SCR 2.007 shall read:

Each member of the Board of Bar Examiners and each member of the Character and Fitness Committee shall have the qualifications of a circuit judge and shall be an active member of the Kentucky bar in good standing. Except for compensated expenses and allowances for services rendered as members of the Board and of the Committee as authorized by the Supreme Court to be paid out of special funds for such purposes, no member of the Board of Bar Examiners and no member of the Character and Fitness Committee shall knowingly receive, or agree to receive, directly or indirectly, compensation for any services rendered or to be rendered, either by himself/herself or another, in any matter which is before the Kentucky Supreme Court relating to the admission of a person to practice law in this state. As appointees of the Supreme Court, neither the members of the Board of Bar Examiners nor the members of the Character and Fitness Committee constitute officers or employees of any agency within the meaning of KRS 45A.335, 45A.340 and 61.990. Subject to the approval of the Supreme Court, the Board of Bar Examiners and the Character and Fitness Committee each may employ such personnel as it deems appropriate, compensation therefore to be paid out of special funds for such purposes.

III. SCR 2.111 Limited certificate of admission to practice law

Section 3 of SCR 2.111 shall read:

- (3) Upon granting of such limited certificate of admission to practice law, and issuance of said limited certificate by the Clerk of the Supreme Court of Kentucky, such applicant shall be and shall remain, during the period the limited certificate of admission to practice law remains in effect, an active member of the Kentucky Bar Association, subject to all duties and

obligations of members admitted under SCR 2.110, SCR 2.120, and SCR 3.645.

IV. SCR 3.035 Membership registration requirements and service

Section 1 of SCR 3.035 shall read:

- (1) Each attorney licensed by the Supreme Court to practice law in this Commonwealth shall:
 - (a) Maintain with the Director one official Bar Roster address at which he or she may be communicated with by mail and shall upon a change of that address notify the Director within ten (10) days of the new official address.

If the member's official Bar Roster address is a Post Office address, he or she must also provide an alternate address for service of process.

Failure to maintain a current address which allows for physical service of process with the Director may be prosecuted in the same manner as a violation of the Rules of Professional Conduct.

- (b) Maintain with the Director one official email address and shall upon change of that address notify the Director within ten (10) days of the new official email address, except however, that "Senior Retired inactive" members, "Disabled Inactive" members and those "Honorary" members who no longer actively practice law or maintain an office shall not be required to maintain an official email address. An official email address shall be unique to the attorney and not be used by another KBA member.
 - (c) Include his or her 5-digit member identification number on all filings with the Courts of the Commonwealth and in all communications with the Association.

V. SCR 3.130(1.8) Conflict of interest: current clients; specific rules

Section 18 of the Commentary to SCR 3.130(1.8) shall read:

COMMENTARY

Client Lawyer Sexual Relationships

- (18) Sexual relationships that predate the client-lawyer relationship are not prohibited. Issues relating to the exploitation of the fiduciary relationship and client dependency are diminished when the sexual relationship existed prior to the commencement of the client lawyer relationship. However, before proceeding with the representation in these circumstances, the lawyer should consider whether the lawyer's ability

to represent the client will be materially limited by the relationship. See Rule SCR 3.130(1.7)(a)(2).

VI. SCR 3.130(1.17) Sale of law practice

New Section (g) of SCR 3.130(1.17) shall read:

(g) Upon the sale of a law practice, the seller shall make reasonable arrangements for the maintenance of client trust account records.

VII. Delete SCR 3.130(1.20) Sale of law practice

SCR 3.130(1.20) shall be deleted in its entirety and replaced by new Section (g) of SCR 3.130(1.17).

VIII. SCR 3.130(7.02) Attorneys' advertising commission

The title of SCR 3.130(7.02) shall be amended to read: Attorneys' advertising commission.

IX. SCR 3.130(8.3) Reporting professional misconduct

Section (f) of SCR 3.130(8.3) shall read:

(f) A lawyer prosecuting any member of the Association who has been arrested for or who has been charged by way of indictment, information, or complaint with a felony or Class A misdemeanor shall immediately notify Bar Counsel of such event.

X. SCR 3.140 Appointment of inquiry commission

Section 2 of SCR 3.140 shall read:

(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 3.161. 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.

XI. SCR 3.285 Motion to reconsider or dismiss a charge

Section (3) of SCR 3.285 shall read:

(3) Upon such reconsideration, the Inquiry Commission may dismiss a charge, issue a private admonition under SCR 3.162, or deny the

motion and direct the Trial Commissioner to proceed with the hearing or refer the matter to the Board for action.

XII. SCR 3.370 Procedure before the Board and the court

Section 5(a) of SCR 3.370 shall read:

(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 guilty, 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 guilty 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 (6), the difference between its findings and recommendations and the report of the Trial Commissioner.

This Order shall be effective August 15, 2022, and until further Order of this Court.

Entered this 11th day of August 2022.

All sitting; all concur.


CHIEF JUSTICE