

# Supreme Court of Kentucky

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

2015-20

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The following rules' effective January 1, 2016 are amended and shall read as follows:

## RULES OF THE SUPREME COURT (SCR)

### I. SCR 2.018 Application Process

The title of SCR 2.018 shall read:

#### Application Process

### II. SCR 2.113 Military Spouse Provisional Admission

New rule SCR 2.113 shall read:

(1) **Requirements.** A person who meets all requirements of subparagraphs (a) through (m) of paragraph 2 of this Rule may, upon motion, be provisionally admitted to the practice of law in Kentucky.

(2) **Required Evidence.** The applicant for provisional admission shall submit evidence satisfactory to the Kentucky Board of Bar Examiners that he or she:

(a) has been admitted by examination to practice law before the court of last resort of any state or territory of the United States or of the District of Columbia;

(b) holds a Juris Doctor degree from a law school accredited by the American Bar Association at the time of such applicant's graduation;

(c) has achieved a passing score on the Multistate Professional Responsibility Examination as it is established in Kentucky at the time of application;

(d) is currently an active member in good standing in the bar of at least one state or territory of the United States, or the District of Columbia, where the applicant is admitted to the unrestricted practice of law, and is a member in good standing in all jurisdictions where the applicant has been admitted;

(e) is not currently subject to lawyer discipline or the subject of a pending disciplinary matter in any other jurisdiction;

(f) possesses the good character and fitness to practice law in Kentucky;

(g) is the dependent spouse of an active duty service member of the United States Uniformed Services as defined by the Department of Defense (or, for the Coast Guard when it is not operating as a service in the Navy, by the Department of Homeland Security) and that the service member is on military orders stationed in the Commonwealth of Kentucky;

(h) is physically residing in Kentucky;

(i) has submitted all requested character investigation information, in a manner and to the extent established by the Board of Bar Examiners, including all required supporting documents;

(j) has never failed the Kentucky Bar Examination;

(k) has completed 12 hours of instruction approved by the Kentucky Continuing Legal Education Board on Kentucky substantive and/or procedural law, including 4 hours of ethics, within the 6-month period immediately preceding or following the filing of the applicant's application;

(l) certifies that he or she has read and is familiar with the Kentucky Rules of Professional Conduct; and

(m) has paid such fees as may be set by the Board of Bar Examiners to cover the costs of the character and fitness investigation and the processing of the application.

### **(3) Issuance, Duration and Renewal.**

(a) The Board of Bar Examiners having certified that all prerequisites have been complied with, the applicant for provisional admission shall, upon payment of applicable dues and completion of the other membership obligations, become an active member of the Kentucky Bar Association. An attorney provisionally admitted pursuant to this Rule shall be subject to the same membership obligations as other active members of the Kentucky Bar Association, and all legal services provided in Kentucky by a lawyer admitted pursuant to this Rule shall be deemed the practice of law and shall subject the attorney to all rules governing the practice of law in Kentucky, including the Kentucky Rules of Professional Conduct.

(b) A provisional admission may be renewed by July 31 of each year, upon filing with the Kentucky Bar Association (i) a written request for renewal, and (ii) compliance with the membership obligations of the Rules of the Supreme Court of Kentucky applicable to active members of the Kentucky Bar Association. Provisional admission under this Rule may be renewed for no more than 4 times.

(c) When the active duty service member is assigned to an unaccompanied or remote follow-on assignment and the attorney continues to physically reside in Kentucky, the provisional admission may be renewed until that unaccompanied or remote assignment ends, provided that the attorney complies with the other requirements for renewal.

**(4) Events of Termination.** An attorney's provisional admission to practice law pursuant to this Rule shall immediately terminate and except as provided in subsection (i) of this rule, the attorney shall immediately cease all activities under this Rule upon the occurrence of any of the following:

(a) The spouse's discharge, separation or retirement from active duty in the United States Uniformed Services, or the spouse's no longer being on military orders stationed in the Commonwealth of Kentucky, except as provided in section 3(c) of this Rule;

(b) Failure to meet the annual licensing requirements of an active member of the Kentucky Bar Association;

(c) The attorney no longer physically residing within the Commonwealth of Kentucky;

(d) The attorney ceasing to be a dependent as defined by the Department of Defense (or, for the Coast Guard when it is not operating as a service in the Navy, by the Department of Homeland Security) on the spouse's official military orders;

(e) The attorney being admitted to practice law in this Commonwealth under an admissions rule other than that of Provisional Admission;

(f) The attorney receiving a failing score on the Kentucky Bar Examination;

(g) The attorney being suspended from the practice of law in Kentucky or in any other state;

(h) Request by the attorney; or

(i) Upon the occurrence of a terminating event the attorney may continue the work that commenced prior to the terminating event until new counsel is retained.

**(5) Notices Required.**

(a) An attorney provisionally admitted under this Rule shall provide written notice to the Kentucky Bar Association of any Event of Termination within 30 days of the occurrence thereof.

(b) Within 30 days of the occurrence of any Event of Termination, the attorney shall:

(i) provide written notice to all his or her clients that he or she can no longer represent such clients and furnish proof to the Executive Director of the Kentucky Bar Association within 60 days of such notification; and

(ii) file in each matter pending before any court or tribunal in this Commonwealth a notice that the attorney will no longer be involved in the matter, which shall include the substitution of the Local Counsel, or such other attorney licensed to practice law in Kentucky selected by the client, as counsel in the place of the provisionally admitted attorney.

(6) **Benefits and Responsibilities.** An attorney provisionally admitted under this Rule shall be entitled to the benefits and be subject to all responsibilities and obligations of active members of the Kentucky Bar Association, and shall be subject to the jurisdiction of the courts and agencies of the Commonwealth of Kentucky and to the Kentucky Bar Association with respect to the laws and rules of this Commonwealth governing the conduct and discipline of attorneys to the same extent as an active member of the Kentucky Bar Association.

### **III. SCR 2.540(b), (c) and (d) Limited student practice**

Sections (b), (c) and (d) of SCR 2.540 shall read:

(b) Such student makes application to the Character and Fitness Committee of the Kentucky Office of Bar Admissions, on a form approved by the Committee and accompanied by a \$25.00 processing fee to cover costs. The Committee reviews and approves applications for students who appear to be qualified to perform legal services as interns and certifies this to the Supreme Court.

(c) The Chief Justice of the Supreme Court of Kentucky, the dean of the student's law school, and the director of the law school program in which such student is participating, have filed written approval of such student with the clerk of the Supreme Court, the clerk of the courts before which the student is to appear, and the clerk of the circuit court in the county wherein the student's law school is located.

(d) A member in good standing of the bar of this state personally supervises all activities of the student in each case, with the exception that the student may consult with the client or potential clients, but may not advise, negotiate or appear alone in administrative proceedings or in the courts of this state in civil or criminal matters without personal appearance and supervision by a member in good standing of the bar of this state, and as otherwise provided in this Rule.

### **IV. SCR 3.030(2), (4), and (5)(a) Membership, practice by nonmembers and classes of membership**

Sections (2), (4) and subsection (a) of section (5) to SCR 3.030 shall read:

(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.

(4) 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.

(5)(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 until restored to active status by the Court. 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.

#### **V. SCR 3.130(4.5) Solicitation of clients**

New rule SCR 3.130(4.5) shall read:

(1) No lawyer shall directly or through another person by in person, live telephone, or real-time electronic means, solicit professional employment when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain, unless:

- (a) the person contacted is a lawyer;
- (b) the person contacted has an immediate family relationship, or prior attorney-client relationship with the lawyer, or person contacted; or
- (c) the lawyer is advocating a public interest issue and is not significantly motivated by the lawyer's pecuniary gain.

This Rule shall not prohibit response to inquiries initiated by persons who may become prospective clients at the time of any other incidental contact not designed or intended by the lawyer to solicit employment.

(2) No lawyer shall solicit professional employment by written, recorded, or electronic communication or by in-person, live telephone, or real-time electronic contact even when not otherwise prohibited by paragraph (1) if:

- (a) the target of the solicitation has made known to the lawyer a desire not to be solicited by the lawyer; or
- (b) the solicitation involves coercion, duress or harassment.

(3) Every written, recorded or electronic communication from a lawyer soliciting professional employment from anyone known to be in need of legal services in a particular matter shall include the words "Advertising Material" on the outside of the envelope, if any, and at the beginning and ending of any recorded or electronic communication, unless the recipient of the communication is a person specified in paragraphs (1)(a) or (1)(b).

(4) Except as provided in paragraph (1), no communication shall be sent to those individuals and related targets of solicitation who have been involved in a disaster as defined in SCR 3.130(7.60) until 30 days have elapsed from the occurrence of the disaster.

(5) Notwithstanding the prohibitions in paragraph (1), a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer which uses in-person or telephone contact to solicit memberships or subscriptions for the plan from persons who are not known to need legal services in a particular manner covered by the plan.

#### **VI. SCR 3.130(4.6) Waiver and forfeiture of fees for prohibited solicitation**

New rule SCR 3.130(4.6) shall read:

If a lawyer illegally or unethically solicited a client for which compensation is paid or payable, all fees arising from such transaction shall be deemed waived and forfeited and shall be returned to the client. A civil action for recovery of such fees may be brought in a court of competent jurisdiction. Violations may be addressed by the Inquiry Commission as a disciplinary matter.

#### **VII. SCR 3.130(5.7) Activities of Suspended Lawyer**

New rule SCR 3.130(5.7) shall read:

(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 reasonable 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.

#### **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 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) communicates 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.

## **VIII. SCR 3.130(7) Applicability**

New Rule 7 as listed below.

### **A. SCR 3.130(7.01) Definitions**

New rule SCR 3.130(7.01) shall read:

For the purposes of Rule 7, the following definitions shall apply:

(1) "Advertise" or "advertisement" means to furnish any information or communication containing a lawyer's name or other identifying information, and an "advertisement" is any information containing a lawyer's name or other identifying information; except the following:

- (a) a professional card of a lawyer;
- (b) a public service announcement identifying the sponsor as a lawyer or law firm, by name, address(es), telephone number(s), but no other information;
- (c) a sign on or near the law office and in the building directory identifying the law office.

(2) "Legal Services" means the practice of law as defined in SCR 3.020.

(3) "Commission" when used in SCR 3.130(7) means Attorneys' Advertising Commission.

### **B. SCR 3.130(7.02) Attorneys' Advertising Commission**

New rule SCR 3.130(7.02) shall read:

(1) There shall be created an Attorneys' Advertising Commission which shall perform such functions in regulating lawyer advertising as prescribed in these Rules.

(2) The Commission shall consist of up to 9 persons appointed by the President and approved by the Board. Each Commission member shall be appointed for a term of 3 years, with terms so established that the terms of the Commission members shall be staggered. Vacancies for unexpired terms shall be filled in the same manner as original appointees, but the appointees shall hold office only to the end of the unexpired term. No member may serve more than 2 terms in succession, and may be removed at any time by a majority vote of the Board.

(3) Each Commission member shall be a citizen of the United States and licensed to practice law in the Courts of the Commonwealth.



(4) The Board shall appoint a Chair from among the Commission members. The term shall be 1 year; however, the Chair may serve more than 1 term.

(5) The Commission shall be provided with sufficient administrative assistance from the Director as from time to time may be required.

(6) The Commission shall have general responsibilities for the implementation of this Rule. In discharging its responsibilities the Commission shall have authority to:

(a) Subject to prior approval by the Board, issue and promulgate regulations and such forms as may be necessary. Each member of the Kentucky Bar Association shall be given at least 60 days advance notice of any proposed regulations and an opportunity to comment thereon. Notice may be given by publication in the journal of the Kentucky Bar Association.

(b) Report to the Board at its last meeting preceding the Annual Convention of the Kentucky Bar Association, and otherwise as required, on the status of advertising with such recommendations or forms as advisable.

(c) Delegate to an employee of the Kentucky Bar Association, designated by the Director of the Kentucky Bar Association, the authority to review advertisements on its behalf.

(d) Issue advisory opinions concerning the compliance of an advertisement with the Advertising Rules and Regulations.

(7) The Commission shall prepare a budget for the succeeding year and shall submit same to the Board of Governors for inclusion with the budget of the Kentucky Bar Association.

(8) Nothing in these rules shall be construed as creating any cause of action for any party or right of suit against any member of the Commission. The Kentucky Bar Association, the Board of Governors, the Attorneys' Advertising Commission, the Executive Director of the Kentucky Bar Association, the Office of Bar Counsel, all of their officers, members, employees or agents shall be immune from civil liability for all acts in the course of their official duties in regulating lawyer advertising.

**C. SCR 3.130(7.03) Advisory opinions**

New rule SCR 3.130(7.03) shall read:

(1) A lawyer may request an advisory opinion by the Commission. Such request shall be in writing and shall be accompanied by a filing fee of \$75.00. Within 30 days after such request is received, the Commission shall issue its advisory opinion as to the compliance of the advertisement with the Advertising Rules and Advertising Regulations. If the Commission finds that the advertisement does not comply with the requirements of the Advertising Rules or the Advertising Regulations, the Commission, or its designee, shall issue an advisory letter setting forth the factual and legal basis for the opinion. The lawyer may submit a corrected advertisement that conforms to the advice in the advisory letter

with no additional fee required.

(2) For any advertisement submitted pursuant to SCR 3.130(7.03)(1), the lawyer shall mail or deliver to the Commission, c/o the Director of the Kentucky Bar Association, 3 copies of the advertisement. If the advertisement is to be published by broadcast media, including radio or television, a fair and accurate representation of the advertisement plus 3 copies of a typed transcript of the words spoken shall be submitted. Website advertisements that do not qualify for submission without a fee must be submitted in electronic format on a data disc in PDF (Portable Document Format), or other such data storage media as the Commission may designate by regulation. Three (3) copies of the data disc should be mailed or delivered to the Commission, c/o the Director of the Kentucky Bar Association. A filing fee of \$75.00 for each advertisement filed under this subsection shall accompany each submission. Additionally, advertisements of more than 100 pages, or longer than 10 minutes of video or audio, will require a supplemental fee of \$100.00. The fair and accurate representation of a broadcast media advertisement shall include 3 copies of a video cassette (VHS), digital video disc (DVD), or audio cassette plus 3 copies of a typed transcript of the advertisement.

(3) If a lawyer has received an advisory opinion that an advertisement complies with the Advertising Rules and Advertising Regulations, that lawyer shall not be disciplined for any use of that advertisement, unless an advertisement is false, misleading or deceptive, or information provided to the Commission in connection with the submission is false, misleading or deceptive after the Commission has issued its advisory opinion.

**D. SCR 3.130(7.04) Records of the Commission**

New rule SCR 3.130(7.04) shall read:

All advertisements and the records of all actions taken by the Commission on submitted advertisements shall be available for inspection and copying at the offices of the Kentucky Bar Association at reasonable times and upon reasonable notice. Any expense incurred shall be borne by the requesting party.

**E. SCR 3.130(7.10) Communications concerning a lawyer's service**

New rule SCR 3.130(7.10) shall read:

A lawyer shall not make a false, deceptive or misleading communication about the lawyer or the lawyer's service. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.

**F. SCR 3.130(7.15) Advertising of fees**

New rule SCR 3.130(7.15) shall read:

A lawyer who advertises a fee for routine services and accepts the employment must perform such services for the amount advertised. Upon request, a detailed description of what services are included in the "routine services" must be supplied to the Commission and to each prospective client.

**G. SCR 3.130(7.20) Advertising**

New rule SCR 3.130(7.20) shall read:

(1) Subject to the requirements of Rules 4.5 and 7.10, a lawyer may advertise legal services through written, recorded or electronic communications, including public media.

(2) A lawyer shall not give anything of value to a non-lawyer for recommending the lawyer's services except that a lawyer may:

(a) Pay the reasonable cost of advertising or communication permitted by this Rule;

(b) Pay the usual charges of a legal service plan or a not-for-profit qualified lawyer referral service. A qualified referral service is a lawyer referral service that has been approved by the Advertising Commission;

(c) Pay for a law practice in accordance with Rule 1.17; and

(d) Refer clients to another lawyer or a non-lawyer professional pursuant to an agreement not otherwise prohibited under these Rules that provides for the other person to refer clients or customers to the lawyer, if

(i) The reciprocal referral agreement is not exclusive, and

(ii) The client is informed of the existence and nature of the agreement.

(3) Any communication made pursuant to these Rules shall include: the name and office address of at least 1 lawyer or the name of a law firm. The lawyer or lawyers in Kentucky shall be responsible for the content of the advertisement.

(4) Communication by a lawyer with a person or entity with whom that lawyer has an immediate family or current attorney-client relationship, or a communication in response to an inquiry from any person or entity seeking information, shall be exempt from the provisions of the Advertising Rules and the Advertising Regulations, with the exception of SCR 3.130(7.10).

(5) If a lawyer or a law firm advertises legal services and a lawyer's name or image is used to present the advertisement, the lawyer must be the lawyer who will actually perform the service advertised unless the advertisement prominently discloses that the service may be performed by other lawyers. If the lawyer whose name or image is used is not licensed to perform the services in Kentucky, such fact shall be disclosed in the advertisement. If the advertising lawyer or firm is advertising for clients for the purpose of referring the client to another lawyer or firm, that fact must be disclosed prominently in the advertisement.

(6) The lawyer shall retain a copy or recording of all advertisements utilized by the lawyer, as well as a record of when and where it was used, for 2 years after its last dissemination. Electronic retention is permitted if in PDF format, or such other formats as the Commission may designate by regulation. In the event of the pendency of any disciplinary action before the Inquiry Commission, Board of Governors or Court, the lawyer shall continue to retain a copy until the termination of that proceeding.

## **H. SCR 3.130(7.40) Communication of fields of practice**

New rule SCR 3.130 (7.40) shall read:

(1) A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law.

(2) A lawyer admitted to engage in patent practice before the United States Patent and Trademark Office may use the designation "Patent Lawyer" or a substantially similar designation.

(3) A lawyer engaged in admiralty practice may use the designation "Admiralty", "Proctor in Admiralty", or substantially similar designation.

(4) A lawyer shall not state or imply that a lawyer is certified as a specialist in a particular field of law, unless:

(a) the lawyer has been certified as a specialist by an organization which has been approved by an appropriate state authority or that has been accredited by the American Bar Association;

(b) the name of the certifying organization is clearly identified in the communication; and

(c) the communication occurs only for as long as the lawyer remains so certified and in good standing.

## **I. SCR 3.130(7.50) Firm names and letterheads**

New rule SCR 3.130(7.50) shall read:

(1) A lawyer shall not use a firm name, letterhead, or other professional designation that violates Rule 7.10.

(2) A law firm with offices in more than one jurisdiction may use the same name in each jurisdiction, but identification of the lawyers in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.

(3) The name of a lawyer holding a public office shall not be used in the name of a law firm, or in communications on its behalf, during any period in which the lawyer is not actively and regularly practicing with the firm.

(4) Lawyers may state or imply that they practice in a legal entity only if that is the fact.

(5) The name of a lawyer who is suspended by the Supreme Court from the practice of law may not be used by the law firm in any manner until the lawyer is reinstated. A lawyer who has been permanently disbarred shall not be included in a firm name, letterhead, or any other professional designation, or advertisement.

**J. SCR 3.130(7.60) Kentucky Bar Association Disaster Response Plan**

New rule SCR 3.130(7.60) shall read:

(1) It is the purpose of the Kentucky Disaster Response Plan to:

(a) address the problems that occur when lawyers and non-lawyers, who are not subject to the disciplinary jurisdiction of the Kentucky Bar Association and the Kentucky Supreme Court, engage in the provision of legal services, legal advice, and outright solicitation of persons and their families affected by a Disaster;

(b) provide information to the public regarding the availability of legal services, as well as information regarding the legal rights available to persons affected by disasters;

(c) monitor the conduct of all attorneys, both members and non-members of the Kentucky Bar Association, and thereby deter violations of the rules of ethical conduct and the rules of the Kentucky Bar Association; and

(d) inform the public of the levels of conduct required of members of the Kentucky Bar Association and notify the public that it is improper for attorneys to solicit employment either in person or through runners, agents, solicitors, or others in such a manner as to create direct contact between the attorney seeking such employment and the potential claimant.

(2) It is the policy of the Kentucky Bar Association to encourage and promote the highest ethical standards among attorneys practicing within its borders. Realizing the emotional distress and grief that are inevitable immediately following a Disaster, the Kentucky Bar Association Disaster Response Plan (hereafter Plan) is established to facilitate the handling of these situations in a manner that best protects the interests of the persons involved as well as the legal community.

(3) For purposes of the Plan, a "Disaster" shall mean the type of emergency or disaster that draws persons to solicit clients. This includes, but is not limited to, air crash, major fire, explosion, sea disaster, hazardous material contamination, flood, landslide, major rail or traffic accident, earthquake, or other circumstances resulting in substantial loss of life, substantial personal injury, or substantial property damage.

(4) It shall be the responsibility of the Immediate Past President of the Kentucky Bar Association (hereafter Past President) or if the Past President is absent from the state or physically or mentally unable to act, the Director of the Kentucky Bar Association, or their designee, to identify a Disaster.

(5) The Kentucky Mass Disaster Task Force, (hereafter "Task Force") is hereby created from the Kentucky Bar Association membership in a sufficient number of "units" at the discretion of the Board to provide Disaster services. A unit of the Task Force shall consist of at least 1 member of the Board; 1 member of the Court of Justice; and 1 or more additional designees to each unit as appointed by the Past President.

(6) The Task Force shall meet promptly upon learning of an identified Disaster and shall establish a "legal service information center."

(7) The Task Force shall be provided with printed literature identifying the purpose of the Task Force, a press release identifying the unit of the Task Force, and any additional materials and equipment that the Past President, the Director, or the unit members themselves believe necessary to accomplish their purpose.

(8) The units of the Task Force shall be prepared to inform affected persons that:

(a) decisions regarding most legal matters and legal claims (other than those requiring immediate attention for the preservation of life or health of a person) are generally decisions that are better made after reasonable and thoughtful consideration and after consultation with the appropriate professionals, including attorneys;

(b) legal services are available to persons affected by Disasters;

(c) persons and entities who sustain damage by reason of the wrongful conduct of another may be entitled to recover damages;

(d) "Statutes of Limitations" exist which apply to various causes of action within the Commonwealth of Kentucky and, in certain circumstances, to Federal causes of action;

(e) any person or entity believing he or she has been damaged by the wrongful acts of another should seek legal advice to determine the applicable statute of limitations;

(f) only those persons who have been admitted to practice law in the Commonwealth of Kentucky and those persons who are lawfully associated with them in practice may appear and present claims within the Courts of the Commonwealth of Kentucky;

(g) no person affected by a Disaster is obligated by law to furnish information regarding the occurrence to any representative of the media, or to investigators, insurance agents and adjusters (other than as required by the persons own insurers), attorneys, or other members of the public, except that a person who has observed conduct that may be identified as "criminal activity" is obligated to furnish information pertaining to criminal activity to lawfully constituted legal authorities;

(h) the affected persons should make a diligent effort to observe all conditions pertaining to the Disaster, and to make such appropriate records or notations as necessary in the circumstances to memorialize their recollections of the Disaster;

(i) if there are witnesses to the Disaster, it may be important to obtain the names, addresses, and telephone numbers of those witnesses, and to retain them for future reference;

(j) that Kentucky law does not certify specialties and that the members of the unit and their partners, associates, members of their firms, and other lawyers associated with them are not permitted to accept employment for the provision of legal services regarding the Disaster;

(k) the services provided by the unit are for informational purposes only; and

(l) each person or entity interested in legal services should seek the advice of private counsel selected by that person or entity.

(9) The Task Force shall investigate to determine if runners, attorneys, or others have been soliciting or attempting to solicit victims, relatives of victims, or others as clients for matters related to the Disaster. The Task Force shall designate from its members a person to receive any complaints or inquiries concerning suspected improper solicitation. As soon as is reasonably practicable, such designee shall furnish such information to the Director of the Kentucky Bar Association or the Director's designee.

(10) The Task Force shall be subject to the following restrictions:

(a) no member of the Task Force shall offer specific legal advice to anyone regarding the Disaster or refer a person to a particular lawyer or law firm. Upon inquiry and to the extent necessary to respond, a member of the Task Force may refer a person to other agencies or groups for information or assistance.

(b) no member of the unit assigned to a particular Disaster, nor any of the partners, members of the firm, associates, or other lawyers associated with the member shall be permitted to accept any employment relating to any matter arising out of that Disaster.

(c) the Task Force shall not issue any news releases or make any public statements on behalf of the Kentucky Bar Association without the specific prior approval of the Director.

(11) The reasonable expenses incurred by each unit member of the Task Force in training and providing services as contemplated herein, as well as the cost of the equipment and supplies necessary to provide the service shall be paid from the General Fund of the Kentucky Bar Association unless the same expenses shall be provided from IOLTA funds of the Kentucky Bar Association, funds obtained from private sources, grants or donations; or from funds otherwise appropriated by the Kentucky General Assembly, including discretionary funds of the Governor of Kentucky or other elected officials. Each unit of the Task Force shall be authorized to obtain when necessary such secretarial and clerical assistance as appropriate in the circumstances of the particular Disaster.

## **IX. SCR 3.160(1) and (3)(C) Initiation of disciplinary cases**

Section (1) and subsection (C) to section (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 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, 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.

(3)(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, 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.

**X. SCR 3.175(1)(b) Efficient enforcement; notice of attorney's address**

Subsection (b) to section (1) of SCR 3.175 shall read:

(1)(b) maintain with the Director a valid email address and shall upon change of that address notify the Director within 30 days of the new 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 email address;

**XI. SCR 3.181(1) Assistance to other lawyer disciplinary jurisdictions**

Section (1) of SCR 3.181 shall read:

(1) Upon receipt by the Director of a subpoena certified to be duly issued under the rules or laws of another lawyer disciplinary jurisdiction, or by a clients' security fund of any jurisdiction, the Inquiry Commission may authorize the Director or Disciplinary Clerk to issue the subpoena directing a person domiciled or found within the Commonwealth of Kentucky to give testimony and/or produce documents or other things for use in the other lawyer disciplinary or clients' security fund proceedings as directed in the subpoena of the other jurisdiction.

**XII. SCR 3.185(1) and (2) Informal admonition procedure**

Sections (1) and (2) of SCR 3.185 shall read:

(1) After a complaint against an attorney for unprofessional conduct is investigated and a response filed, the Inquiry Commission may direct a private admonition, with or without conditions, 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 20 days from the date of the admonition, reject such admonition and request that a charge be issued and filed as is provided by Rule 3.190; whereupon, the issues shall be processed under the applicable rules.

(2) 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. The attorney who receives the warning letter may, within 30 days from the date of the letter, respond to the letter and request that it be reconsidered by the Inquiry Commission.



**XIII. SCR 3.210(3) and (4) Processing cases of default, admissions of violations or answers raising only issues of law**

Sections (3) and (4) to SCR 3.210 shall read:

(3) If the parties agree that the answer raises only issues of law, or the Respondent admits the violation, the case shall be submitted to the Board upon Motion by either party. Bar Counsel may file a brief within 20 days after the order granting the Motion is entered, and the Respondent may file a brief within 20 days thereafter. After briefs are filed, or the time within which briefs may be filed has expired, the record and briefs shall be forwarded to the President for assignment to a member of the Board for a report.

(4) In the event of a case submitted under subsection (3), the Board, by a vote of a majority of the Board present and voting, may return the entire record to the Disciplinary Clerk for appointment of a Trial Commissioner pursuant to SCR 3.230 to conduct an evidentiary hearing, which proceeding will be confidential pursuant to 3.150.

**XIV. SCR 3.360(3) and (4) Trial Commissioner to file report with Disciplinary Clerk**

Sections (3) and (4) of SCR 3.360 shall read:

(3) Within 10 days after the filing of the report with the Disciplinary Clerk, either party may move to amend the findings or for additional findings of fact or conclusions of law by the Trial Commissioner. Any response shall be filed within 10 days. Such motion shall be ruled upon within 30 days of the filing of the motion.

(4) Within 30 days after the filing with the Disciplinary Clerk of: (a) the report, (b) an order ruling on a motion under SCR 3.360(3), or (c) an amended report, whichever is later, either party may file a notice of appeal 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).

**XV. SCR 3.370(10) and (11) Procedure before the Board and the Court**

Sections (10) and (11) of SCR 3.370 are deleted and new section (10) of SCR 3.370 shall read:

(10) 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.

**XVI. SCR 3.380 Degrees of discipline; indefinite suspension in default cases**

SCR 3.380 shall read:

(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.

**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." 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."

**XVII. SCR 3.395(1), (4), (5) and (6) Appointment of special commissioner to protect clients' interests**

Sections (1), (4), (5) and (6) of SCR 3.395 shall read:

(1) When it comes to the attention of the Director that: (a) an attorney has been temporarily suspended pursuant to SCR 3.165 and has failed to notify his/her clients of the suspension as required by Court order; or (b) an attorney has been suspended or disbarred pursuant to SCR 3.370 and has failed to notify his/her clients of his/her suspension or disbarment pursuant to SCR 3.390; or (c) an attorney has resigned pursuant to SCR 3.480 and has failed to notify his/her clients of his/her resignation as required by Court order; or (d) an attorney dies; or (e) an attorney has been declared incompetent; or (f) an attorney abandons his/her law practice or his/her whereabouts are unknown, and no law partner, personal representative of the deceased attorney's estate, or other responsible person capable of conducting the attorney's business affairs is known to exist, the Director may petition the Court, and the Court for good cause may order the Chief Circuit Judge of the Judicial Circuit for the attorney's last known address to order the appointment of 1 or more members of the Association to serve as Special Commissioners of the Court.

The Director shall give notice to the attorney by mailing a copy of the petition to the attorney's last known address, except where the attorney is deceased. If the attorney is deceased, the notice shall be sent to the attorney's personal representative, if known. Within 20 days after the date on which the Director files the petition with the Court, the attorney may file a response to the petition with the Court. The Clerk of the Court shall mail a copy of the Court's order ruling on the petition to the attorney's last known address, to the Director and to the Chief Circuit Judge.

(4) The Special Commissioner shall file a written report within 6 months, with the Court containing a summary and explanation of the actions taken by the Special Commissioner to fulfill the duties assigned to the Special Commissioner by the Court. This time frame may be extended for good cause shown. The Special Commissioner shall mail a copy of the report to the Director and to the attorney's last known address.

(5) If the Special Commissioner takes possession of files of an attorney and the Special Commissioner is unable after a diligent effort to deliver the files to the clients or to new attorneys representing the clients, the Special Commissioner may request the Court to enter an order providing for the storage and safekeeping or destruction, as appropriate, of such files.

(6) The Special Commissioner shall be entitled to reasonable compensation with the amount to be determined by the Court and to also be reimbursed for necessary expenses actually incurred. In order to receive such compensation or reimbursement of expenses, the Special Commissioner shall file with the Court a motion containing an itemized list of the time spent on the case, the work performed, and receipts for the expenses incurred. The Special Commissioner's compensation and expenses which are approved by the Court shall be paid by the Association, but any amounts disbursed by the Association to the Special Commissioner shall be assessed as costs against the attorney pursuant to SCR 3.450 if the appointment of the Special Commissioner arose out of, (a) disciplinary proceeding, resignation or an abandonment of the practice or, (b) if the appointment arose out of a mental illness or disease and a guardian has been appointed for the attorney, the cost shall be presented to the attorney's guardian or, (c) if the appointment arose from the death of the attorney, from the estate of the decedent by presenting the fiduciary of the estate the costs and, when possible, to file a proof of claim with the appropriate district court clerk.

#### **XVIII. SCR 3.510(2) Reinstatement in case of disciplinary suspension**

Section (2) of SCR 3.510 shall read:

(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, Bar Counsel, and the Registrar 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 Registrar 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 and to the member concerned. If such an objection has been filed by Bar Counsel, and is not withdrawn within 30 days, 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. An additional fee of \$250.00 shall be made payable to the Kentucky Bar Association.

**XVIX. SCR 3.640(8) New Lawyer Program Requirement**

Section (8) of SCR 3.640(8) shall read:

(8) The time for completion and certification set forth in paragraphs (1) and (6) of this Rule may, upon written application to and approval by the Commission or its designee, be extended. Written application for an extension under this paragraph must be received by the Commission no later than 30 days after the member's deadline to complete the Program as set forth in paragraph (1) of this Rule. All applications must be signed by the member. The Commission may approve extensions for completing the Program under the following circumstances:

**XX. SCR 3.645(1) and (2)(c) Continuing legal education requirements: compliance and certification**

Section (1) and subsection (c) of section (2) to SCR 3.645(1) shall read:

(1) Each educational year, as defined by SCR 3.600(7), every person licensed to practice law in this Commonwealth, not specifically exempted pursuant to the provisions of SCR 3.665, shall complete and certify a minimum of 12 credit hours in continuing legal education activities approved by the Commission, including a minimum of 2 credit hours devoted to "ethics, professional responsibility and professionalism" as defined by SCR 3.600(8). All continuing legal education activities must be completed by June 30 of each educational year.

(2)(c) Sponsors submitting certifications to the Director for CLE shall comply with all requirements set forth in SCR 3.660(5).

**XXI. SCR 4.020 Jurisdiction**

SCR 4.020 shall read:

(1) Commission shall have authority:

(a) (i) After notice and hearing, to order the temporary or permanent retirement of any judge whom it finds to be suffering from a mental or physical disability that seriously interferes with the performance of his/her duties; (ii) and to suspend temporarily from the performance of judicial duties, without affecting his/her compensation any judge against whom there is pending in any court of the United States an indictment or information charging him/her with a crime punishable as a felony, or after notice and an opportunity to

be heard, and upon a finding that it will be in the best interest of justice that the judge be suspended from acting in his/her official capacity as a judge until final adjudication of the complaint, any judge as to whom a preliminary investigation has been initiated under Rule 4.170.

(b) To impose the sanctions, separately or collectively of (1) admonition, private reprimand or public reprimand; (2) suspension without pay, or removal or retirement from judicial office, upon any judge of the Court of Justice or lawyer while a candidate for judicial office, who after notice and hearing the Commission finds guilty of any one or more of the following:

- (i) Misconduct in office.
- (ii) Persistent failure to perform his/her duties.
- (iii) Incompetence.
- (iv) Habitual intemperance.
- (v) Violation of The Code of Judicial Conduct, Rule 4.300.
- (vi) Any willful refusal or persistent failure to conform to official policies and directives adopted by the Supreme Court and issued by the Chief Justice in his/her constitutional capacity as Chief Executive Officer of the Court of Justice.
- (vii) Conviction of a crime punishable as a felony.

(c) After notice and hearing, to remove a judge whom it finds to lack the constitutional and statutory qualifications for the judgeship in question.

(d) To refer any judge of the Court of Justice or lawyer while a candidate for judicial office, after notice and hearing found by the Commission to be guilty of misconduct, to the Kentucky Bar Association for possible suspension or disbarment from the practice of law.

(2) Any erroneous decision made in good faith shall not be subject to the jurisdiction of the Commission.

## **XXII. SCR 4.025 Authority of Commission in certain situations**

SCR 4.025 Shall read:

(1) The Commission shall have the authority set out in SCR 4.020 without regard to separation of a judge from office or defeat of a candidate in an election, except as specifically limited in SCR 4.000 to SCR 4.300.

(2) For any violation related to campaign conduct in a primary or general election, the authority of the Commission to take action shall be barred unless notice of preliminary investigation pursuant to SCR 4.170 has been issued by the Commission within 180 days of the date of the general election following the campaign as to which the conduct relates.

(3) For any violation other than a campaign violation, the authority of the Commission to take action against a judge who has left office shall be barred unless notice of preliminary investigation pursuant to SCR 4.170 has been issued within 180 days after the date the judge leaves office.

(4) Nothing in SCR 4.000 to 4.300 shall bar proceedings against sitting judges who

have left judicial office after a prior term of office concerning conduct not previously adjudicated by the Commission, including conduct which occurred during a prior term or terms of office.

**XXIII. SCR 4.075 Alternate members**

SCR 4.075 shall read:

At the time and in the same manner as the Court of Appeals, circuit court and district court members are elected, an alternate member for each shall be elected. At the time and in the same manner as the Bar Association member is appointed an alternate member shall be appointed. The alternate member may participate in all meetings, hearings, and deliberations of the Commission, but shall be entitled to vote on a matter coming before the Commission only in the event the member disqualifies, is absent, is otherwise unable to vote or a vacancy exists.

**XXIV. SCR 4.090 Disqualification**

SCR 4.090 shall read:

(1) Grounds. A member or alternate member shall disqualify from participation as a member in all matters in which the member has an interest, relationship or bias that would disqualify a judge in a judicial proceeding.

(2) Procedure.

(a) A party seeking disqualification of a member or alternate member shall file a verified motion with the Executive Secretary who shall forthwith transmit the motion to the challenged member.

(b) The challenged member shall promptly file with the Executive Secretary a written response stating whether the member recuses. The response may include explanation of the member's position.

(c) If a member refuses to recuse, the recusal issue shall be decided by majority vote of the other members of the Commission by written findings not later than the meeting next following the filing of the member's response to the motion to recuse.

(d) Upon disqualification of a member, the disqualified member's alternate shall serve. If there is no alternate for the disqualified member, the matter shall be determined by the remaining members of the Commission.

(e) A member disqualified in a matter shall not participate in its consideration and shall be excused from that portion of any meeting at which the matter is discussed.

**XXV. SCR 4.095 Term of office**

SCR 4.095 shall read:

The 4-year terms of office of all members and alternate members of the

Commission shall be deemed as having commenced on the first Monday in January of 1976 except for the district court member and alternate member, whose terms shall commence on the first Monday in January of 1978.

**XXVI. SCR 4.110 Counsel**

SCR 4.110 shall read:

The Commission may designate or employ any member of the Kentucky Bar to gather and present evidence before the Commission and before the Supreme Court upon judicial review.

**XXVII. SCR 4.120 Quorum**

SCR 4.120 shall read:

A quorum shall be 4 members. The Commission may act by majority vote of members present; however, the affirmative vote of at least 4 members shall be required for the suspension, removal or retirement of a judge for good cause. Absence of a member or a vacancy upon the Commission shall not invalidate its action. If because of disqualification or other inability of members and alternates to serve, a quorum cannot be achieved, the Chairperson shall certify that fact to the respective appointing authorities for selection of sufficient special members to bring the Commission to full membership in the matter. In such matter, the time periods of SCR 4.170(5) and 4.260(3) shall be tolled, and the full period shall not begin to run until the special members are selected.

**XXVIII. SCR 4.130 Confidentiality**

SCR 4.130 shall read:

All papers and information obtained by or on behalf of the Commission shall be confidential except as provided in this rule or by order of the Supreme Court.

(1) The Commission may direct that an order suspending a judge pursuant to SCR 4.020(1)(a) shall not be confidential. Following the procedure set forth in SCR 4.170, upon filing of an answer to a notice of formal proceedings, or expiration of time for filing an answer, the notice and all subsequent pleadings filed with the Commission shall not be confidential, except that the Commission's internal papers such as investigative reports and staff memoranda, and similar matters, shall remain confidential and shall not be a part of the formal file.

(2) The Commission may reveal information to appropriate law enforcement authorities or to the judge under investigation that it believes is reasonably necessary in order to protect the public or the administration of justice.

(3) Hearings in formal proceedings shall be public, except that the Commission shall deliberate in executive session in reaching any decision involved in such hearings.

(4) The Commission may on its own initiative, and shall upon request of the Director or Board of Governors of the Kentucky Bar Association, make available to the Kentucky

Bar Association any of the Commission's records pertinent to a disciplinary matter or inquiry under investigation by the Commission or by the Association.

(5) Breach of confidentiality may be deemed contempt of court and grounds for removal of a member of the Commission and for discharge of any of its agents or employees.

**XXIX. SCR 4.150 Service of papers**

SCR 4.150 shall read:

Service of notices and other papers may be by personal service or by mail. Papers served on the judge shall be marked "Personal and Confidential." Service may also be by email with written consent of the judge.

**XXX. SCR 4.170 Complaint; preliminary investigation**

SCR 4.170 shall read:

(1) Upon its own motion or upon receiving a written complaint indicating that there is a basis for investigation of a matter within the jurisdiction of the Commission under SCR 4.020, the Commission shall make a preliminary investigation to determine whether formal proceedings should be initiated.

(2) Notice of the investigation shall be given to the judge, and the judge shall be given an opportunity to appear informally before the Commission. The name of the complainant shall not be included in the notice.

(3) If the Commission concludes after its preliminary investigation that formal proceedings should not be initiated, it shall so inform the judge.

(4) After the preliminary investigation is completed and before formal proceedings are initiated under Rule 4.180, the Commission shall afford the judge under investigation an opportunity to examine all factual information, including the name of the complainant if relevant, and shall afford the judge an opportunity to furnish to the Commission any information the judge may desire bearing on the investigation.

(5) The Commission shall decide whether to initiate formal proceedings under SCR 4.180 within 180 days of commencement of preliminary investigation, unless within such period or extension thereof the Commission for good cause extends such period for a period or periods not exceeding an additional 180 days. The judge shall be informed of such extensions.

(6) If because of court injunction or other requirement of law, the Commission is prevented from proceeding in a matter, the time periods of this rule and SCR 4.260(3) shall be tolled, and the full period shall not begin to run until the reason for the Commission's inability to act is removed.



**XXXI. SCR 4.210 Procedural rights of judge**

SCR 4.210 shall read:

(1) In proceedings involving removal or retirement, a judge shall have the right and reasonable opportunity to defend against the charges by the introduction of evidence, to be represented by counsel, and to examine and cross-examine witnesses. The judge shall also have the right to the issuance of subpoenas for attendance of witnesses to testify or produce books, papers, and other evidentiary matter.

(2) Except as herein otherwise provided, whenever these rules provide for giving notice or sending any matter to the judge, such notice or matter shall be sent to the judge at their residence unless the judge requests otherwise in writing, and a copy thereof shall be mailed to his/her counsel of record.

(3) If the judge is adjudged insane or incompetent, or if it appears to the Commission at any time during the proceedings that the judge is not competent to act for himself/herself, it shall appoint a guardian ad litem unless the judge has a committee who will represent him/her. In the appointment of such guardian ad litem, preference shall be given, whenever possible, to members of the judge's immediate family. The committee or guardian ad litem may claim and exercise any right and privilege and make any defense for the judge with the same force and effect as if claimed, exercised, or made by the judge, if competent, and whenever these rules provide for serving or giving notice or sending any matter to the judge, such notice or matter shall be served, given, or sent to the committee or guardian ad litem.

**XXXII. SCR 4.220 Hearing**

SCR 4.220 shall read:

(1) At the time and place set for hearing, the Commission shall proceed with the hearing whether or not the judge has filed an answer or appears at the hearing. Counsel shall present the case in support of the charges.

(2) The failure of the judge to answer or to appear at the hearing shall not, standing alone, be taken as evidence of the truth of the facts alleged to constitute grounds for suspension, removal or retirement. The failure of the judge to testify in his/her own behalf or to submit to a medical examination requested by the Commission may be considered, unless it appears that such failure was occasioned by circumstances beyond his/her control.

(3) In a hearing before the Commission, not less than 5 members shall be present when the evidence is produced.

**XXXIII. SCR 4.230 Recording of hearings in formal proceedings**

SCR 4.230 shall read:

All hearings in formal proceedings shall be video recorded. Upon request, the judge shall be provided a copy of the recording at the expense of the Commission.

**XXXIV. SCR 4.240 Evidence**

SCR 4.240 shall read:

At a hearing before the Commission only evidence admissible under the Kentucky Rules of Evidence shall be received. The Chairperson shall rule on all evidentiary matters.

**XXXV. SCR 4.260 Commission findings; order**

SCR 4.260 shall read:

(1) The Commission shall make written findings of fact and conclusions of law which shall be filed with the record in the case.

(2) A certified copy of the Commission's findings of fact, conclusions of law and final order shall be served on the judge or counsel immediately after entry.

(3) The Commission shall make final disposition in formal proceedings as provided in this section within 180 days of notice of such proceedings, except that within such period or extension thereof the Commission may for good cause extend such period for a period or periods not exceeding an additional 180 days. The judge shall be informed of such extensions.

**XXXVI. SCR 4.270 Commission orders**

SCR 4.270 shall read:

Commission orders shall become effective 10 days after service on the judge unless the judge appeals therefrom within that time. Upon its effective date, a certified copy of an order of suspension, removal or retirement shall be given to appropriate persons such as the Chief Justice, the Executive Department for Finance and Administration and the Judicial Retirement Board. Notice of a private reprimand shall not be given to any person other than the judge, except that a private reprimand may be publicized on the Commission website and in other publications without any information that would identify the recipient.

A judge who is retired for a permanent disability shall thereupon become eligible for retirement benefits under KRS 21.345 to KRS 21.455.

A judge who is placed on temporary retirement shall continue to draw full compensation the same as if he/she were on active duty, and for retirement purposes shall be considered as continuing in active service.

**XXXVII. SCR 4.280 Certification of Commission order; Permanent File**

SCR 4.280 shall read:

Upon making a determination ordering a suspension, removal or retirement of a judge, the Commission shall promptly file a copy of the order certified by the Chairman or

Secretary of the Commission, together with the findings and conclusions and the record of the proceedings, in a permanent file.

**XXXVIII. SCR 4.290 Judicial review**

SCR 4.290 shall read:

(1) To the extent applicable and not inconsistent with SCR 4, the Rules of Civil Procedure (CR) applicable to other types of proceedings shall apply to the judicial review of Commission orders by the Supreme Court.

(2) A notice of appeal of the Commission's final order shall be filed with the Clerk of the Supreme Court within 10 days after service of notice of the order upon the judge. A copy of the notice of appeal shall be served on the Commission.

(3) The Commission shall thereupon promptly transmit to the Court the entire original record upon which the order is based, unless by stipulation of the Commission and the judge an abbreviated or substitute record is agreed upon.

(4) The judge shall file his/her brief within 20 days after the record is filed and the Commission shall file its brief within 20 days thereafter. The time for filing of briefs may be extended by the Court upon motion of either party.

(5) The Court shall have power to affirm, modify or set aside in whole or in part the order of the Commission, or to remand the action to the Commission for further proceedings.

**XXXIX. SCR 4.300 Canon 4(C)(2) Kentucky Code of Judicial Conduct**

Canon 4(C)(2) of SCR 4.300 shall read:

**Canon 4(C)(2)** A judge shall not accept appointment to a governmental board, committee, or commission or other governmental position within the executive or legislative branches that exercises power to make governmental decisions within that branch or determines governmental policy, except as otherwise authorized or required by law. A judge may represent a country, state or locality on ceremonial occasions or in connection with historical, educational or cultural activities, and may otherwise participate in civic or charitable activities devoted to the improvement of the law, the legal system or the administration of justice.

**Commentary**

Section 4C(2) is based upon Kentucky Constitutional Sections 27 (providing for the separation of governmental powers into three branches) and 28 (prohibiting officers of one branch from exercising any power properly belonging to another branch.) The Rule prohibits a judge from accepting any governmental position within either the legislative or executive branches that makes governmental decisions or policy. The Rule does not prohibit a judge from serving upon such a board or commission where judicial participation is otherwise required by law, subject to compliance with the Constitutional mandate. The Rule does not prohibit a judge from accepting positions within the legislative or executive

branches that are merely advisory and lack the authority to exercise the constitutional power of that branch. For example, service upon a board or committee that governs a state university (an executive branch entity) would be prohibited, but service upon a university board that merely makes advisory suggestions to university officials would not be prohibited by this rule. The appropriateness of accepting extra-judicial assignments must be assessed in light of the demands on judicial resources created by crowded dockets and the need to protect the courts from involvement in extra-judicial matters that may prove to be controversial. Judges should not accept governmental appointments that are likely to interfere with the effectiveness and independence of the judiciary.

Section 4C(2) does not govern a judge's service in a nongovernmental position. See Section 4C(3) permitting service by a judge with organizations devoted to the improvement of the law, the legal system or the administration of justice and with educational, religious, charitable, fraternal or civic organizations not conducted for profit.

(3) A judge may serve as an officer, director, trustee or non-legal advisor of an organization devoted to the improvement of the law, the legal system or the administration of justice or of an educational, religious, charitable, fraternal or civic organization not conducted for profit, subject to the following limitations and the other requirements of this Code.

### Commentary

Section 4C(3) does not apply to a judge's service in a governmental position; see Section 4C(2).

See Commentary to Section 4B regarding use of the phrase "subject to the following limitations and the other requirements of this Code." As an example of the meaning of the phrase, a judge permitted by Section 4C(3) to serve on the board of a fraternal institution may be prohibited from such service by Sections 2C or 4A if the institution practices invidious discrimination or if service on the board otherwise casts reasonable doubt on the judge's capacity to act impartially as a judge.

Service by a judge on behalf of a civic or charitable organization may be governed by other provisions of Canon 4 in addition to Section 4C. For example, a judge is prohibited by Section 4G from serving as a legal advisor to a civic or charitable organization.

All sitting. All concur, except Cunningham and Noble, JJ., dissent on the proposed rule amendments to SCR 3.030(2).

ENTERED: November 3, 2015.

  
CHIEF JUSTICE