

Supreme Court of Kentucky

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

2017-18

The following rules' amendments shall become effective January 1, 2018, except for SCR 2.022, SCR 2.023 and SCR 2.024 which shall become effective February 2, 2018 and SCR 2.080 which shall become effective for bar examinations administered after January 1, 2019.

RULES OF THE SUPREME COURT (SCR)

I. SCR 2.008 Confidentiality

Section (c) and new section (d) of SCR 2.008 shall read:

The Office of Bar Admissions shall not disclose to anyone other than an applicant any information with respect to the character and fitness or the examination results of any applicant except:

- (a) upon written authority of such applicant and upon payment of any fees required by the Board for copies of such reports;
- (b) in response to a valid subpoena from a Court of competent jurisdiction;
- (c) to the Director, Kentucky Bar Association;
- (d) upon request by a disciplinary enforcement agency or a Character and Fitness Committee of any jurisdiction, relating to an investigation of the applicant.

II. SCR 2.014 Legal Education

Subsection (a) to section (2) and section (4) of SCR 2.014 shall read:

(2) An attorney who received a legal education in the United States but is not eligible for admission by virtue of not having attended a law school approved by the American Bar Association or the Association of American Law Schools

may nevertheless be considered for admission by examination provided the attorney satisfies the following requirements:

(a) The attorney holds a J.D. Degree, which is not based on study by correspondence, study online, or distance learning from a law school accredited in the jurisdiction where it exists and which requires the equivalent of a three-year course of study that is the substantial equivalent of the legal education provided by approved law schools located in Kentucky. The applicant shall bear the cost of the evaluation of his/her legal education, as determined by the Board, and the application shall not be processed until the applicant's legal education is approved by the Board of Bar Examiners; and

(4) For purposes of (2)(b) and (3)(c), the active engagement in the teaching of the law, full time at an American Bar Association accredited law school, shall be considered active engagement in the practice of law.

**III. SCR 2.022 Application for admission by examination
(Effective February 2, 2018)**

Subsections (a) and (b) to section (1) of SCR 2.022 shall read:

(1) Every person who intends to apply for admission to the Kentucky Bar by examination must electronically submit a complete, verified Application for Admission by Examination form and pay the required fee to the Kentucky Office of Bar Admissions. An application must be complete at the time of its filing, including a properly executed Authorization & Release form; and must include the following fee:

(a) Applicants not previously admitted to practice law-\$875.00 (cashier's or certified check or money order)

(b) Attorney applicants admitted in another jurisdiction-\$1,200.00 (cashier's or certified check or money order)

**IV. SCR 2.023 Late filing of application for admission by examination
(Effective February 2, 2018)**

Sections (1) and (2) of SCR 2.023 shall read:

(1) An applicant who has failed to timely file an Application for Admission by Examination under SCR 2.022 may file a late application for Admission by Examination form from October 2 to November 10, prior to the February Bar Examination and from February 2, to March 10 for the July Bar examination, accompanied by a late fee of \$250.00 along with the application fee (cashier's or certified check or money order).

(2) An applicant who has failed to file an Application for Admission by

Examination form by the late deadlines prescribed in paragraph (1) of this rule, may file under the extended late deadlines of November 11 to December 10 for the February Bar examination and March 11 to May 10 for the July Bar examination accompanied by an extended late fee of \$500.00 along with the application fee.

**V. SCR 2.024 Re-application for admission by examination
(Effective February 2, 2018)**

SCR 2.024 shall read:

An applicant who withdraws from or fails the bar examination shall be permitted to re-apply for the next scheduled bar examination on a form approved by the Board along with a fee of \$150.00. The \$175.00 examination fee is also required of applicants who failed the bar examination. The re-application form must be filed by November 10 prior to the February examination and May 10 prior to the July examination.

**VI. SCR 2.080 Bar Examinations
(Effective for bar examinations administered after January 1, 2019)**

Section (4) of SCR 2.080 shall read:

(4) An applicant must pass both the essay and Multistate (MBE) portions of the examination in one sitting. A general average of 75% or higher on the essay portion of the examinations shall be deemed a passing score on the essay portion of the examination. A scaled score of 135 or higher on the Multi-state portion of the examination shall be deemed a passing score on the Multistate portion of the examination. After failing to pass five (5) Kentucky Bar Examinations, an applicant shall not be permitted to sit for the Kentucky Bar Examination. An applicant who has taken the Multistate (MBE) examination in another jurisdiction within three years of the date of the Kentucky examination may transfer a scaled score of 135 or higher and need only sit for the essay portion of the examination in situations where the applicant successfully passed the entirety of the transferring jurisdiction's examination and has not previously failed the Kentucky examination.

VII. SCR 2.110 Admission without examination

Section (1) of SCR 2.110 shall read:

(1) Any person who has been admitted to the highest Court of the District of Columbia or some sister state and who has been engaged in the active practice of law, in a state or jurisdiction which has reciprocity or comity with Kentucky, for five of the seven years next preceding the filing of an application may be admitted to the bar of this state without examination provided the applicant meets all requirements for admission to the bar under these Rules.

Active engagement in the teaching of the law, full time at an American Bar Association accredited law school, shall be considered active engagement in the practice of law.

VIII. SCR 2.300 Reinstatement of persons to practice law scope and purpose of reinstatement guidelines

The first paragraph of SCR 2.300 shall read:

Scope and Purpose of Reinstatement Guidelines.

The guidelines set forth in SCR 2.300 apply to applications for reinstatement filed by any person who has been suspended from the practice of law, who seeks reinstatement under the provisions of SCR 3.510, and whose application is referred by the Kentucky Bar Association to the Office of Bar Admissions, Character and Fitness Committee, or to petitions for restoration filed by any person who has been transferred to disability inactive status pursuant to SCR 3.030.

IX. SCR 3.023 Disclosure of Professional Liability Insurance

New rule SCR 3.023 shall read:

1) On or before September 1 of each year, every member of the Association shall certify to the Executive Director in such form and manner as the Board may designate:

a) Whether the member is engaged in the private practice of law;

b) If engaged in the private practice of law, whether the member is currently covered by a policy of professional liability insurance with minimum limits of \$100,000.00 per claim and \$300,000.00 aggregate for all claims during the policy term; and

c) Whether the member is exempt from the disclosure provisions of this Rule.

2) Each member who has previously reported being covered by professional liability insurance as set forth in paragraph 1(b) of this Rule shall notify the Executive Director in writing in such form and manner as the Board may designate within 30 days if the insurance policy providing coverage lapses, terminates, or is no longer in effect for any reason.

3) The information disclosed pursuant to this Rule will be made available to the public by such means as the Board may designate.

4) The following members are exempt from the disclosure provisions of this Rule:

a) Members who are employed by a government entity and who do not represent clients outside of that capacity; and

b) Members who are employed by an organization client and who do not represent clients outside of that capacity.

X. SCR 3.030 Membership, practice by nonmembers and classes of membership

Subsections (a) and (b) to section (5) of SCR 3.030 shall read:

(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. 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.

(b) An attorney transferred to disability inactive status may file a petition with the Court for restoration to active status. A copy of the petition shall be served on Bar Counsel, who shall have 20 days to file a response to the petition. If Bar Counsel objects to the petition, the matter shall be referred to the Character and Fitness Committee to conduct proceedings under SCR 2.300. If Bar Counsel has no objection to the petition the Court may enter an order restoring the attorney to active status with or without conditions or refer the matter to the Character and Fitness Committee to conduct proceedings under SCR 2.300. If an attorney is restored to active status, any disciplinary proceedings that have been stayed will be resumed.

XI. SCR 3.035 Membership Registration Requirements and Service

New rule SCR 3.035 replaces SCR 3.175 and shall read:

(1) Each attorney licensed by the Supreme Court to practice law in this Commonwealth shall:

(a) Maintain with the Director one official 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;

(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;

(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.

If the member's official 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.

(2) Every member of the Association shall be deemed to have appointed the Director as that member's agent for service of any document that is required to be served upon that member by any provision of Supreme Court Rule 2 or 3, provided that service of a document upon the Director shall constitute constructive service of that document upon the member only upon proof that all of the following requirements have been satisfied:

(a) Reasonable efforts have been made to achieve actual service of the document upon the member;

(b) Two (2) true copies of the document have been provided to the Director, accompanied by a written request that the Director serve the document upon the member at the member's current Bar Roster address;

(c) Within seven (7) days after receipt of such request, the Director mailed one (1) copy of the document to the member at the aforesaid address, posted by certified mail, return receipt requested, restricted delivery--addressee only, in an envelope bearing the return address of the Director and marked on the outside as "OFFICIAL COMMUNICATION--IMMEDIATE ATTENTION REQUIRED"; and

(d) No less than thirty (30) days after mailing the document pursuant to subparagraph (c), the Director shall enter a Return of Service which attests:

(i) that the Director mailed one of the copies of the document mentioned in subparagraph (b) to the member's Bar Roster address in accordance with the requirements of subparagraph (c);

(ii) that the Director has attached to the Return of Service all communications received in response to the service or attempted service of the document, including any certified mail receipt or other postal notice or return receipt relating to the delivery or attempted delivery of the document and any communication from the member of the Association or other person acting on behalf of such member; and

(iii) that the Director has provided a true copy of the Return of Service, with copies of all attachments, to the person or entity who requested service of the document upon the member of the Association.

(3) The Association may reject any communication to the Association which fails to comply with paragraph (1)(c) of this Rule 3.175, provided that a member's failure to include his or her member identification number in a document shall not result in a default in any disciplinary proceeding.

XII. SCR 3.130(1.1) Competence

Section (6) of the Supreme Court Commentary 2009 to SCR 3.130(1.1) shall read:

Supreme Court Commentary

2009:

Maintaining Competence

(6) To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.

XIII. SCR 3.130(1.5) Fees

Section (f) to SCR 3.130(1.5) and sections (10) and (11) to Supreme Court Commentary 2009 of SCR 3.130(1.5) shall read:

(f) A fee may be designated as an advance fee. An advance fee agreement shall be in a writing signed by the client evidencing the client's informed consent, and shall state the dollar amount of the retainer, its application to the scope of the representation and the time frame in which the agreement will exist.

Supreme Court Commentary 2009:

Fee Arrangements

(10) If a lawyer collects a deposit on a fee or for expenses, or a flat fee for services to be performed, the lawyer must deposit the funds in the lawyer's trust account until the fee is earned or the expense incurred, at which time the funds shall be promptly distributed. The foregoing shall not apply to advance fees as set out in 1.5(f). In the event the full amount that is held is not ultimately earned, or due to other factors, such as termination of the attorney-client relationship or is not reasonable, the funds must be returned to the client as provided in Rule 1.16(d).

Advance Fee

(11) A lawyer may designate a fee arrangement as an advance fee and upon receipt deposit such funds in the lawyer's operating account. The amount of an advance fee must be reasonable in amount and comply with Rule 1.5. In the event the full amount is not ultimately earned, or due to other factors, such as termination of the attorney-client relationship or is not reasonable, the funds must be returned to the client as provided in Rule 1.16(d).

XIV. SCR 3.130(1.6) Confidentiality of information

Sections (7), (8), (9), (10), (11) and (13) of the Supreme Court Commentary 2009 to SCR 3.130(1.6) shall read:

Supreme Court Commentary

2009:

Disclosure Adverse to Client

(7) A lawyer's confidentiality obligations do not preclude a lawyer from securing confidential legal advice about the lawyer's personal responsibility to comply with these Rules. In most situations, disclosing information to secure such advice will be impliedly authorized for the lawyer to carry out the representation. Even when the disclosure is not impliedly authorized, paragraph (b)(2) permits such disclosure because of the importance of a lawyer's compliance with the Rules of Professional Conduct. SCR 3.530, Advisory opinion – informal and formal, authorizes a lawyer to request an advisory opinion from the requester's Supreme Court District Committee member regarding ethics and unauthorized practice of law questions. The question may be submitted in writing or by telephone using the KBA Ethics Hotline. Communications between the requester and any District Committee member or Ethics Committee member are granted confidentiality by SCR 3.530 and are permitted disclosure by paragraph (b)(2).

(8) Where a legal claim or disciplinary charge alleges complicity of the lawyer in a client's conduct or other misconduct of the lawyer involving representation of the client, the lawyer may respond to the extent the lawyer reasonably believes necessary to establish a defense. The same is true with respect to a claim involving the conduct or representation of a former client. Such a charge can arise in a civil, criminal, disciplinary or other proceeding and can be based on a wrong allegedly committed by the lawyer against the client or on a wrong alleged by a third person, for example, a person claiming to have been defrauded by the lawyer and client acting together. The lawyer's right to respond arises when an assertion of such complicity has been made. Paragraph (b)(3) does not require the lawyer to await the commencement of an action or proceeding that charges such complicity, so that the defense may be established by responding directly to a third party who has made such an assertion. Lawyers may also report incidents of potential malpractice that have not ripened into a client claim to a lawyer's liability insurer for legal advice and to comply with policy reporting requirements provided the report is made on a confidential basis and protected by the attorney-client privilege. The right to defend also applies, of course, where a proceeding has been commenced.

(9) A lawyer entitled to a fee is permitted by paragraph (b)(3) to prove the services rendered in an action to collect it. This aspect of the Rule expresses the principle that the beneficiary of a fiduciary relationship may not exploit it to the detriment of the fiduciary.

(10) Other law may require that a lawyer disclose information about a client. Whether such a law supersedes Rule 1.6 is a question of law beyond the scope of these Rules. When disclosure of information relating to the representation appears to be required by other law, the lawyer must discuss the matter with the client to the extent required by Rule 1.4. If, however, the other law supersedes this Rule and requires disclosure, paragraph (b)(4) permits the lawyer to make such disclosures as are necessary to comply with the law.

(11) A lawyer may be ordered to reveal information relating to the representation of a client by a court or by another tribunal or governmental entity claiming authority pursuant to other law to compel the disclosure. Absent informed consent of the client to do otherwise, the lawyer should assert on behalf of the client all nonfrivolous claims that the order is not authorized by other law or that the information sought is protected against disclosure by the attorney-client privilege or other applicable law. In the event of an adverse ruling, the lawyer must consult with the client about the possibility of appeal to the extent required by Rule 1.4. Unless review is sought, however, paragraph (b)(4) permits the lawyer to comply with the court's order.

(13) Paragraph (b) permits but does not require the disclosure of information relating to a client's representation to accomplish the purposes specified in paragraphs (b)(1) through (b)(4). In exercising the discretion conferred by this

Rule, the lawyer may consider such factors as the nature of the lawyer's relationship with the client and with those who might be injured by the client, the lawyer's own involvement in the transaction and factors that may extenuate the conduct in question. A lawyer's decision not to disclose as permitted by paragraph (b) does not violate this Rule. Disclosure may be required, however, by other Rules. Some Rules require disclosure only if such disclosure would be permitted by paragraph (b). See Rules 1.2(d), 4.1(b), 8.1 and 8.3. Rule 3.3, on the other hand, requires disclosure in some circumstances regardless of whether such disclosure is permitted by this Rule. See Rule 3.3(c).

XV. SCR 3.130(1.9) Duties to former clients

Section (5) of Supreme Court Commentary 2009 to SCR 3.130(1.9) shall read:

Supreme Court Commentary

2009:

Lawyers Moving Between Firms

(5) Historically, another rubric used for dealing with disqualification has been the appearance of impropriety proscribed in Canon 9 of the ABA Model Code of Professional Responsibility. This rubric has a two-fold problem. First, the appearance of impropriety can be taken to include any new client-lawyer relationship that might make a former client feel anxious. If that meaning were adopted, disqualification would become little more than a question of subjective judgment by the former client. Second, since "impropriety" is undefined, the term "appearance of impropriety" is question-begging. It therefore has to be recognized that the problem of disqualification cannot be properly resolved either by simple analogy to a lawyer practicing alone or by the very general concept of appearance of impropriety.

XVI. SCR 3.130(1.15) Safekeeping property

Section (e) to SCR 3.130(1.15) and sections (3), (4), (5) and (6) to Supreme Court Commentary 2009 of SCR 3.130(1.15) shall read:

(e) Except for advance fees as provided in 1.5(f), a lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred.

SUPREME COURT COMMENTARY

(3) While normally it is impermissible to commingle the lawyer's own funds with client funds, paragraph (d) provides that it is permissible when necessary to pay bank service charges on that account. Accurate records must be kept regarding which part of the funds are the lawyer's. A lawyer may deposit funds in a trust account to provide funds for restitution of the defalcation caused by others,

if necessary under any legal obligation to a banking institution, client or third party whose funds have been converted.

(4) Paragraph (e) requires that when a lawyer has collected an advance deposit on a fee or for expenses or a flat fee for services not yet completed, the funds must be deposited in the trust account until earned, at which time they should be promptly distributed to the lawyer. The foregoing shall not apply to advance fees as set out in 1.5(f). At the termination of the client-lawyer relationship the lawyer must return any amount held that was not earned or was an unreasonable fee, as provided by Rules 1.5 and 1.16(d).

(5) The obligations of a lawyer under this Rule are independent of those arising from activity other than rendering legal services. For example, a lawyer who serves only as an escrow agent is governed by the applicable law relating to fiduciaries even though the lawyer does not render legal services in the transaction and is not governed by this Rule.

XVII. SCR 3.130(1.17) Sale of law practice

Subsection (3) to section (a) of SCR 3.130(1.17) shall read:

A lawyer or a law firm may sell or purchase a law practice, or a field of practice, including good will, if the following conditions are satisfied:

- (a) The seller ceases to engage in:
 - (1) the private practice of law; or
 - (2) the field(s) of practice sold; or
 - (3) the practice of law in the geographic area in which the practice has been conducted, all as the seller and purchaser may agree;

XVIII. SCR 3.150 Access to disciplinary information

Subsections (c) and (d) to section (4) of SCR 3.150 shall read:

(4)(a) Request for Non-Public Information. A request for non-public information to the Office of Bar Counsel may be considered by the Inquiry Commission and may be granted if the request relates to an investigation by the requestor and is made by:

- i. The Character and Fitness Committee;
- ii. A Lawyer Disciplinary Enforcement Agency;

iii. A Judicial Disciplinary Enforcement Agency;

(b) A request for non-public information to the Office of Bar Counsel may be considered by the Court if the request is made by a Law Enforcement Agency, or other official authorized by federal or any state's law to investigate or prosecute misdemeanors or felonies, or the equivalent thereof, in any jurisdiction, provided that the agency or official certifies under oath with specificity that the information is necessary to a pending investigation. In this event the Respondent shall receive notice unless the Court determines that disclosure of the request would seriously prejudice the investigation.

(c) In the absence of a third party request, the Inquiry Commission may permit the disclosure of any non- public information to any of the entities listed in (4)(a) upon application to it by the Office of Bar Counsel.

(d) In the event of a request under (4)(a) or (c) no notice to the Respondent is required, although the Inquiry Commission may require notice upon review of the application.

XVIX. Delete [SCR 3.175 Efficient enforcement; notice of attorney's address]

New rule SCR 3.035 replaces SCR 3.175 and SCR 3.175 shall be deleted.

XX. SCR 3.185 Informal admonition procedure

Section (2) of SCR 3.185 shall read:

(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, attendance at a remedial ethics program or related classes as directed by the Office of Bar Counsel, or referral to fee arbitration under SCR 3.810. 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.

XXI. SCR 3.285 Motion to reconsider or dismiss a charge

Section (2) of SCR 3.285 shall read:

(2) The motion shall be verified and shall state specifically the reasons why the matter should be reconsidered or dismissed and may be accompanied by supporting affidavits and exhibits. The motion shall be filed in the office of the Disciplinary Clerk no later than 30 days prior to the evidentiary hearing or the Board's consideration of the case. Any response shall be filed within 20 days of service of the motion. After a hearing of which the Respondent is given at least 5

days notice and an opportunity to be heard, the Commission shall rule on the motion at the next meeting of the issuing panel. No other motion to reconsider or dismiss shall be permitted in regard to the reconsideration of a charge by the Inquiry Commission, unless good cause is shown.

XXII. SCR 3.330 Order of proceedings and burden of proof

SCR 3.330 shall read:

(1) The Trial Commissioner shall determine and regulate the order of proceedings at the hearing. Upon request of a party or upon direction of the Trial Commissioner, the Disciplinary Clerk shall issue subpoenas for the attendance of witnesses or the production of evidence.

(2) Every subpoena shall command each person to whom it is directed to attend and give testimony and/or to produce designated documents in that person's possession, custody, or control, at the time and place therein specified. Notice of the subpoena shall be provided to each party and to any person or entity whose information is being requested. Copies of all documents received in response to the subpoena shall be furnished to the opposing party, except on Motion and for good cause shown.

(3) Prehearing discovery shall proceed in accordance with this rule as directed by the Trial Commissioner rather than by the Kentucky Rules of Civil Procedure. If reasonably necessary to prepare the case for hearing, the Trial Commissioner may allow the taking of depositions and require the production of documents.

(4) The burden of proof shall rest upon the Association in a disciplinary proceeding, and the facts must be proven by a preponderance of the evidence. In reinstatement hearings the burden shall rest upon the Applicant, and he/she must demonstrate by clear and convincing evidence his/her suitability for reinstatement.

(5) Before submission the Trial Commissioner may direct such oral argument as he/she deems appropriate and may allow briefs, not to exceed 30 pages, from all parties, which shall be filed simultaneously within 30 days after the record is filed with the Disciplinary Clerk. The trial commissioner shall have discretion to extend the page limit of briefs.

XXIII. SCR 3.500 Restoration to membership

Subsection (e) to section (3) and section (4) of SCR 3.500 shall read:

(3)(e) If the Character and Fitness Committee recommends approval of the application and the Board concurs, the application shall be referred to the

Board of Bar Examiners of the Kentucky Office of Bar Admissions, for the administration of a written examination which includes the subject of professional ethics and 5 of the subjects listed in SCR 2.080(1). A general average score of 75% or higher shall be deemed a passing score. Fees required by SCR 2.022, and SCR 2.023 shall be paid prior to taking the examination. As an alternative and upon referral from the Board of Governors, if the Applicant has practiced in a reciprocal jurisdiction after withdrawal pursuant to SCR 3.480 and meets all requirements of SCR 2.110, the Applicant may elect to have the Character and Fitness Committee consider an application for admission without examination under SCR 2.110. All fees required by that rule shall be paid prior to the processing of the application, instead of the fee referenced in subsection 3(d) of this rule.

If the Applicant passes the examination or is approved for admission without examination, such fact shall be certified to the Court and to the Director, together with a recommendation for the Applicant's restoration to membership. Upon this certification, the Disciplinary Clerk shall transmit the record to the Court for its consideration of the application for restoration. If the applicant fails the examination, the Board of Bar Examiners shall certify the fact of the failure to the Court and the Director. Upon that certification, the Disciplinary Clerk shall transmit the record to the Court for entry of an order denying restoration.

The provisions of SCR 2.015, SCR 2.080, and SCR 2.110 shall apply where not inconsistent with these provisions.

(4) All costs incurred in excess of the filing fee shall be paid by the Applicant. Upon referral to the Character and Fitness Committee, if pursuing restoration through subsection (3)(d) of this rule, a cash or corporate surety bond in the amount of \$2500.00 to secure the costs to be incurred shall be paid to the Office of Bar Admissions by the Applicant.

XXIV. SCR 3.505 Character and Fitness Committee; reinstatements

Subsection (c) to section (1) of SCR 3.505 shall read:

(1) The Character and Fitness Committee created by SCR 2.040 shall, in addition to the powers and duties conferred in that rule, consider all applications for reinstatement to the practice of law by persons who:

- (a) have been suspended for more than one hundred eighty (180) days;
- (b) have been suspended for one hundred eighty (180) days or less, but whose reinstatement has been opposed by Bar Counsel.
- (c) Have been transferred to disabled inactive status pursuant to SCR 3.030.

XXV. SCR 3.510 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 and Bar Counsel 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 Inquiry Commission 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, to the member concerned, and to the Registrar. Within 90 days after the filing of the objection, the Respondent shall have the opportunity to show Bar Counsel that he/she possesses the sufficient professional capabilities and qualifications to serve the public as an active practitioner or is of good moral character. Upon such showing, Bar Counsel shall withdraw its objection. If the objection has not been withdrawn, 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.

XXVI. SCR 3.530 Ethics Committee and Unauthorized Practice Committee – advisory opinions – informal and formal

Sections (3), (6) and (10) of SCR 3.530 shall read:

(3) Communications between the requesting attorney and the Ethics Committee member shall be confidential, but confidentiality may be waived by the requesting attorney. However, the requesting and giving of advice under this Rule does not create an attorney-client relationship. In order to promote uniformity of advice, redacted copies of informal opinions may be circulated among members of the Ethics Committee, as applicable, provided that such confidentiality is preserved.

(6) Any attorney licensed in Kentucky or admitted to practice law in another state who is in doubt as to the propriety of any course of conduct or act of any person or entity which may constitute the unauthorized practice of law may make a request in writing, or in emergencies, by telephone, to the Chair of the Unauthorized Practice Committee, or such other members of the Unauthorized

Practice Committee as are designated by the Chair, for an advisory opinion thereon. Local bar associations may also request advisory opinions. The Committee member to whom the request is directed shall bring this matter to the attention of the Committee at its next meeting. The Committee may attempt to furnish the requesting attorney with a prompt telephonic answer and written informal letter opinion as to whether the conduct constitutes the unauthorized practice of law. A copy of such informal opinion shall be provided to the Director and the Chair of the Unauthorized Practice Committee. Any attorney licensed in Kentucky or admitted under SCR 3.030(2) who is in doubt as to the ethical propriety of any professional act contemplated by that attorney with respect to the unauthorized practice of law shall be referred to the Ethics Committee district member for an informal opinion as set forth in (2) and (3). Communications about such an inquiry between the requesting attorney and the unauthorized practice committee member, and between the committee members of the two committees, shall be confidential.

(10) Ethics Committee and Unauthorized Practice Committee members shall be immune from suit for advice given in the performance of duties under this Rule. Ethics Committee and Unauthorized Practice Committee members shall be immune from process and shall not otherwise be compelled to testify or give an opinion in connection with any advice given in the performance of duties under this rule.

XXVII. SCR 3.640 New Lawyer Program requirement

Subsections (a), (b) and (c) to section (7) of SCR 3.640 shall read:

(7) A member required to complete the New Lawyer Program pursuant to paragraph (1) of this Rule may, upon application to and approval by the Commission, be exempted from the requirement under the following circumstances:

(a) The member is admitted to practice in another jurisdiction for a minimum of 5 years, and will certify such prior admission to the Commission;

(b) The member has attended a mandatory new lawyer training program of at least 12 credits, including 2 ethics credits, offered by the state bar association of another jurisdiction and approved by the Director for CLE; or

(c) The member is an active member of the United States armed forces, who has completed a mandatory new lawyer training of at least 12 credits, including 2 ethics credits, offered by the United States armed forces branch in which he/she is an active member, and approved by the Director for CLE.

XXVIII. SCR 3.660 Procedure for accreditation of continuing legal education activities and obligations of sponsors

Section (2) of SCR 3.660 shall read:

(2) Application for accreditation of continuing legal education activities shall be made by members, former members or activity sponsors using forms provided by the Commission or using uniform applications adopted by the Commission. Applications must provide all information required by the form in order to be reviewed. All applications shall be accompanied by an application fee, as determined by the Commission.

XXIX. SCR 3.665 Exemptions and removal of exemptions

Subsection (e) to section (1) and subsection (a)(ii), (iii), (iv) and (v) to section (2) of SCR 3.665 shall read:

(1) For each educational year, the following members of the Association shall be exempt from the requirements of SCR 3.645:

(a) In recognition of their positions, which prohibit the practice of law and have significant continuing education requirements by statute or rule of court as a result of the positions they hold, members who, during any portion of that educational year, are serving as:

(i) Justices, Judges, or Magistrates of the Commonwealth or Court of the United States; or

(ii) full-time administrative law judges for an agency of the United States or Commonwealth of Kentucky executive branch.

(b) Justices and Judges of the Commonwealth leaving the bench will be allowed to use accumulated Continuing Judicial Education credits toward the required CLE minimum, up to 12 credits, including 2 ethics, for the first year they are subject to the CLE requirement after leaving the bench.

(c) New lawyers who have been admitted less than 1 full educational year as of the June 30th deadline. Such members shall be subject to the New Lawyer Program requirement, as set forth in SCR 3.640.

(d) Members who are at least 75 years of age or at least 50 year members, including members who will become 75 years of age and those who become 50 year members within the educational year.

(e) Members who have been transferred to disabled inactive status pursuant to SCR 3.030.

(2) Upon application to the Commission, the following members may be exempted from the requirements of SCR 3.645:

(a) Non-practice exemption: Members who do not practice law, as defined in SCR 3.020, within the Commonwealth and agree to refrain from such practice until the Commission approves an application for removal of the exemption.

(i) Non-practice exemptions shall not be effective retroactively unless the applicant certifies that he or she has not practiced law, as defined in SCR 3.020, within the Commonwealth, for all time periods covered by such exemption.

(ii) Practice of law as defined in SCR 3.020, within the Commonwealth, during the effective period of this exemption pursuant to SCR 3.665(2)(a) shall constitute the unauthorized practice of law. Information known by the Commission regarding the practice of law during any period for which a member has certified non-practice status pursuant to SCR 3.665(2)(a) is not confidential as provided by SCR 3.695 and shall be provided along with the member's continuing legal education transcript by the Director for CLE to the Office of Bar Counsel and the Inquiry Commission in writing.

(iii) Any member who has been classified as Senior Retired Inactive status pursuant to SCR 3.030(4), and so holds a non-practice exemption from the mandatory minimum annual CLE requirement as set forth in this Rule, 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.

(iv) A member seeking removal of a non-practice exemption shall be required to file a written application with the Commission, addressed to the Director for CLE, for the removal of said exemption. Required as an attachment to the application for removal of said exemption shall be certification of completion of sufficient continuing legal education credits to meet the minimum annual continuing legal education requirement for each educational year during which he or she was exempt, excluding the current educational year. In no case shall a member be required to certify completion of more than 12 credits, including applicable ethics credits, as a condition of removal of the exemption. Timely certification shall include only continuing legal education credits earned during the current educational year and 2 prior educational years. This Rule in no way affects the member's responsibility to complete the current year minimum annual education requirement by June 30th. The current year minimum educational requirement must be completed as set forth at SCR 3.645. The member shall be notified in writing, via certified mail, of the commission's action on the application for the removal of the exemption.

(v) Application for removal of an exemption granted pursuant to SCR 3.665(2)(a) may not be made within 30 days of the granting of the exemption.

(b) Hardship exemption: Members who practice law within the Commonwealth, but demonstrate that meeting the requirements of SCR 3.645 would work an undue hardship by reason of disability, sickness, or other clearly mitigating circumstances.

(c) Military exemption: Any member who, for any portion of an educational year, was on active duty in the United States armed forces or whose spouse was on active duty in the United States armed forces for any portion of an educational year.

XXX. SCR 3.670 Extension of time requirements

Section (1), subsections (a), (b), (c)(i), (ii), (iii), (iv), (d)(i), (ii), (iii) and (iv) to section (2) of SCR 3.670 shall read:

(1) The time requirements associated with completion of continuing legal education and certification thereof, as set forth in SCR 3.645(1), may be extended by the Commission in case of hardship or other good cause clearly warranting relief. Requests for time extensions for completion of activities or certification thereof shall be made to the Commission in writing. All requests for time extension must be received by the Commission no later than the September 15 following the end of the educational year for which the time extension is sought. Requests must set forth all circumstances upon which the request is based, including supporting documentation. Applications for time extensions for completion of the New Lawyer Program may be submitted pursuant to SCR 3.640(8).

(2) A member who fails to complete the requirements of SCR 3.645 for any educational year, and who cannot show hardship or other good cause clearly warranting relief, may submit an application for a non-hardship extension of time in which to earn the annual minimum requirement. The application, which shall be made on KBA forms or by such other appropriate method approved by the Commission, must meet the following requirements:

(a) Applications will not be deemed complete but will be accepted prior to earning and reporting the credits required to cure the deficiency if the application contains a detailed plan for completing the annual requirement. The detailed plan must contain specific information regarding the program(s) that will be taken, including the date, delivery format, location, and sponsor of the program.

(b) In any event, all required credits must be completed and reported, and the application must be received by the Director for CLE pursuant to the fee and filing schedule set forth in section (c) below.

(c) Fee and filing schedule:

(i) For complete applications received by August 15 following the end of the educational year for which the extension is sought, the application fee is \$250.00.

(ii) For complete applications received by September 15 following the end of the educational year for which the extension is sought, the application fee is \$350.00.

(iii) For complete applications received by October 15 following the end of the educational year for which the extension is sought, the application fee is \$500.

(iv) No applications for non-hardship time extensions will be accepted after October 15 following the end of the educational year for which the extension is sought.

XXXI. SCR 3.675 Non-compliance: procedure and sanctions

Sections (4) and (6) of SCR 3.675 shall read:

(4) Unless good cause is shown by the return date of the notice, or within such additional time as may be allowed by the Board, the lawyer will be stricken from the membership roster as an active member of the KBA and will be suspended from the practice of law or will be otherwise sanctioned as deemed appropriate by the Board. A copy of the suspension notice shall be delivered by the Director to the member, the Clerk of the Kentucky Supreme Court, the Director of Membership, and to the Circuit Clerk of the district wherein the member resides for recording and indexing.

(6) A member may appeal to the Supreme Court of Kentucky from such suspension within 30 days of the date the suspension notice is recorded in the membership records. Such appeal shall include an affidavit showing good cause why the suspension should be revoked.

XXXII. SCR 3.685 Continuing legal education requirements for restoration or reinstatement to membership: procedures

Sections (1) and (3) of SCR 3.685 shall read:

(1) Every former member or member transferred to disability inactive status pursuant to SCR 3.030, applying for or otherwise seeking restoration or reinstatement to membership pursuant to Rules 3.500 or 3.510, shall be required to have completed the minimum annual continuing legal education requirement for each year during which he or she was not a member in good standing, including any year prior to disbarment, suspension or withdrawal under threat of disbarment or suspension, during which the minimum annual continuing legal

education requirement was not fulfilled. Completion of such credits shall be certified to the Commission as a condition precedent to reinstatement or restoration. In no case shall a member be required to attend more than 60 continuing legal education credits, including applicable ethics credits, as a condition precedent of restoration or reinstatement to membership.

(3) The requirements for completion of continuing legal education as a condition to restoration or reinstatement as set forth above may only be satisfied with credits earned in the current educational year during which the application is submitted and the preceding 5 educational years. Credits so earned shall be applicable to requirements imposed by the Commission upon application or other actions undertaken in pursuit of restoration or reinstatement.

XXXIII. SCR 3.810 Legal fee arbitration

Subsection (D) to section (2) of SCR 3.810 shall read:

(2) Definitions.

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

XXXIV. SCR 3.820(11)(b)(1) Clients' Security Fund

Subsection (b)(1) to section (11) of SCR 3.820 shall read:

(11) Procedures and Responsibilities for Claimants

(a) The Trustees shall prepare and approve a form for claiming reimbursement.

(b) The form shall include at least the following information provided by the claimant under penalty of perjury:

(1) the name and address of claimant, home and business telephone, occupation and employer;

XXXV. SCR 7.010 Terms of office

SCR 7.010 shall read:

The terms of office of bar representatives on the judicial nominating

commissions described in section 118 of the Constitution shall be deemed to have commenced on January 1, 1976. The initial elections in 1976 shall be special elections for the purpose of filling the unexpired terms. Regular elections shall be held on the first Tuesday following the first Monday in November every four years.

XXXVI. SCR 7.030 Nomination and election--regular elections of bar representatives to judicial nominating commissions

Sections (6), (7), (8), (9), (10), (11), (12), (13) and (14) of SCR 7.030 shall read:

(6) Ballots shall be prepared by the director. The various commissions shall be on separate ballots but may be included in one mailing. The ballot for each commission shall include the names of the candidates, listed in alphabetical order, and the addresses at which they reside. There shall be printed on each ballot in boldface type the words "This ballot must be received by the director on or before the first Tuesday following the first Monday in November" and the words, "You may not vote for more than two or your ballot will not be counted".

(7) On or before October 10 of the year in which the election is to be held the ballots shall be mailed, or made available on-line, to the following members: A ballot for the commission for the Supreme Court and the Court of Appeals shall be sent to each member residing in the Commonwealth of Kentucky; a ballot for the commission for each judicial circuit shall be sent to each member residing in the circuit.

(8) All ballots must be received by the director on or before the first Tuesday following the first Monday in November. On or before the following December 1 a canvassing board consisting of five (5) members appointed by the president shall meet in the office of the director and tabulate the votes. Each candidate or a representative designated by him in writing may be present at the meeting of the canvassing board.

(9) The two (2) candidates for each commission receiving the highest number of votes shall be elected. If two (2) or more candidates are found to have received an equal number of votes, the election shall be fairly determined by lot under the supervision of and in the presence of the canvassing board.

(10) The canvassing board shall immediately make and forward to the Chief Justice and the director a written certification of the election. The director shall promptly notify each candidate of the results of the election and shall publish the results in the next official association publication.

(11) On or before December 10 following the election any defeated candidate may contest the election of his successful opponent or opponents. Such contest shall be by written petition to the Supreme Court stating the

grounds of contest and certifying that a copy has been served on the adversary party or parties. The matter shall be summarily heard and determined in such manner, and relief granted or denied upon such grounds, as the court shall deem fair and equitable.

(12) As soon as practicable after the election the director shall certify to the Supreme Court for its approval an itemization of all costs incurred in the election of members to the commissions. Upon its approval of such costs the court shall order payment to the association out of the state treasury.

(13) Within sixty (60) days after the election the director shall transmit all petitions, ballots and other applicable records to the administrative director of the courts.

Credits

All sitting. All concur.

ENTERED: November 15, 2017.


CHIEF JUSTICE