

Supreme Court of Kentucky

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

2020-03

The following Rules of the Supreme Court (SCR) shall become effective March 1, 2020:

**AMENDMENTS TO THE
RULES OF THE SUPREME COURT OF KENTUCKY (SCR)**

I. SCR 2.009 Immunity

Section (1) and new section (2) of SCR 2.009 shall read:

(1) Any person who communicates information to a member of the Board, Committee or its affiliates concerning an applicant for admission to the Kentucky Bar shall be granted immunity from all civil liability which might result from said communications.

(2) The Office of Bar Admissions, the Board, the Committee, their officers, members, employees, and agents, are immune from any and all civil liability for conduct and communications occurring in the performance of their duties. This includes but is not limited to, character and fitness qualification and investigations; eligibility for admission, reinstatement, or restoration of licensure; preparation and/or administration of examinations; and licensing of persons seeking to be admitted or readmitted to the practice of law.

II. SCR 2.018 (1), (2), (3) and (4) Application process

Sections (1), (2), (3) and (4) of SCR 2.018 shall read:

(1) All applications for admission to the Kentucky Bar shall be submitted on forms approved by the Board and Committee. Application forms are accessible electronically on the Kentucky Office of Bar Admissions website, www.kyoba.org. All portions of the application, except for fee payment and submission of documents requiring the notarized signature of the applicant, shall be submitted electronically. Before the applicable deadline, required fees and required signed and notarized documents shall be sent to the Office of Bar Admissions by USPS mail or hand delivery.

(2) The applicant must give full and complete response(s) to all inquiries on the application as well as furnish any additional documents requested in relation to the application.

(3) Any applicant who submits an incomplete application by failing to upload the required credit report with said application will be notified of the error, and given an opportunity to upload the required documentation and pay therewith a non-refundable fee of \$20.00. No action will be taken by the Office of Bar Admissions upon an incomplete application.

(4) In signing the notarized signature page of the Application, the applicant attests to the accuracy of all information contained therein. All answers on the application form must be completely candid. Lack of candor may result in possible denial of character and fitness certification. Applicants must disclose in writing on the application any circumstances or occurrences that may reflect adversely upon their character or fitness.

III. SCR 3.030 (2), (3)(a) and (b), (4), (5), (6)(a) and (b) Membership, practice by nonmembers and classes of membership

Section (2), new subsections (a) and (b) of new section (3), new sections (4) and (5), new subsections (a) and (b) of new section (6) of 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 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.

(3)(a) If any attorney continues to appear on the basis of *pro hac vice* admission per subsection (2), the attorney shall pay a renewal fee every year until the case is concluded. The renewal fee shall be due on the one-year anniversary of the attorney's original *pro hac vice* admission. Any subsequent renewal fees shall be due in subsequent years on the same calendar date. The renewal fee payment shall be equal to the annual dues paid by KBA members who have been admitted to practice for five years or more.

(b) Failure to pay the renewal fee within thirty (30) days of the due date will result in the attorney being suspended from appearing in any case in which he/she has been admitted *pro hac vice*. Upon notification of the failure of payment, members of the KBA serving as co-counsel shall immediately notify the Court in which the case is pending.

(4) The association, by its bylaws, may create honorary memberships.

(5) 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.

(6)(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.

IV. SCR 3.035 (1)(b) and (3) Membership registration requirements and service

Subsection (b) of section (1) and section (3) of SCR 3.035 shall read:

(1)(b) Maintain with the Director one official email address and shall upon change of that address notify the Director within ten (10) days of the new official email address, except however, that "Senior Retired inactive" members, "Disabled Inactive" members and those "Honorary" members who no longer actively practice law or maintain an office shall not be required to maintain an official email address. An official email address shall be unique to the attorney and not be used by another KBA member;

(3) The Association may reject any communication to the Association which fails to comply with paragraph (1)(c) of this Rule 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.

V. SCR 3.130(1.5)(f) Fees

Section (f) 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 fee, its application to the scope of the representation and the time frame in which the agreement will exist.

VI. SCR 3.130(4.5) (1)(b), (3) and new section (6) Solicitation of clients

Subsection (b) of section (1), section (3) and new section (6) of SCR 3.130(4.5) shall read:

(1)(b) the person contacted has an immediate family relationship, or prior attorney-client relationship with the lawyer; or

(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, or in the subject line if sent as an email, 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).

(6) 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.

VII. SCR 3.130(5.7) (a)(4), (5), (6) and (7) and Supreme Court Commentary (4) Activities of suspended lawyer

New subsections (4), (5) (6) and (7) of new section (a) and section (4) in Supreme Court Commentary of SCR 3.130(5.7) shall read:

(a)(4) knowingly appear as a representative, spokesperson, or salesperson-in any visual, audible, print, or electronic media of any kind for any law firm or legal-related entity providing or proposing to provide legal service to the public or a specific subset of the public at large.

(5) negotiate or transact any matter for or on behalf of another person with third parties;

(6) receive, disburse, or otherwise handle a client's funds; or

- (7) engage in activities that constitute the practice of law.

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(4) Examples of the types of work a suspended lawyer may perform 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) communicating 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(7.03) (2) Advisory opinions

Section (2) of SCR 3.130(7.03) shall read:

(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. Websites 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 digital video disc (DVD), flash drive, or compact disc (CD), plus 3 copies of a typed transcript of the advertisement.

IX. SCR 3.130(7.20) (2)(b) Advertising

Subsection (b) of section (2) of SCR 3.130(7.20) shall read:

(2)(b) Pay the usual charges of a legal service plan or a not-for-profit lawyer referral service;

X. SCR 3.130(8.3) (f) and (g) Reporting professional misconduct

New section (f) and new section (g) of SCR 3.130(8.3) shall read:

(f) As provided in SCR 3.320, a lawyer prosecuting any member of the

Association who has been arrested for or who has been charged by way of indictment, information, or complaint with a felony or Class A misdemeanor shall immediately notify Bar Counsel of such event.

(g) As provided in SCR 3.166(2), a lawyer prosecuting a case against any member of the Association to a plea of guilty, conviction by judge or jury or entry of judgment, shall immediately notify Bar Counsel of such event.

XI. SCR 3.160 (1), (2) (4) and (5) Initiation of disciplinary cases

Sections (1) and (2), new sections (4) and (5) 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 file a verified response 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.

(2) Notwithstanding the provisions of paragraph (1), when it comes to the attention of the Inquiry Commission from any source that an attorney may have engaged in unprofessional conduct, the Inquiry Commission, or a three-person panel thereof, may initiate and conduct an investigation. If it believes from its investigation that there is sufficient evidence to justify its filing a complaint against the attorney it may file such a complaint or it may issue a warning letter. The attorney who receives the warning letter may, within 30 days from the date of the letter, respond to the letter and request it be reconsidered by the Inquiry Commission.

(4) Once a complaint has been filed, it cannot be withdrawn and shall be processed and reviewed pursuant to this rule. A complainant may file an affidavit of disavowal if they realize a mistake was made or the filing of the complaint was in error.

(5) Neither the Association, the Board, the Director, the Inquiry Commission, the Trial Commission, the Office of Bar Counsel, nor their officers, employees, agents, delegates or members shall be liable, to any person or entity initiating a complaint or investigation, or to any member of the bar or any other person or entity being charged or investigated by, or at the direction of, the Inquiry Commission, for any damages incident to such investigation or any complaint, charge, prosecution, proceeding or trial.

XII. SCR 3.161 Processing disciplinary cases

New SCR 3.161 shall read:

(1) Upon the expiration of sixty (60) days after service upon Respondent by

certified mail or other means, or receipt of a response to a complaint, whichever is later, the Office of Bar Counsel shall refer the matter, together with such investigative evidence as may have been obtained, to the Inquiry Commission.

(2) The Inquiry Commission may dismiss the Complaint; issue a Private Admonition, with or without conditions as set forth in SCR 3.162(1); issue a warning letter, with or without conditions, as set forth in SCR 3.162(2); or issue a Charge,

(3) If the Inquiry Commission dismisses a complaint, no reason must be given, and there shall be no appeal of the dismissal.

(4) The Inquiry Commission may direct that the complaint be returned to Bar Counsel for further investigation.

XIII. [SCR 3.170 Processing disciplinary cases]

SCR 3.170 is deleted.

XIV. SCR 3.180 (3) Investigations and trials to be prompt; subpoena power

Section (3) of SCR 3.180 shall read:

(3) Upon application of Bar Counsel to the Inquiry Commission and after a hearing of which Respondent is given at least five (5) days' notice, for good cause shown the Inquiry Commission may authorize the Director or the Disciplinary Clerk to issue a subpoena to a Respondent, or any other person or legal entity, to produce to Bar Counsel any evidence deemed by the Inquiry Commission to be material to the investigation of a complaint or investigative file opened pursuant to SCR 3.160(2), and to testify regarding such production. Such an application may be made in connection with complaints against more than one Respondent if the complaints are based on the same or a related set of facts. The person or entity so subpoenaed will not divulge, except to his/her own attorney, that such a subpoena has been served nor what evidence is sought or obtained. The Respondent may be present at the time the evidence or material is examined or obtained by Bar Counsel and will be furnished copies of all documents obtained, unless obtained from the Respondent.

XV. SCR 3.162 Informal admonition procedure

New SCR 3.162 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 30 days from the date of the filing of the admonition with the Disciplinary Clerk, reject such admonition and request that a charge be issued and filed as is provided by Rule 3.163; 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, 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 or conditional dismissal 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.

XVI. SCR 3.163 Charges; form; by whom and where filed

New SCR 3.163 shall read:

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

XVII. SCR 3.164 Notice of filing charges; time to answer

New SCR 3.164 shall read:

Upon the filing of a charge, the Disciplinary Clerk shall furnish the Respondent with a copy, by certified mail return receipt requested to the Respondent's bar roster address, or by service on the Director as set forth in SCR 3.035, and notify the Respondent that within thirty (30) days after receipt of the notice, he/she must file a verified answer and three (3) copies with the Disciplinary Clerk for transmittal to the Inquiry Commission. The Inquiry Commission may rule on motions to file late answers for good cause shown as set forth in CR 6.02.

XVIII. [SCR 3.185 Informal admonition procedure]

SCR 3.185 is deleted.

XIX. [SCR 3.190 Charges; form; by whom and where filed]

SCR 3.190 is deleted.

XX. [SCR 3.200 Notice of filing charges; time to answer]

SCR 3.200 is deleted.

XXI. SCR 3.210 (1) Processing cases of default, admissions of violations or answers raising only issues of law

Section (1) of SCR 3.210 shall read:

(1) If no answer is filed after a Respondent is notified, the Inquiry Commission shall order the record, together with such investigative evidence as may have been obtained, to be submitted to the Board. If there is more than one file, the Inquiry Commission may at the request of Bar Counsel order the files be consolidated.

XXII. SCR 3.290 (1) Filing and processing of pleadings and other papers

Section (1) of SCR 3.290 shall read:

(1) Promptly after a charge is filed all further pleadings, notices, motions, orders, and briefs shall be sent to the Disciplinary Clerk. The Disciplinary Clerk shall file the original and forward one copy each: to the Inquiry Commission, through the Office of Bar Counsel, or to the Trial Commissioner, if after appointment, to Respondent or Respondent's counsel of record and to the Office of Bar Counsel. However, a motion to reconsider, dismiss, or amend a charge shall be sent only to the Inquiry Commission and to counsel of record.

XXIII. SCR 3.330 (2) Order of proceedings and burden of proof

Section (2) of SCR 3.330 shall read:

(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, except those issued for a hearing, shall be served on each party and 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.

XXIV. SCR 3.370 (2) Procedure before the Board and the court

Section (2) of SCR 3.370 shall read:

(2) Upon motion by the parties or upon the Board's own motion, oral arguments may be scheduled before the Board. The oral argument proceedings shall be electronically recorded and be considered a part of the record.

XXV. SCR 3.530 (6) Ethics Committee and Unauthorized Practice Committee - advisory opinions – informal and formal

Section (6) of SCR 3.530 shall read:

(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 in Kentucky 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 in Kentucky 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.

XXVI. SCR 3.600 (1), (2), (8) and (11) Continuing legal education definitions

Sections (1), (2), (8) and (11) of SCR 3.600 shall read:

(1) "Approved activity" is a continuing legal education activity that meets the requirements set forth in these Rules and has been approved for credit by the CLE Commission.

(2) "Member Identification Number" is the 5 digit number assigned to each member of the Association upon admission.

(8) "Ethics, professional responsibility and professionalism" is the category by which "ethics credits" shall be earned and includes programs, or designated portions thereof, with instruction focusing on the Rules of Professional Conduct independently or as they relate to the practice of law and/or law firm management.

(11) "Non-compliance" means not meeting continuing legal education requirements set forth in SCR 3.640 and SCR 3.645 and includes both lack of completion and lack of certification of activities prior to established time requirements.

XXVII. SCR 3.605 (1), (2)(a), (b), (c), (d), (e), (f), (3)(a), (b), (c), (d), (e), (f), (g), (h), (i), (4) and (5) The Commission

Section (1), new subsections (a), (b), (c), (d), (e) and (f) of new section (2), new subsections (a), (b), (c), (d), (e), (f), (g), (h) and (i) of new section (3) and new sections (4) and (5) of SCR 3.605 shall read:

(1) The Continuing Legal Education Commission shall consist of 7 attorneys, 1 of whom shall be from each appellate district of the Commonwealth as presently existing or hereafter created. Under the policy direction of the Court and the Board, the Commission shall be responsible for the administration and regulation of all continuing legal education programs and activities for the members of the Association.

(2) Selection and tenure of the Commission; filling vacancies on the Commission

(a) The Court shall appoint all members of the Commission from a list consisting of 3 times the number to be appointed submitted to the Court by the Board. Of the members first appointed, 3 shall be appointed for 1 year, 2 for 2 years and 2 for 3 years. Thereafter, appointments shall be made for a 3-year term.

(b) Members may be reappointed but no member shall serve more than 2 successive 3 year terms. Each member shall serve until a successor is appointed and qualified.

(c) Vacancies shall be filled for the vacant term in the same manner as initial appointments are made by the Court.

(d) A chair shall be designated by the Court for such time as the Court may direct.

(e) Each Commission member must be licensed to practice law in the courts of this Commonwealth and have been a resident in the appellate district from which nominated for 2 years immediately preceding the appointment.

(f) Members of the Commission shall serve without compensation but shall be paid their reasonable and necessary expenses incurred in the performance of their duties. The Association shall have the responsibility of funding the Commission and any necessary staff, who shall be employees of the Association.

(3) Commission Duties: The Commission shall be responsible for the administration of these continuing legal education rules, subject to policy approval and other direction by the Board and the Court. In discharging this responsibility, the Commission shall:

(a) Encourage and promote the offering of high-quality continuing legal education.

(b) Conduct, sponsor, or otherwise provide high-quality continuing legal education, specifically including, but not limited to, one seminar offering at least 12 credits in each

Supreme Court District each year.

- (c) Encourage and promote quality legal writing.
 - (d) Promptly approve or deny all applications provided for by these rules.
 - (e) Establish standards, procedures, and forms to evaluate applications made pursuant to these rules.
 - (f) Promulgate rules and regulations for the administration of the mandatory continuing legal education program subject to approval of the Board and the Court
 - (g) Report annually, on or before September 15, and as otherwise required, to the Board and the Court on the status of continuing legal education in the Commonwealth. Such report shall include recommended changes to these rules and regulations and their implementation.
 - (h) Submit to the Board annually, on or before November 1, a recommended budget for the succeeding year with any recommended changes in annual membership dues to cover costs of administering these rules.
 - (i) Perform such other acts and duties, not inconsistent with these rules, as are necessary and proper to improve the continuing legal education programs within the Commonwealth.
- (4) A quorum consisting of at least 4 Commission members is required for conducting the business of the Commission.
- (5) The Commission shall be provided with a Director for Continuing Legal Education and sufficient administrative and secretarial assistants as are from time to time required. Selection and qualifications of the Director for Continuing Legal Education shall be determined by the Board except that the person selected shall be an attorney licensed to practice law in the courts of this Commonwealth. The Director for Continuing Legal Education shall be responsible to the Commission for the proper administration of the rules applying to the Commission and any regulations issued by the Commission.

XXVIII. [SCR 3.610 Selection and tenure of the commission; filling vacancies on the Commission]

SCR 3.610 is deleted.

XXIX. [SCR 3.615 Commission member qualifications]

SCR 3.615 is deleted.

XXX. [SCR 3.620 Commission quorum]

SCR 3.620 is deleted.

XXXI. [SCR 3.625 Commission staff]

SCR 3.625 is deleted.

XXXII. [SCR 3.630 Commission duties]

SCR 3.630 is deleted.

XXXIII. SCR 3.635 (1) and (3) Kentucky Law Update seminars in each appellate district

Sections (1) and (3) of SCR 3.635 shall read:

(1) Each educational year, the Commission shall conduct a continuing legal education seminar of at least 12 credits in each Supreme Court District. Subjects taught at each seminar shall include the latest Kentucky Supreme Court and Court of Appeals decisions, procedural rule changes, Federal Court decisions, legal ethics, professional responsibility and professionalism, Kentucky statutory changes and other subjects relating to improvements in basic legal skills. Each program shall include a minimum of 2 credits for subjects specifically addressing legal ethics, professional responsibility and professionalism.

(3) Members may attend Kentucky Law Update seminars in any location. Duplicate credits shall not be earned by attending the same program at different locations. However, if different tracks of programs are attended at different locations, additional credit may be approved by the Commission.

XXXIV. SCR 3.640 (2), (3), (4), (5), (6)(a), (b) and (c), (7)(a) and (b), (8)(c), (d), (f), (g) and (h) New Lawyer Program requirement

Section (2), new sections (3), (4), (5), new subsections (a), (b) and (c) of new section (6), new subsections (a) and (b) of new section (7), new subsections (a), (b), (c), (d), (e), and (f) of new section (8) of SCR 3.640 shall read:

(2) At least twice each educational year, the Commission shall provide or cause to be provided a New Lawyer Program of at least 12 credits. The Commission may in its discretion, accredit a New Lawyer Program proposed by other CLE providers.

(3) The New Lawyer Program shall include at least 2 hours of ethics, a course on law practice management and other subjects deemed appropriate by the Commission.

(4) The Commission or other provider accredited under SCR 3.640(2) may charge a reasonable registration fee approved by the Court for the New Lawyer Program.

(5) Each individual attending the New Lawyer Program shall certify to the Director for CLE the completion of the Program on the attendance certificate provided for that purpose. Such certification shall be submitted to the Director for CLE upon completion of the program. Continuing legal education credits awarded for the program shall be applied to the educational year in which the program is attended, and if applied to a year in which the individual so attending is otherwise exempt from CLE requirements under SCR 3.665(1)(c), then said credits shall carry forward in accordance with SCR 3.645(3).

(6) 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.

(7) The time for completion of the New Lawyer Program requirement may be extended upon written application to and approval by the Commission. The written application must be received within 30 days of the original deadline for the requirement. All applications must be signed by the member. The Commission may approve extensions for completing the Program under the following circumstances:

(a) Where the member demonstrates hardship or other good cause clearly warranting relief. Requests for relief under this subsection must set forth all circumstances upon which the request is based, including supporting documentation. In these circumstances, the member shall complete the New Lawyer Program requirement as soon as reasonably practicable as determined by the Commission; or

(b) Where the member fails to demonstrate hardship or other good cause clearly warranting relief. When requesting relief under this subsection, the member must pay a fee of \$250.00 and complete the New Lawyer Program requirement at the next regularly scheduled offering of the program.

(8) Non-compliance with the New Lawyer Program requirement: Failure to complete and certify attendance for the New Lawyer Program pursuant to this Rule shall be grounds for suspension from the practice of law in the Commonwealth or other sanctions as deemed appropriate by the Board.

(a) Ninety days prior to the end of the 12-month period all individuals not certifying completion of the New Lawyer Program pursuant to this Rule shall be notified in writing that the program must be completed before the end of the 12 month period, and the notice shall state the date by which the New Lawyer Program must be completed.

(b) Names of all individuals not submitting certification of completion of the New Lawyer Program within the 12-month period or not being granted an extension of time, pursuant to paragraph (7) of this Rule, shall be submitted to the Board by the Director for CLE, certifying failure to comply with the New Lawyer Program requirement.

(c) The Board shall cause to be sent to the member a notice of delinquency by certified mail, return receipt requested, at the member's bar roster address. Such notice shall require the attorney to show cause within 30 days from the date of the mailing why the attorney's license should not be suspended for failure to meet the New Lawyer Program requirement set forth in this Rule. Such response shall be in writing, sent to the attention of the Director of CLE, and shall be accompanied by costs in the amount of \$50.00 payable to the Kentucky Bar Association.

(d) 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 otherwise sanctioned as deemed appropriate by the Board. A copy of the suspension notice shall be delivered to the member, the Clerk of the Supreme Court of Kentucky, and in the case of suspension, to the Circuit Clerk of the district wherein the member resides for recording and indexing as required by SCR 3.480.

(e) A member suspended under this Rule may apply for restoration to membership under the provisions of SCR 3.500.

(f) A member may appeal to the Supreme Court of Kentucky from such suspension order within 30 days of the effective date of the suspension. Such appeal shall include an affidavit showing good cause why the suspension should be set aside.

XXXV. SCR 3.650 (2)(a), (b), (e), (f), (g), (h), (i), (j), (k) and (l), (4)(c) and (e) Qualifying continuing legal education activity [and]standards

Subsections (a) and (b), new subsections (e), (f), (g), (h), (i) and (j) of section (2), subsections (c) and (e) of section(4) of SCR 3.650 shall read:

(2)(a) The activity is an organized program of learning which contributes directly to the legal competence of an attorney.

(b) The activity deals primarily with substantive legal issues directly related to the practice of law, or law practice management.

(e) The activity itself must be taught and conducted by an individual or group qualified by practical or academic experience.

(f) The activity, including the named advertised participants, must be conducted substantially as planned, subject to emergency alterations.

(g) Thorough, high-quality, readable, timely, useful and carefully prepared written materials must be made available to all participants at or before the time the activity is presented. A brief outline without citations or explanatory notations is not sufficient.

(h) At the conclusion of the activity, each participating attorney must be given the opportunity to complete an evaluation questionnaire addressing the quality of the particular activity.

(i) The activity may be presented live or by technological transmission as defined in SCR 3.600(12). Activities including audio components must have high-quality audio reproductions so that listeners may easily hear the content of the activity. Activities including video components must have high-quality video reproductions so that observers may easily view the content of the activity.

(j) In-house activities, as defined in SCR 3.600(9), may be approved if all standards set forth herein for accreditation are met, and at least half the instruction hours are provided by qualified persons having no continuing relationship or employment with the sponsoring firm, department or agency.

(4)(c) Bar review courses taken in preparation for bar examinations.

(e) Any activity completed prior to admission to practice in Kentucky except the New Lawyer Program.

XXXVI. SCR 3.655 (2)(c) Calculation and reporting of continuing legal education credits: formulas and limits

Subsection (c) of section (2) of SCR 2.655 shall read:

(2)(c) Members may be granted one credit for each 2 hours spent in preparation for teaching or participating as a panel member or seminar leader, researching, writing, and/or editing materials presented by someone else, in an approved activity, up to a maximum of 12 credits per educational year. No credit will be awarded for administrative functions.

XXXVII. SCR 3.665 (1), (2)(a)(ii), (iv), (v) and (b), (3) and (4) Exemptions and removal of exemptions

Section (1), subsections (ii), (iv) and (v) of subsection (a) of section (2), subsection (b) of section (2), sections (3) and (4) of SCR 3.665 shall read:

(1) For each educational year, the following members of the Association shall be exempt from the mandatory CLE requirement:

(2) Upon application to the Commission, the following members may be exempted from the mandatory CLE requirement:

(a)(ii) Practice of law as defined in SCR 3.020, within the Commonwealth, during the effective period of this exemption 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 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.

(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. Required as an attachment to the application shall be certification for each educational year during which he or she was exempt, either: (1) proof of completion of sufficient continuing legal education credits to meet the minimum annual continuing legal education requirement; or (2) proof that he or she was compliant with the mandatory CLE requirement of another jurisdiction. In no case shall a member be required to certify completion of more than 12 credits, including 2 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 member shall be notified in writing of the commission's action on the application for the removal of the exemption.

(v) Application for removal of a non-practice exemption 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 mandatory CLE requirement would work an undue hardship by reason of disability, sickness, or other clearly mitigating circumstances.

(3) Every member seeking an exemption from the mandatory continuing legal education requirement shall submit an application on forms provided by the Association or shall make other such written request providing information necessary for determination by the Commission of circumstances warranting exemption.

(4) Exemptions granted based on hardship or military service are considered temporary in nature unless specifically designated otherwise. In order to maintain an exemption based on a temporary hardship or military service, annual application is necessary. Failure to so certify will result in loss of the exempt status.

XXXVIII. SCR 3.670 (1) and (2)(a) Extension of time requirements

Section (1) and subsection (a) of section (2) of SCR 3.670 shall read:

(1) The time requirements associated with completion of continuing legal education and certification thereof may be extended by the Commission in case of hardship or other good cause clearly warranting relief. Requests for time extensions shall be made to the Commission in writing. All requests for hardship time extensions 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.

(2) A member who fails to complete the mandatory CLE requirements 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. 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 accredited program(s) that will be taken, including the date, delivery format, location, and sponsor of the program.

XXXIX. SCR 3.675 (2), (3) and (4) Non-compliance: procedure and sanctions

Sections (2), (3) and (4) of SCR 3.675 shall read:

(2) If, by the first day of November immediately following, a member has neither certified completion by the June 30th immediately prior, of the minimum continuing legal education requirements nor applied for and satisfied the conditions of an extension under SCR 3.670 or exemption under SCR 3.665, the Commission shall certify the name of that member to the Board.

(3) The Board shall cause to be sent to the member a notice of delinquency by certified mail, return receipt requested, at the member's bar roster address. Such notice shall require the attorney to show cause within 30 days from the date of the mailing why the attorney's license should not be suspended for failure to meet the mandatory minimum CLE requirements. Such response shall be in writing, sent to the attention of the Director for CLE, and shall be accompanied by costs in the amount of \$50.00 payable to the Kentucky Bar Association.

(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 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.

XL. SCR 3.685 (1)(a)(i) and (ii), (2), (3), (4) and (5) Continuing legal education requirements for restoration or reinstatement to membership: procedures

New subsections (i) and (ii) of new subsection (a) of section (1), sections (2), (3), (4) and (5) of SCR 3.685 shall read:

(1) Except for those who voluntarily withdrew pursuant to SCR 3.480(1), every former member or member transferred to disability inactive status pursuant to SCR 3.030, 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, including the educational year during which the application is filed. 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 complete more than 60 continuing legal education credits, including 10 ethics credits, as a condition precedent of restoration or reinstatement to membership.

(a) Former members who voluntarily withdrew from membership pursuant to SCR 3.480(1) shall be required to show either:

(i) compliance with the mandatory continuing legal education requirement of another jurisdiction for each year he or she was not a member in good standing, including the current educational year; or

(ii) that he or she has completed the minimum annual continuing legal education requirement for each year he or she was not a member in good standing, including the current educational year. In no case shall a former member who voluntarily withdrew be required to complete more than 24 credits, including 4 ethics credits, as a condition precedent to restoration to membership.

(2) The application or affidavit of compliance submitted for restoration or reinstatement shall include certification from the Director for CLE of completion of continuing legal education activities as required by these Rules, or otherwise specified by the Commission or Court. Applicants or affiants shall request said certification from the Director for CLE in writing and shall submit with said written request a fee of \$50.00 to cover the expense of the record search and certification. Applications or affidavits of compliance submitted for restoration or reinstatement which do not include the required

certification of continuing legal education compliance, including verification of fee payment for the certification, shall be considered incomplete and shall not be processed.

(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 educational year during which the application is submitted and the preceding 5 educational years.

(4) Approval of the application or provision of a certification for an affidavit of compliance shall satisfy the requirement of the applicant under SCR 3.645 for the educational year during which the application is filed.

(5) If a new educational year begins after approval of the application or certification, but prior to Supreme Court entry of an Order of Reinstatement or Restoration, or Registrar's certification of the member's name to the active roster of membership, the new year minimum continuing legal education requirement must be completed and the application updated before the reinstatement or restoration can proceed to the Board of Governors or to the Court, unless the maximum credits set forth above in this Rule were completed at the time of the initial application or certification.

XLI. SCR 3.690 (1) and (7) Continuing legal education award

Sections (1) and (7) of SCR 3.690 shall read:

(1) Any member who completes a minimum of 60 credit hours approved by the Commission within a period of 3 or fewer educational years, is eligible for a Continuing Legal Education Award.

(7) The Association may publish annually an announcement of the members who during the preceding educational year have earned the Continuing Legal Education Award. The announcement shall describe the basis of the award and shall set forth in alphabetical order the name of each recipient.

XLII. SCR 3.695 Commission records confidential

SCR 3.695 shall read:

The files and records of the Commission shall be deemed confidential and shall not be disclosed except in furtherance of the duties of the Commission, of the Board, upon request of the member affected, or as directed by the Supreme Court of Kentucky. This rule specifically excludes from confidentiality information provided by a member to the Commission as a part of a member's application for relief from the requirements of these rules.

XLIII. SCR 3.820 (5)(d) Clients' Security Fund

Subsection (d) of section (5) of SCR 3.820 shall read:

(5) Composition and Officers of the Board

(d)The Board shall select a chairperson and such other officers as they deem appropriate.

XLIV. SCR 3.830 (21)(A), (B), (C) and (D) Kentucky IOLTA Fund

New subsections (A), (B), (C) and (D) of new section (21) of SCR 3.830 shall read:

(21)(A) If a lawyer does not know the identity or the location of the owner of funds held in the lawyer's IOLTA account, or the lawyer discovers that the owner of the funds is deceased, the lawyer must make reasonable efforts to identify and locate the owner or the owner's heirs or personal representative. If, after making such efforts, the lawyer cannot determine the identity or the location of the owner, or the owner's heirs or personal representative, the lawyer shall either continue to hold the unclaimed funds in an IOLTA account, or remit the unclaimed funds to the Kentucky IOLTA Fund in accordance with written procedures published by the Kentucky IOLTA Fund and available through its website or upon request.

(B) A lawyer remitting unclaimed funds to the Kentucky IOLTA Fund shall keep a record of the remittance that includes the name and last known address of the owner of the funds, if the owner of the funds is known; the date of death of the deceased owner; the efforts made to identify and locate the owner of the funds or deceased owner's heirs, or personal representatives; the amount of funds remitted; the period of time during which the funds were held in the lawyer's or law firm's IOLTA account; and the date the funds were remitted.

(C) If, after remitting unclaimed funds to the Kentucky IOLTA Funds, the lawyer determines the identity and the location of the owner or the owner's heirs or personal representative, the lawyer shall request a refund for the benefit of the owner or the owner's estate in accordance with written procedures that the Kentucky IOLTA Fund shall publish and make available through its website or upon request.

(D) What constitutes reasonable efforts, as set out in paragraph (A), would depend on whether the lawyer knows the identity of the owner of certain funds held in the IOLTA account, or the lawyer knows the identity of the owner of the funds, but not the owner's location or the location of the deceased owner's heirs or personal representative. When the lawyer does not know the identity of the owner of the funds or the deceased owner's heirs or personal representative, reasonable efforts shall include an audit of the IOLTA account to determine how and when the funds lost their association to a particular owner or owners, and whether they constitute attorney's fees earned by the lawyer or expenses to be reimbursed to the lawyer or third person. When the lawyer knows the identity, but not the location of the owner of the funds, or the location of the owner's heirs or personal representative, reasonable efforts shall include attempted contact

using last known contact information, reviewing the file to identify and contact third parties who may know the location of the owner or the owner's heirs or personal representative, or conducting internet searches. After making reasonable, but unsuccessful efforts in identifying and locating the owner of the funds or the owner's heirs or personal representative, a lawyer's decision to continue to hold the funds in the IOLTA account, as opposed to remitting the funds to the Kentucky IOLTA fund, does not relieve the lawyer of the obligation to maintain records pursuant to paragraph (B), or to determine whether it is appropriate to maintain the funds in an IOLTA account.

All sitting. All concur, except Keller and Lambert, JJ., would not adopt SCR 3.130(8.3) (f) and (g).

ENTERED: January 13, 2020.


CHIEF JUSTICE