Supreme Court of Kentucky

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

99-1

The following rules' amendments shall become effective February 1, 2000.

AMENDMENTS TO THE RULES OF THE SUPREME COURT

1. SCR 2.000. Board of Bar Examiners.

Paragraphs (1), (2) and (3) of SCR 2.000 shall read:

(1) There is hereby created a Board of Bar Examiners known and designated as Kentucky Board of Bar Examiners, hereinafter referred to as "Board." The Board, together with the Committee created by SCR 2.040, shall constitute the Kentucky Office of Bar Admissions. The Board shall be composed of seven (7) attorneys appointed by the Supreme Court of Kentucky for terms of three years, the members to serve until the expiration of their terms and until their successors are appointed. The Supreme Court of Kentucky shall appoint the chair of the Board, and the Board shall select from its membership a secretary.
(2) Subject to the approval of the Supreme Court, the Board shall have the power to adopt and amend rules and regulations governing the manner in which it carries out its duties.
(3) The Board is charged with the responsibility of administering the Bar examination to qualified applicants for admission to the Bar of the Commonwealth.

2. SCR 2.005. Travel.

Paragraphs (1) and (2) of SCR 2.005 shall read:

(1) In the conduct of business for the Board and Committee, its members and employees shall be reimbursed for lodging, meals and travel expenses in accordance with the travel regulations of the Administrative Office of the Courts.

(2) Whenever it appears to the Board or Committee that the above limitations will result in unfair hardship because actual and necessary expenses exceed the limits fixed, the Board or Committee may allow additional reimbursements.

3. SCR 2.014(3). Application packets.

Paragraph (3) of SCR 2.014 shall read:

(3) Any application received that is incomplete shall be returned to the applicant and a fee of $20.00 shall be submitted along with the complete application prior to said application being acted upon. If an applicant fails to return the requested information within 30 days, the application will be held in abeyance and no further action will be taken and no fees shall be refundable. If the requested information is submitted after the 30 days, the Committee will determine whether or not the applicant is permitted to take the forthcoming examination.

4. SCR 2.016. Application for early registration as a law student.

Entire SCR Rule 2.016 is deleted.

5. SCR 2.020. Application for admission by examination.

SCR 2.020 shall read:

The Application for Admission by Examination shall be on a form approved by the Office of Bar Admission.

(1) An applicant must file a complete Application for Admission by Examination form accompanied by a fee of $625.00 (cashier's or certified check or money order) at the time of filing. The filing deadline is October 1 for the February Bar examination and February 1 for the July Bar examination.

(2) ATTORNEY APPLICANT: An attorney applicant who is admitted in another jurisdiction must file a complete Application for Admission By Examination form along with a fee of $675.00 (cashier's or certified check or money order). The filing deadline is October 1 for the February Bar examination and February 1 for the July Bar examination.

(3) Every person who intends to apply for admission to the Kentucky Bar by examination shall file with the Clerk of the Supreme Court, Frankfort, Kentucky, a verified application on a form provided by the Office of Bar Admission. The applicant shall provide such information as requested on the form. An application

must be complete at the time of filing including a properly executed Authorization & Release form.

(4) The Dean of each law school shall certify to the Committee as to the character and fitness of each applicant. Each applicant shall pay all additional investigation expenses that exceed the $200.00 fee required by the Committee in conducting the background investigation necessary for certification of eligibility. These costs are incurred when circumstances require a more intensive background investigation. The cost of any record, document or inquiry concerning an application or transcript of record as a result of a hearing shall be paid by the applicant. Any additional expenses incurred must be paid prior to the release of any examination results for the applicant.

(5) Any applicant whose application to the Bar of another state has been refused for any reason is ineligible to take the Bar examination in this state unless the refusal was based upon a failure to pass the Bar examination in that state.

(6) Any applicant who is a member of the Bar in another jurisdiction must produce a certificate of good standing with the application. The applicant must also produce a statement from the disciplinary board of that jurisdiction indicating whether any complaints have been filed against the applicant and their disposition. Any applicant who has a complaint(s) pending, is under disciplinary action, suspended, or who is subject to any other action that would prohibit the practice of law as a member of the Bar in another jurisdiction, is not eligible for admission in Kentucky. Any applicant who is disbarred in another jurisdiction is not eligible for admission in Kentucky.

(7) An applicant who wishes to withdraw from the Bar examination must notify the Office of Bar Admission, in writing, not later than five (5) days prior to the examination date or have a verified excuse, otherwise, the Bar examination fee shall be forfeited.

(8) No part of any fees or expenses as stated in the paragraphs above shall be refundable.

6. SCR 2.021. Late filing of application for admission by examination.

SCR 2.021 shall read:

(1) An applicant who has failed to timely file an Application for Admission By Examination form under SCR 2.020 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 $200 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 $400 along with the application fee.

(3) When an Application for Admission by Examination form is filed later than the prescribed deadlines of SCR 2.020, the Committee will determine whether or not the applicant is permitted to take the forthcoming examination.

(4) Under no circumstances will an application to sit for the Bar examination be accepted after the above stated extended late filing deadline.

7. SCR 2.022. Re-application for admission by examination.

SCR 2.022 shall read:

An applicant who withdraws 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 $75.00. The $175.00 examination fee is also required of applicants who failed the Bar examination. The re-application form must be filed by December 10 prior to the February examination and May 10 prior to the July examination.

8. SCR 2.025. Re-certification of character and fitness.

SCR 2.025 shall read:

Certification of character and fitness eligibility of the applicant shall be valid for a period of 3 years. An applicant whose certification of eligibility is granted 3 years or more from the date of the examination for which they are applying must apply for re-certification of character and fitness on a form provided by the Committee, along with a fee of $200.00.

9. SCR 2.040(1) and (5). Character and Fitness Committee - Nominations.

Paragraphs (1) and (5) of SCR 2.040 shall read:

(1) There is hereby created a Committee on Character and Fitness, hereinafter referred to as the Committee, to be composed of four attorneys, appointed by the Supreme Court for terms of three years, the members to serve until the expiration of their terms and until their successors are appointed. The Supreme Court of Kentucky shall appoint the Chair of the Committee.

(5) The Character and Fitness Committee shall submit to the Board of Bar Examiners the names and addresses of all applicants to take the examination who will be eligible upon approval from the standpoint of character and fitness and upon submission of the required recommendations of their law school deans. Said list shall be submitted no later than 30 days after the extended late deadline. At least ten days prior to each Bar examination the Character and Fitness Committee shall certify to the Secretary of the Board of Bar Examiners the names and addresses of all applicants who are qualified to take that Bar examination.

10. SCR 2.042. Conditional admission.

SCR 2.042 shall read:

(1) The Committee may, as a part of its certification process, require that an applicant enter into an agreement as a condition of their admission to the Bar. The conditions of admission as determined by the Character and Fitness Committee shall be set forth in a written agreement with specific terms and conditions. These terms and conditions shall be monitored by the Committee or its agents or designees.

(2) Upon failure to comply with the terms and conditions of the agreement, the Committee may:

(a) extend the term and impose additional condition(s).
(b) recommend to the Court revocation of license.

(3) All information relating to conditional admission of an applicant or an attorney shall remain confidential in accordance with SCR 2.120.

11. SCR 2.060. Committee's decision as to eligibility.

SCR 2.060 shall read:

The decision of the Character and Fitness Committee as to the eligibility of an applicant for admission to the Bar of this state shall be final unless, on motion by the applicant filed within 30 days after notice of an adverse decision has been mailed to applicant's last known address, the Supreme Court upon review of the record overrules such decision.

12. SCR 2.070(2) and (3). Legal education.

Paragraphs (2) and (3) of SCR 2.070 shall read:

(2) An attorney who received a legal education in the United States but is not eligible to sit for the examination by virtue of not having attended a law school approved by the American Bar Association or the Association of American Law Schools may nevertheless sit for the examination provided the attorney satisfies the following requirements:
(a) The attorney holds a J.D. Degree, which is not based on study by correspondence, 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 their 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
(b) The attorney has been actively and substantially engaged in lawful practice of law as his or her principal business or occupation for at least three of the last five years immediately preceding the filing of the application; and
(c) The attorney meets all other requirements contained in the Rules of the Supreme Court of Kentucky pertaining to Admission of Persons to Practice Law.
(3) An attorney who received a legal education in a foreign country and is not eligible to sit for the examination may nevertheless sit for the examination provided the attorney satisfies the following requirements:
(a) The foreign attorney's legal education 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 their 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.
(b) In evaluating the education received the Board of Bar Examiners shall consider, but not be limited to, such factors as the admission of the applicant to the Bar of another state or the District of Columbia, the similarity of the curriculum taken to that offered in law schools approved by the American Bar Association or by the Association of American Law Schools, that the school at which the applicant's legal education was received

has been examined and approved by other state bar associations examining the legal qualifications of foreign law school graduates, and the applicant's proficiency in written and spoken English.
(c) The applicant shall, in order to qualify to sit for the Bar examination, also submit a certified copy of the record or license of the court or agency which admitted the applicant to practice law in such country, and satisfy the requirement that the applicant has been actively and substantially engaged in the lawful practice of law as his or her principal business or occupation for at least three of the last five years immediately preceding the filing of the application, in addition to any other requirements authorized by these rules.

13. SCR 2.090(1),(2) and (5). Bar examinations.

Paragraphs (1),(2) and (5) of SCR 2.090 shall read:

(1) The Board of Bar Examiners shall examine such applicants as are certified to it as provided in Rule 2.040. The examination shall cover a period of two days and may cover the following subjects:
(a) Administrative Law and Administrative Procedure
(b) Conflict of Laws
(c) Contracts
(d) Constitutional Law
(e) Business Entities (corporations, partnerships and/or others)
(f) Criminal Law and Procedure
(g) Civil Procedure
(h) Domestic Relations
(i) Property (real and/or personal)
(j) Federal Taxation
(k) Torts
(l) Uniform Commercial Code (sales, secured transactions and/or negotiable instruments)
(m) Estates (wills and/or trusts)
(n) Evidence
(o) Such other subjects as the Board may select from among questions proposed by the National Conference of Bar Examiners.

Prior to or at the time of the examination, each applicant shall certify that he or she has successfully completed a course of study in law school in the subject of ethics, and that if admitted to practice, the applicant will adhere to the Code of Ethics prescribed by the Supreme Court. The changes made by this amendment shall be effective beginning with the examination immediately following the adoption of this amendment. The Character and Fitness Committee of the Kentucky Office of Bar Admissions may, in exceptional cases, waive the requirement that an applicant have successfully completed a course of study in law school in the subject of ethics.

(2) The Board may cover the subject matter in any manner that it sees fit, including or not including the multi-state essay examinations, multi-state performance examinations and/or multi-state Bar examinations.

(5) The Board of Bar Examiners at the beginning of the first session shall give each applicant a numbered envelope. The applicant shall write his/her name upon a slip of paper, seal the name in the envelope and return the envelope to the Secretary of the Board. All papers will then be signed by the applicant only with the number upon his/her envelope. When the applicant has completed answering the questions on any given subject, he/she shall deposit his/her written answers thereto with the Secretary of the Board.

14. SCR 2.100. Requirement of admission to practice law - Prerequisites.

SCR 2.100 shall read:

An applicant approved under Rule 2.095 to be granted admission to practice law in this state shall apply for and be granted a certificate of admission prior to engaging in the practice of law in this state. As prerequisites for the issuance of such admission through examination or without examination, an applicant approved under Rule 2.095 shall submit to the Clerk satisfactory evidence of payment of the current annual dues or fees of the Kentucky Bar Association authorized under SCR 3.040, shall be administered the constitutional oath of office either by a Justice of the Supreme Court or by the Clerk of the Supreme Court, and shall pay to the Clerk a final Board certification fee of fifty dollars ($50.00). Upon completion of the prerequisites, the Clerk shall deliver to the applicant a certificate of admission on a form approved by the Court, and the issuance of the certificate shall be duly recorded by the Clerk.

15. SCR 2.110(1) and (2). Admission without examination.

Paragraphs (1)and (2) 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

shall be considered active engagement in the practice of law.

(2) An attorney applying for admission under this Rule shall file with the Clerk of the Supreme Court, on the form provided for application for admission, such information as shall be requested thereon accompanied by a fee of twelve hundred dollars ($1,200), no part of which shall be refunded. The Clerk shall forward the application to the Character and Fitness Committee. An applicant shall file with the Character and Fitness Committee such other affidavits, certificates, documents and materials as shall be required to satisfy the Committee of the applicant's good moral character and fitness to be a member of the Bar of this state. With respect to character and fitness, the Character and Fitness Committee shall process such applications pursuant to Rule 2.040.

16. SCR 2.111(1) and (2). Limited certificate of admission to practice law.

Paragraphs (1) and (2) of SCR 2.111 shall read:

(1) Every attorney not a member of the Bar of the Commonwealth who performs legal services in this Commonwealth solely for his/her employer, its parent subsidiary, or affiliated entities, shall file with the Clerk of the Supreme Court on a form provided, an application for limited certificate of admission to practice law in this Commonwealth. The Clerk shall forward the application to the Character and Fitness Committee. Such application shall be approved and a limited certificate of admission to practice law shall be granted, and shall be effective as of the date such application is approved, provided that the following prerequisites are satisfied.
(a) The applicant shall have completed the study of law in a law school approved by the American Bar Association or by the Association of American Law Schools, and must be admitted to practice in the highest court of another state or the District of Columbia, and be a member in good standing at the Bar of such court, or in such state, at the time of filing such application.
(b) The attorney applying for limited certificate of admission to practice law shall sign a sworn statement certifying to the Court that:
(i) he/she has completed the study of law in an accredited law school;
(ii) he/she has been admitted to practice in the highest court of another state or the District of Columbia;
(iii) he/she is presently in good standing at the Bar of such court, or such state;
(iv) he/she will perform legal services in this Commonwealth solely for his/her employer, its parent, subsidiary, or affiliated entities.
(c) A statement signed by a representative of such applicant's

employer stating that such applicant is an employee for such employer, and performs legal services in this Commonwealth for such employer, its parent, subsidiary, or affiliated entities, shall be filed with the application.
(d) In addition to the application fee, an attorney applying for admission under this Rule shall pay all investigative fees, reporting fees or other expenses required and assessed by the Character and Fitness Committee as deemed necessary in determining the character and fitness of an applicant.
(2) Such applicant shall pay to the Clerk, at the time of submission of such application, a fee of one thousand ($1,000.00) and shall tender to the Clerk for transmittal to the Kentucky Bar Association payment of the current annual dues or fees of the Kentucky Bar Association authorized under SCR 3.040.

17. SCR 2.112 (a) and (b)(4). Attorney participants in defender or legal services programs.

SCR 2.112 (a) and (b)(4) shall read:

(a) Scope. This rule applies to an attorney who is not a member of the Bar of this Commonwealth but who, after having completed the study of law in a law school approved by the American Bar Association or by the Association of American Law Schools and having been admitted to practice in the highest court of another state, is an employee of an organized public defender program or an organized legal services program in this Commonwealth providing legal assistance to indigent persons.
(b) General rule. An attorney to which this rule applies shall be admitted to practice before the courts of this Commonwealth in all matters in which the attorney is associated with an organized public defender program or an organized legal services program which program is sponsored, approved or recognized by the Kentucky Bar Association. Admission to practice under this rule shall be limited to the matters specified in the preceding sentence. Motions for restricted admission to practice under this rule shall be made by filing one copy thereof with the Clerk of the Supreme Court. The motion shall be in writing on a form prescribed by the Supreme Court and shall include or be accompanied by:
(4) Payment of a fee of one hundred dollars ($100.00) made payable to the Clerk of the Supreme Court (cashier's or certified check or money order).

18. SCR 2.300 Reinstatement of persons to practice law

New rule 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.

These guidelines have been formulated to govern the manner in which Reinstatement Applications are processed so that all parties, including the public at large, are insured that a systematic and thorough character and fitness investigation is conducted and applicants are assured that their applications are addressed in a timely and procedurally consistent manner.

(1) Initial Reinstatement Application Process

(a) The initial forms necessary to apply for reinstatement may be obtained from the Kentucky Bar Association. Completed applications for reinstatement, along with the necessary fees, must be delivered, mailed to, or presented to the Clerk of the Supreme Court of Kentucky in accordance with SCR 3.500 and SCR 3.510.
(b) Upon receipt of a complete application for reinstatement by an applicant who has been suspended more than 180 days (and in some cases where the suspension has been less than 180 days) the Kentucky Bar Association will refer the application to the Kentucky Office of Bar Admissions, Character and Fitness Committee for investigation, for a hearing, if necessary, and for a formal recommendation regarding the disposition of the application in accordance with SCR 3.500, SCR 3.505, and SCR 3.510.
(c) Upon receipt of a Reinstatement Application from the Kentucky Bar Association, the Kentucky Office of Bar Admissions, Character and Fitness Committee will immediately send the applicant an Application for Admission to the Bar. The applicant must complete that form and return it to the Character and Fitness Committee with documentation specified in instructions accompanying the application.
(d) The submission of an incomplete application or the failure of an applicant to submit necessary documentation and/or fees will delay the Character and Fitness Committee's ability to render a timely recommendation. Failure of an applicant to submit the application for admission to the Bar within thirty (30) days or failure of an applicant to perfect an application within thirty (30) days of the date a notice of deficiency is sent to the applicant by the Committee may result in an unfavorable recommendation.

(2) Investigative Process

Upon receipt of a fully complete application the Character and Fitness Committee will immediately begin the necessary investigatory process, which may or may not involve the use of independent investigators. During this initial investigative period the applicant will be notified that he/she has sixty (60) days to obtain and submit any additional evidence he/she wants considered. The initial sixty (60) day period may be extended upon proper justification being submitted to the Committee in a written request by the applicant.

(3) Informal Hearings:

At the conclusion of the investigative period a member of the Character and Fitness Committee, or a designee appointed by the Committee, may elect to conduct an informal hearing in an effort to clarify or narrow issues. The informal hearing proceeding shall not be stenographically reported and sworn testimony shall not be taken.

The applicant shall be given written notice of the date, time and place of any informal hearing. Notice shall be given no less than fourteen days before the hearing. Failure of the Applicant to fully cooperate with and participate in the informal hearing process shall be a basis for an unfavorable recommendation regarding the application for readmission.

(4) Formal Hearings:

(a) At the conclusion of the investigative period, and following the informal hearing, if one is held, the applicant and Kentucky Bar Association Counsel will be given a right to request a formal hearing before the Committee pursuant to SCR 3.505(3). If a formal hearing is not requested, the Committee may elect to hold a hearing or act upon the evidence of record and issue a decision within sixty (60) days of the day the parties decline a formal hearing.
(b) If the applicant or Bar Counsel requests a formal hearing then such a hearing will be held within sixty (60) days of the request. Notice of the hearing date will be served on the parties not less than fourteen days before said hearing. The hearing shall be of record and the applicant may have counsel present and present testimony. The costs involved in this hearing shall be included with costs outlined in SCR 2.040(7) and will be paid by the applicant.
(c) The Character and Fitness Committee shall, at the hearing, inquire fully into all matters at issue, and shall not be bound by common law or statutory rules of evidence, or by technical or formal rules of procedure. The Committee shall receive into evidence the testimony of the witnesses and parties, the evidence of record, and such additional evidence as may be submitted. However, the Committee may entertain the objections of any party to the evidence submitted under this section.
(d) The conduct of the hearings and the order in which allegations and evidence shall be presented shall be within the

discretion of the Character and Fitness Committee.

(5) Formal Recommendation:

Following the Formal Hearing if there are material factual disputes, the Character and Fitness Committee must resolve them by making findings of fact. Such findings of fact must be supported by the existence or absence of clear and convincing evidence. Such findings will be set forth in a formal recommendation. A formal recommendation will be issued within thirty (30) days of the date of receipt of the hearing transcript.

(6) Burden of Proof:

While the burden of proof in a disciplinary proceeding rests with the KBA, in reinstatement cases the applicant has the burden of proving by clear and convincing evidence that he/she possesses the requisite character, fitness and moral qualification for re-admission to the practice of law. (SCR 3.330) Issues that will be considered include, but are not limited to, the following:
(a) Whether the applicant has presented clear and convincing evidence that he/she has complied with every term of the order of suspension or disbarment.
(b) Whether the applicant has presented clear and convincing evidence that his/her conduct while under suspension shows that he/she is worthy of the trust and confidence of the public.
(c) Whether the applicant has presented clear and convincing evidence that he/she possesses sufficient professional capabilities to serve the public as a lawyer.
(d) Whether the applicant has presented clear and convincing evidence that he/she presently exhibits good moral character.
(e) Whether the applicant has presented clear and convincing evidence that he/she appreciates the wrongfulness of his/her prior misconduct, that he/she has manifest contrition for his/her prior professional misconduct, and has rehabilitated himself/herself from past derelictions.

Failure to meet any of these criteria may constitute a sufficient basis for denial of a petitioner's application.

(7) Presumptions and Weight of Evidence:

A petitioner for reinstatement will be held to a substantially more rigorous standard than a first time applicant for an initial admission to the Bar. The prior determination that he/she engaged in professional misconduct continues to be evidence against him or her and the proof presented must be sufficient to overcome that prior adverse judgment.

Among the considerations to be weighed are:
The nature of the misconduct for which the applicant was suspended or disbarred.
The applicant's conception of the serious nature of his or her act.
The applicant's sense of wrongdoing.
The applicant's previous and subsequent conduct and attitude toward the courts and the practice, including the element of time elapsed since disbarment.
The applicant's candor in dealing with the Character and Fitness Committee.
The relevant knowledge of witnesses called by the applicant.

19. SCR 2.540. Limited student practice.

The first paragraph of SCR 2.540 shall read:

Any student who has successfully completed two-thirds of the academic hour requirement for the first degree in law at an approved law school and is participating in a law school sponsored clinic, intern, extern, or public service program may provide legal services to, and may appear in any proceeding in any court of this state on behalf of any person financially unable to employ counsel, or, on behalf of the Commonwealth or the United States' Attorney; and any student who has successfully completed two-thirds of the academic hour requirements for the first degree in law may provide legal advice, counseling and negotiation services to a college or university student, regardless of that student's financial status, pursuant to an approved law school clinical program provided:

20. SCR 3.022 'Forms of Practice of Law'

New rule SCR 3.022 shall read:

Lawyers may engage in the practice of law in Kentucky in the following forms:

a. As sole practitioners;

b. As employees of a private corporation, a United States government agency or department, or a state, county or municipal government agency, a legal aid society, or a corporation organized to provide public defender services (but if for a private corporation, may render professional services in that employment only for the employing corporation and its subsidiaries and not the general public; except pro bono or legal aid)

c. As instructors or professors of law in a law school located in Kentucky;

d. As a judge of the Court of Justice, a federal court or as an administrative law judge in federal or state government;

e. As employees or general partners of a Kentucky general partnership organized for the practice of law;

f. As employees of or partners, shareholders, members or co-owners of a registered limited liability partnership, professional service corporation, or limited liability company or any other limited liability entity organized pursuant to applicable statutes.

Subject to judicial or prosecutorial immunity which may be recognized by law, each lawyer practicing law in Kentucky shall be personally liable and accountable to his or her clients for (i) all of his or her acts, errors, and omissions in the practice of law; and (ii) the acts, errors, and omissions of other lawyers under such lawyer's direct supervision.

21. SCR 3.024 "REQUIREMENTS OF PRACTICING LAW IN LIMITED LIABILITY ENTITIES"

New rule SCR 3.024 shall read:

Lawyers may engage in the practice of law as a partner, shareholder, member, manager, co-owner or employee of a registered limited liability partnership, professional service corporation, limited liability company or any other limited liability entity recognized by the Commonwealth so long as such entity maintains at all times adequate professional liability insurance in force and effect or has established and maintains at all times other acceptable forms of adequate financial coverage for the acts, errors and omissions of its partners, shareholders, members, managers, co-owners and employees arising out of the performance of legal services.

For purposes of the preceding sentence, "adequate insurance" shall mean one or more policies of lawyers professional liability insurance which shall insure the limited liability entity and its individual owners and employees. The insurance shall be in an amount of at least $50,000 per claim, multiplied by the number of attorneys of the limited liability entity, with an aggregate maximum limit of liability per policy year for all claims in the amount of at least $100,000, multiplied by the number of attorneys of the limited liability entity, provided that i) the minimum insurance coverage that a limited liability entity shall be required to carry is $250,000 per claim and $500,000 for all claims during the policy year and ii) no limited liability entity shall be required to carry insurance in excess of $5,000,000 per claim and $10,000,000 for all claims during the policy year. Each co-owner of a limited liability entity shall remain jointly and severally liable for acts, errors and omissions excluded from coverage by such insurance policies, but in no event shall that joint and several liability exceed, for each claim and for all claims during the policy year, an amount (net of the payment of any insurance claims in such year) equal to the minimum amount of coverage per claim and for all claims during the policy year described in the second sentence of this paragraph.

For purposes of this Rule, a limited liability entity has established "other acceptable forms of adequate financial coverage" if the limited liability entity provides funds (in amounts no less than as described in the next sentence) specifically designated and segregated for the satisfaction of judgments against the limited liability entity and/or the co-owners by:

1. deposit in trust, or in bank escrow of cash, bank certificates of deposit, or United States Treasury obligations; or

2. a bank letter of credit, or

3. a surety bond to be payable to any person presenting a valid final judgment of any court of competent jurisdiction in the Commonwealth of Kentucky, or a foreign judgment registerd in a Kentucky federal court, or a settlement or mediation award for acts, errors and omissions arising out of the performance of professional legal services by the limited liability entity. The funds required to be so designated and segregated shall be no less than $50,000 multiplied by the number of attorneys employed by the limited liability entity, with the minimum amounts of funding for the year to be no less than $250,000 and the maximum limit of funding for the year shall not be required to exceed $5,000,000.

Nothing in this Rule shall relieve a co-owner of a limited liability entity from personal liability for the acts, errors and omissions committed by such individual or any person under his or her direct supervision and control arising out of the performance of professional legal services.

22. SCR 3.050. Collection of dues - Suspension for nonpayment.

SCR 3.050 shall read:

As soon as practicable after August 20th of each year, the Treasurer shall notify a member in writing of his delinquency. If such member remains delinquent on the 10th day of the following September, the Treasurer shall, forthwith, in writing, certify the member's name to the Court. The Clerk shall docket the matter and the Court shall issue to such member a rule returnable twenty days thereafter, requiring the respondent to show cause why he/she should not be suspended from the practice of law. The response shall be in writing to the Supreme Court, filed with the Clerk, with a copy served to the Director and, in addition to payment of the delinquent dues, shall be accompanied by a fee paid to the Association in an amount to be set forth in the Court's order. The Association shall be permitted to file a reply within ten days after the filing of a response by the member. Unless good cause be shown by the return day of the rule or within such additional time as may be allowed by the Court, an order shall be entered suspending respondent from the practice of law. An attested copy of the order shall forthwith be delivered by the Clerk to the member, the Director, and the circuit clerk of the member's residential district for recording and indexing as required by Rule 3.480. The suspended member may apply for reinstatement to membership under the provisions of Rule 3.500.

23. SCR 3.130. Kentucky Rules of Professional Conduct. Rule 1.9.

SCR 3.130, Rule 1.9 shall read:

Rule 1.9. Conflict of interest: former client.

A lawyer who has formerly represented a client in a matter shall not thereafter:

(a) Represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client consents after consultation;

(b) Represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client

(1) whose interests are materially adverse to that person; and

(2) about whom the lawyer had acquired information protected by Rules 1.6 and 1.9(c) that is material to the matter; unless the former client consents after consultation.

(c) A lawyer who has formerly represented a client in a matter of whose present or former firm has formerly represented a client in a matter shall not thereafter:

(1) use information relating to the representation to the disadvantage of the former client except as Rule 1.6 or Rule 3.3 would permit or require with respect to a client or when the information has become generally known; or

(2) reveal information relating to the representation except as Rule 1.6 or Rule 3.3 would permit or require with respect to a client.

24. SCR 3.130 Kentucky Rules of Professional Conduct. Rule 1.10

SCR 3.130, Rule 1.10 shall read:

Rule 1.10. Imputed disqualification: general rule.

(a) While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7, 1.8(c), 1.9 or 2.2.

(b) When a lawyer has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the formerly associated lawyer and not currently represented by the firm, unless:
(1) The matter is the same or substantially related to that in which the formerly associated lawyer represented the client; and
(2) Any lawyer remaining in the firm has information protected by Rules 1.6 and 1.9(b) that is material to the matter.

(c) A disqualification prescribed by this rule may be waived by the affected client under the conditions stated in Rule 1.7.

(d) A firm is not disqualified from representation of a client if the only basis for disqualification is representation of a former client by a lawyer presently associated with the firm, sufficient to cause that lawyer to be disqualified pursuant to Rule 1.9 and:

(1) the disqualified lawyer is screened from any participation in the matter and is apportioned no specific part of the fee therefrom; and

(2) written notice is given to the former client.

25. SCR 3.290. Filing and processing of pleadings and other papers.

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, who shall file the original and forward one copy to the Inquiry Commission or Trial Commissioner and counsel of record. All other reports, inquiries, letters, letters of transmittal, and other communications shall be sent to and

processed by the Clerk, excepting, however, any communication between the parties concerning negotiations for an agreed sanction which shall not be transmitted to the Disciplinary Clerk or Trial Commissioner nor filed of record unless the sanction proposal is approved by the Court. No such paper or copy thereof shall be sent by, or on behalf of, any party to the Court, the Board, the Trial Commissioner, Inquiry Commission, or any member thereof.

(2) All pleadings, notices, motions, orders, and briefs shall be filed with sufficient copies to allow service by the Disciplinary Clerk on all persons listed above.

26. SCR 3.480(2) and (3)(b). Withdrawal from the association.

Sections (2) and (3)(b) of SCR 3.480 shall read:

(2) Any member who is under investigation pursuant to SCR 3.160(2) or who has a complaint or charge pending and who desires to terminate such investigation or disciplinary proceedings at any stage of it may request Bar Counsel to consider a negotiated sanction. If the parties agree upon an appropriate sanction, the member shall file a motion with the Court and serve a copy upon Bar Counsel. Counsel for the KBA shall, within ten (10) days of the Clerk's notice that the motion has been docketed, respond to its merits. The Registrar shall submit to the Court within the ten (10) day period the active disciplinary files to which the motion applies. The Court may approve the sanction agreed to by the parties, or may remand the case for hearing or other proceedings specified in the order of remand. If counsel for the KBA objects to the terms proposed, and, if the Court determines good cause exists, the Court shall remand the case for hearing or other proceedings specified in the order of remand.

(3)(b) He/she will not practice law in the Commonwealth of Kentucky subsequent to the suspension or disbarment unless or until he/she is reinstated as a member of the Association by order of the Court. Any member suspended or disbarred by order of this Court shall take all steps necessary and practicable to cease all forms of advertisement of the member's practice immediately upon entry of an order of suspension or disbarment and shall report the fact and effect of those steps to the Director in writing within twenty (20) days after the order of suspension or disbarment is entered.

27. SCR 3.500(1),(2),(3) and (5). Restoration to membership.

Sections (1),(2),(3) and (5) of SCR 3.500 shall read:

(1) Any former member who has retired under Rule 3.480, or who

has been suspended for failure to pay dues as provided by Rule 3.050, or any member who has failed to pay dues for such period of time as to warrant suspension under that Rule, or any member who has been suspended for failure to comply with the continuing legal education requirements as provided by Rule 3.661, and such status had prevailed for less than a period of five (5) years, may apply for restoration by completing forms provided by the Director, tendering a fee of $250.00, and payment of dues for the current year and all back years, unless he/she has been in a retired status by order of the Court. In cases where a suspension has prevailed for five years or less and the reinstatement application is referred to the Character and Fitness Committee, a fee of $250 shall be made payable to the Kentucky Office of Bar Admissions.

Upon receipt of such application and payments, the Clerk shall tender the same to the Director who shall refer the application to the Continuing Legal Education Commission for proceedings under Rule 3.675 within thirty (30) days of the referral. The Continuing Legal Education Commission shall make its recommendation which shall be added to the record in the restoration proceeding. The Director shall in turn advise each member of the Board and furnish them all pertinent information available.
(a) The Board shall, within thirty (30) days of review of the information, make its recommendation to the Court for approval of an entry of an order restoring the Applicant or
(b) Refer the matter to the Committee for proceedings under Rule 2.040. The Committee's recommendation shall be made to the Board for its action and recommendation to the Court.
(c) As to any Applicants, including those who have been suspended for failure to pay dues or failure to meet continuing legal education requirements, the mere submission of the application for reinstatement and tendering the required fee shall not automatically restore the privilege of practicing law, and such suspension shall remain in force pending entry of the order of the Court restoring the Applicant.

(2) Any former member who has withdrawn or retired or has been suspended for failure to pay dues or has been suspended for failure to meet continuing legal education requirements, and such status has prevailed for five (5) or more years, may file an application for restoration and pay a fee of $500.00. If the former member has been suspended for nonpayment of bar dues he shall tender payment for current dues and all back dues. The application shall then be referred to the Committee for proceedings under Rule 2.040 and to the Continuing Legal Education Commission for proceedings under Rule 3.675. An additional fee of $500 shall be made payable to the Kentucky Office of Bar Admissions.

The Committee and Continuing Legal Education Commission shall make their recommendations to the Board.

(3) If the Committee recommends approval of the application and the Board concurs, then the application shall be referred to the Board of Bar Examiners, which Board shall administer a written examination which shall cover the subject of ethics and five (5) of the subjects listed in SCR 2.090(1). Each of these subjects must be passed by the Applicant, and not averaged or combined with each other, or with the score obtained on the examination required by Rule 2.080. The fees required by Rule 2.020 shall be paid prior to taking the examination.

If an Applicant passes an examination, such fact shall be certified to the Court together with a recommendation that the Applicant be readmitted to membership. If the Applicant fails to pass an examination, the Board of Bar Examiners shall certify the fact of failure to the Association and the Court for entry of an order denying the Applicant for reinstatement.

The provisions of Rule 2.090 shall apply where not inconsistent.

(5) All costs incurred in excess of the filing fee shall be paid by the Applicant. A cash or corporate surety bond in the amount of $2500 to secure costs to be incurred shall be posted with the Clerk before the Clerk files the application.

28. SCR 3.510(1) and (2). Reinstatement in case of disciplinary suspension.

Sections (1) and (2) of SCR 3.510 shall read:

(1) No former member of the Association who has been suspended for a disciplinary case for more than one hundred eighty (180) days shall resume practice until he/she is reinstated by order of the Court. Application for reinstatement shall be on forms provided by the Director and Continuing Legal Education Commission, filed with the Clerk, and shall be accompanied by a filing fee of $250.00 which shall be made payable to the Kentucky Bar Association. An additional filing fee of $1250.00 shall be made payable to the Kentucky Office of Bar Admissions. The Clerk shall not accept an application for filing unless all costs incurred in the suspension proceeding have been paid by the former member, and the costs in the reinstatement proceeding (whether costs of the Association or of the Character and Fitness Committee or of the Office of Bar Admissions) have been secured by the posting of a cash or corporate surety bond of $2500.00. Upon filing of an application and payment of the filing fee, the Clerk shall promptly deliver the application to the Director together with the original record of suspension proceeding. The Director shall refer the application to the Continuing Legal Education Commission within ten (10) days of receipt for

proceedings under Rule 3.675. The Continuing Legal Education Commission shall make its recommendation within twenty (20) days of the referral which shall be added to the record in the reinstatement proceedings.

(2) If the period of suspension has prevailed for one hundred eighty (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. 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 ten (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. If such an objection has been filed by Bar Counsel, the Character and Fitness Committee shall conduct proceedings under Rule 2.040. In cases where a suspension has prevailed for one hundred eighty (180) days or less and the reinstatement application is referred to the Character and Fitness Committee, a fee of $1250.00 shall be made payable to the Kentucky Office of Bar Admissions.

29. SCR 3.662(2) and (3). Qualifying continuing legal education activity and standards.

Sections (2) and (3) to SCR 3.662 shall read:

(2) The following categories of activities shall not qualify as a continuing legal education activity.
(a) Activities designed primarily for non-lawyers.
(b) In-house activity which has not been accredited at least thirty (30) days in advance.
(c) In-house activities for which less than half the instruction is provided by qualified persons outside the firm, department or agency, and which members of the Court, the Commission or Commission designee are prohibited from observing for compliance without charge of fees.
(d) Technological transmissions as set forth at SCR 3.662(1)(j) which do not meet the standards set forth in SCR 3.662 and which have not been submitted and accredited pursuant to SCR 3.665, or which are of such poor audio and video quality that participants cannot see or hear the content under reasonable circumstances.
(e) Home study or self-study which does not meet the standards set forth in SCR 3.662 and which has not been submitted and

accredited pursuant to SCR 3.665.
(f) Bar review courses taken in preparation for bar examinations.
(g) Correspondence classes.
(h) Any activity completed prior to admission to practice in Kentucky except the program required pursuant to SCR 3.661(9) and 3.652(5).
(i) Undergraduate law or law-related classes.
(j) Programs taken in preparation for licensure exams for non-lawyer professionals.
(k) Business meetings or committee meetings of legal and law-related associations.

(3) Continuing legal education credit may be earned as set forth in Rule 3.663 for the following additional activities.
(a) Teaching or participating as a panel member or seminar leader in an approved activity. No credit may be earned for teaching or participating as a panel member or seminar leader for activities that do not meet standards set forth in Rule 3.662.
(b) Researching, writing or editing material to be presented at an approved activity. No credit may be earned for researching, writing, or editing materials for activities that do not meet the standards set forth in Rule 3.662.
(c) Publication of legal writing. A legal writing is a publication which contributes to the legal competency of the applicant or other attorneys or judges and is approved by the Commission. Writing for which the author is paid shall not be approved.
(d) Law-related education and public speaking. Upon application, by teaching or participating as a panel member, mock trial coach or seminar leader for law-related education activities or for public service speeches to civic organizations or school groups. Speaking for which the member is paid shall not be approved. Written copies of presentations must accompany such applications; provided, however, that, where appropriate, a narrative summary of the material presented may be sufficient.

30. SCR 3.663(9). Calculation and reporting of continuing legal education credits: formulas and limits.

Section (9) of SCR 3.663 shall read:

(9) The Commission shall grant a maximum of two (2.0) credits to meet the annual minimum requirement for credits earned pursuant to SCR 3.662(3)(d).

31. SCR 3.665(6)(e). Procedure for accreditation of continuing legal education activities and obligations of sponsors.

Section 6(e) of SCR 3.665 shall read:

(6) Sponsors of accredited activities shall comply with the obligations and requirements set forth below.
(e) Collect credit reporting cards from Kentucky attorneys and submit to the Commission all cards received within thirty (30) days of completion of the program. Failure to submit completed credit reporting cards within thirty (30) days of the activity shall be accompanied by a late filing fee from the sponsor of $10.00 per card or certificate. Submit all attendance cards or certificates for activities held during the month of June not later than July 10th, immediately following the end of the educational year on June 30th. For programs held during June this provision of the rule supersedes the thirty (30) day submission provided above. Failure to submit cards or certificates pursuant to this schedule will result in the sponsor's obligation to pay a late filing fee of $10 per card or certificate.

32. SCR 3.669(3). Non-compliance: procedure and sanctions.

Section (3) of SCR 3.669 shall read:

(3) The Clerk shall docket the matter and the Court shall issue to such member a rule returnable twenty days thereafter to show cause why he or she should not be suspended from the practice of law or otherwise sanctioned by the Court. The response shall be in writing to the Supreme Court, filed with the Clerk, with a copy to the Commission, in care of the Director, and shall be accompanied by a fee, payable to the Kentucky Bar Association, in an amount to be set forth in the Court's Order. The Commission shall be permitted to file a reply within ten days following the filing of a response by the member.

33. SCR 4.090(2)(b)

SCR 4.090(2)(b) shall read:

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

34. SCR 4.300, Terminology Section, "economic interest"

SCR 4.300, Terminology Section, the definition of "economic interest" shall read:

"Economic interest" denotes ownership of a more than de minimis legal or equitable interest, or a relationship as officer, director, advisor or other active participant in the affairs of a party, except that:

(i) ownership of an interest in a mutual or common investment fund that holds securities is not an economic interest in such securities unless the judge participates in the management of the fund or a proceeding pending or impending before the judge could substantially affect the value of the interest;

(ii) service by a judge as an officer, director, advisor or other active participant in an educational, religious, charitable, fraternal or civic organization, or service by a judge's spouse, parent or child as an officer, director, advisor or other active participant in any organization does not create an economic interest in securities held by that organization;

(iii) a deposit in a financial institution, the proprietary interest of a policy holder in a mutual insurance company, of a depositor in a mutual savings association or of a member in a credit union, or a similar proprietary interest, is not an economic interest in the organization unless a proceeding pending or impending before the judge could substantially affect the value of the interest;

(iv) ownership of government securities is not an economic interest in the issuer unless a proceeding pending or impending before the judge could substantially affect the value of the securities.

35. SCR 4.300. CANON 2(A) Commentary

The Commentary to CANON 2(A) shall read:

Commentary:

Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety. A judge must expect to be the subject of constant public scrutiny. A judge must therefore accept restrictions on the judge's conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly.

The prohibition against behaving with impropriety or the appearance of impropriety applies to both the professional and personal conduct of a judge. Because it is not practicable to list all prohibited acts, the proscription is necessarily cast in general terms that extend to conduct by judges that is harmful although not specifically mentioned in the Code. Actual improprieties under this standard include violations of law, court rules or other specific provisions of this Code. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality and competence is impaired. See also Commentary under Section 2E.

36. SCR 4.300. CANON 2(E) Commentary

The Commentary to CANON 2(E) shall read:

Commentary:

Membership of a judge in an organization that practices invidious discrimination gives rise to perceptions that the judge's impartiality is impaired. Section 2E refers to the current practices of the organization. Whether an organization practices invidious discrimination is often a complex question to which judges should be sensitive. The answer cannot be determined from a mere examination of an organization's current membership rolls but rather depends on how the organization selects members and other relevant factors, such as that the organization is dedicated to the preservation of religious, ethnic or cultural values of legitimate common interest to its members, or that it is in fact and effect an intimate, purely private organization whose membership limitations could not be constitutionally prohibited.

An organization is generally said to discriminate invidiously if it arbitrarily excludes from membership on the basis of race, religion, sex or national origin persons who would otherwise be admitted to membership. See New York State Club Ass'n., Inc. v. City of New York, 108 S. Ct. 2225, 101 L. Ed. 2d 1 (1988); Board of Directors of Rotary International v. Rotary Club of Duarte, 481 U.S. 537, 107 S. Ct. 1940, [(1987)] 95 L. Ed. 2d 474 (1987); Roberts v. United States Jaycees, 468 U.S. 609, 104 S. Ct. 3244, 82 L. Ed. 2d 462 (1984).

Although Section 2E relates only to membership in organizations that invidiously discriminate on the basis of race, sex, religion or national origin, a judge's membership in an organization that engages in any discriminatory membership practices prohibited by the law of the jurisdiction also violates Canon 2 and Section 2A and gives the appearance of impropriety. In addition, it would be a violation of Canon 2 and Section 2A for a judge to arrange a meeting at a club that the judge knows practices invidious discrimination on the basis of race, sex, religion or national origin in its membership or other policies, or for the judge to regularly use such a club. Moreover, public manifestation by a judge of the judge's knowing approval of invidious discrimination on any basis gives the appearance of impropriety under Canon 2 and diminishes public confidence in the integrity and impartiality of the judiciary, in violation of Section 2A.

When a person who is a judge on the date this Code becomes effective learns that an organization to which the judge belongs engages in invidious discrimination that would preclude membership under Section 2E or under Canon 2 and Section 2A, the judge is permitted, in lieu of resigning, to make immediate efforts to have the organization discontinue its invidiously discriminatory practices, but is required to suspend participation in any other activities of the organization. If the organization fails to discontinue its invidiously discriminatory practices as promptly as possible (and in all events within a year of the judge's first learning of the practices), the judge is required to resign immediately from the organization.

37. SCR 4.300. CANON 3(B)(5) Commentary

The Commentary to Canon 3(B)(5) shall read:

Commentary:

A judge must refrain from speech, gestures or other conduct that could reasonably be perceived as sexual harassment and must require the same standard of conduct of others subject to the judge's direction and control.

A judge must perform judicial duties impartially and fairly. A judge who manifests bias on any basis in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute. Facial expression and body language, in addition to oral communication, can give to parties or lawyers in the proceeding, jurors, the media and others an appearance of judicial bias. A judge must be alert to avoid behavior that may be perceived as prejudicial.

38. SCR 4.300. CANON 3(B)(9) Commentary

The Commentary to CANON 3(B)(9) shall read:

Commentary:

The requirement that judges abstain from public comment regarding a pending or impending proceeding continues during any appellate process and until final disposition. This Section does not prohibit a judge from commenting on proceedings in which the judge is a litigant in a personal capacity, but in cases such as a writ of mandamus where the judge is a litigant in an official capacity, the judge must not comment publicly. The conduct of lawyers relating to trial publicity is governed by SCR 3.130(3.6).

39. SCR 4.300. CANON 3(F) Commentary

The Commentary to CANON 3(F) shall read:

Commentary:

A remittal procedure provides the parties an opportunity to proceed without delay if they wish to waive the disqualification. To assure that consideration of the question of remittal is made independently of the judge, a judge must not solicit, seek or hear comment on possible remittal or waiver of the disqualification unless the lawyers jointly propose remittal after consultation as provided in the rule. A party may act through counsel if counsel represents on the record that the party has been consulted and consents.

40. SCR 4.300. CANON 4(A) Commentary

The Commentary to CANON 4(A) shall read:

Commentary:

Complete separation of a judge from extra-judicial activities is neither possible nor wise; a judge should not become isolated from the community in which the judge lives.

Expressions of bias or prejudice by a judge, even outside the judge's judicial activities, may cast reasonable doubt on the judge's capacity to act impartially as a judge. Expressions which may do so include jokes or other remarks demeaning individuals on the basis of their race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status. See Section 2E and accompanying Commentary.

41. SCR 4.300. CANON 4(C)(1) Commentary

The Commentary to CANON 4(C)(1) shall read:

Commentary:

See Section 2D regarding the obligation to avoid improper influence.

42. SCR 4.300. CANON 4(C)(3)(b)(iii)

Canon 4(C)(3)(b)(iii) shall read:

(iii) shall not personally participate in membership solicitation if the solicitation might reasonably be perceived as coercive or if the membership solicitation is essentially a fund-raising mechanism;

43. SCR 4.300. CANON 4(C)(3)(b) Commentary

The Commentary to CANON 4(C)(3)(b) shall read:

Commentary:

A judge may solicit membership or endorse or encourage membership efforts for an organization devoted to the improvement of the law, the legal system or the administration of justice or a nonprofit educational, religious, charitable, fraternal or civic organization as long as the solicitation cannot reasonably be perceived as coercive and is not essentially a fund-raising mechanism. Solicitation of funds for an organization and solicitation of memberships similarly involve the danger that the person solicited will feel obligated to respond favorably to the solicitor if the solicitor is in a position of influence or control. A judge must not engage in direct, individual solicitation of funds or memberships in person, in writing or by telephone except in the following cases: 1) a judge may solicit for memberships other judges over whom the judge does not exercise supervisory or appellate authority, 2) a judge may solicit other persons for membership in the organizations described above if neither those persons nor persons with whom they are affiliated are likely ever to appear before the court on which the judge serves and 3) a judge who is an officer of such an organization may send a general membership solicitation mailing over the judge's signature.

Use of an organization letterhead for fund-raising or membership solicitation does not violate Section 4C(3)(b) provided the letterhead lists only the judge's name and office or other position in the organization, and, if comparable designations are listed for other persons, the judge's judicial designation. In addition, a judge must also make reasonable efforts to ensure that the judge's staff, court officials and others subject to the judge's direction and control do not solicit funds on the judge's behalf for any purpose, charitable or otherwise.

A judge must not be a speaker or guest of honor at an organization's fund-raising event, but mere attendance at such an event is permissible if otherwise consistent with this Code.

44. SCR 4.300. CANON 4(D)(5) Commentary

The Commentary to CANON 4(D)(5) shall read:

Commentary:

Section 4D(5) does not apply to contributions to a judge's campaign for judicial office, a matter governed by Canon 5.

Because a gift, bequest, favor or loan to a member of the judge's family residing in the judge's household might be viewed as intended to influence the judge, a judge must inform those family members of the relevant ethical constraints upon the judge in this regard and discourage those family members from violating them. A judge cannot, however, reasonably be expected to know or control all of the financial or business activities of all family members residing in the judge's household.

45. SCR 4.300. CANON 4(D)(5)(a)

CANON 4(D)(5)(a) shall read:

(a) a gift incident to a public testimonial, books, tapes and other resource materials supplied by publishers on a complimentary basis for official use, or an invitation to the judge and the judge's spouse or guest to attend a bar-related function or an activity devoted to the improvement of the law, the legal system or the administration of justice;

46. SCR 4.300. CANON 4(D)(5)(a) Commentary

The Commentary to CANON 4(D)(5)(a) shall read:

Commentary:

Acceptance of an invitation to a law-related function is governed by Section 4D(5)(a); acceptance of an invitation paid for by an individual lawyer or group of lawyers is governed by Section 4D(5)(h).

A judge may accept a public testimonial or a gift incident thereto only if the donor organization is not an organization whose members comprise or frequently represent the same side in litigation, and the testimonial and gift are otherwise in compliance with other provisions of this Code. See Sections 4A(1) and 2D.

47. SCR 4.300. CANON 4(E)(2)

CANON 4(E)(2) shall read:

E. Fiduciary Activities.

(2) A judge shall not serve as a fiduciary if it is likely that the judge as a fiduciary will be engaged in proceedings that would ordinarily come before the judge, or if the estate, trust or ward becomes involved in adversary proceedings in the court on which the judge serves or one under its appellate jurisdiction.

48. SCR 4.300. CANON 4(G) Commentary

The Commentary for CANON 4(G) shall read:

Commentary:

This prohibition refers to the practice of law in a representative capacity and not in a pro se capacity. A judge may act for himself or herself in all legal matters, including matters involving litigation and matters involving appearances before or other dealings with legislative and other governmental bodies. However, in so doing, a judge must not abuse the prestige of office to advance the interests of the judge or the judge's family. See Section 2D.

The Code allows a judge to give legal advice to and draft legal documents for members of the judge's family, so long as the judge receives no compensation. A judge must not, however, act as an advocate or negotiator for a member of the judge's family in a legal matter.

49. SCR 4.300. CANON 4(H)(2) Commentary

The Commentary for CANON 4(H)(2) shall read:

Commentary:

See Section 4D(5) regarding gifts, bequests and loans.

The Code does not prohibit a judge from accepting honoraria or speaking fees provided that the compensation is reasonable and commensurate with the task performed. A judge should ensure, however, that no conflicts are created by the arrangement. A judge must not appear to trade on the judicial position for personal advantage. Nor should a judge spend significant time away from court duties to meet speaking or writing commitments for compensation. In addition, the source of the payment must not raise any question of undue influence or the judge's ability or willingness to be impartial.

50. SCR 8.020. Selection and tenure of the Commission.

SCR 8.020 shall read:

(1) The Chief Justice of the Kentucky Supreme Court or his designee shall serve as chair of the Commission;
(2) One (1) member of the Court of Appeals to be appointed by the Chief Judge of the Court of Appeals;
(3) The Chair of the Circuit Judges' Education Committee and two (2) circuit judges to be appointed by the President of the Circuit Judges' Association;
(4) The Chair of the District Judges' Education Committee and two (2) district judges to be appointed by the President of the District Judges' Association;
(5) One (1) representative of the University of Kentucky College of Law to be appointed by the Dean of the College; one (1) representative of the University of Louisville School of Law to be appointed by the Dean of the School; one (1) representative of the Northern Kentucky University Chase College of Law to be appointed by the Dean of the College.
(6) Chair, or the chair's designee, of the House Judiciary Committee for a term concurrent with the term as chair.
(7) Chair, or the chair's designee, of the Senate Judiciary Committee for a term concurrent with the term as chair.
(8) All appointments shall be for a term of three (3) years or so long as they remain chair of their respective judicial or legislative committees. Vacancies occurring through death, disability, inability or disqualification to serve or by resignation shall be filled for the remainder of the term in the same manner as initial appointments.

51. SCR 8.030. Staff for Commission.

SCR 8.030 shall read:

The Manager of the Division of Education Services of the Administrative Office of the Courts shall serve as Executive Secretary to the Commission.

52. SCR 8.040. Expenses of Commission members.

SCR 8.040 shall read:

Members of the Commission shall not be compensated but shall be reimbursed for actual expenses incurred by them in attending the Commission meetings in accordance with the current travel regulations of the Court of Justice.

53. SCR 8.060. Commission meetings and quorum.

SCR 8.060 shall read:

The Commission will meet at least once a year before the end of the fiscal year and at such other times as called by the chair. A quorum to do business in meetings of the Commission shall require the attendance of not less than seven members of the Commission.

54. SCR 8.070. Continuing judicial education requirements.

SCR 8.070 shall read:

Every appellate judge and justice and every trial judge, not exempted, shall attend a minimum of twenty-five (25) hours in continuing judicial education courses approved by the Judicial Education Commission each educational biennium. At least once every two years, a portion of the required continuing judicial education shall consist of programs which focus on the dynamics and effects of domestic violence including the availability of community resources, victims services and reporting requirements. An educational biennium shall begin on July 1 and end two years later on June 30 of each even-numbered year. To satisfy the minimum attendance requirement for any educational biennium a judge is authorized to carry forward any excess attendance over twenty-five (25) hours earned in the immediately preceding biennium.

55. SCR 8.120. Expenses.

SCR 8.120 shall read:

Judges attending judicial education programs sponsored by the Administrative Office of the Courts shall be reimbursed for their expenses in accordance with Court of Justice Travel Regulations. Expenses for attendance at any other education program shall be borne by the judge unless prior approval is obtained from the Manager of the Education Services Unit of the Administrative Office of the Courts.

56. SCR 9.000 Monitoring of District Court Probationers by Private Agency.

A new rule SCR 9.000 shall read:

KRS 533.010 (12) permits a court to order a defendant to submit to probation monitoring by a private agency when it is in the best interest of the defendant and the public to do so.

(Effective July 15, 1998). The following rules shall apply when a district court orders a private agency to supervise a defendant who has been convicted of a misdemeanor or traffic offense and placed on probation as an alternative sentence to imprisonment.

57. SCR 9.010 When Referral to a Private Agency is Permitted.

A new rule SCR 9.010 shall read:

A district court may refer a defendant convicted of a misdemeanor or a traffic offense to a private agency for monitoring in accordance with KRS 533.010(12) only when probation monitoring services are not being and cannot be performed by a governmental agency, a not-for-profit agency or volunteers.

58. SCR 9.020 Requirements of Private Agency

A new rule SCR 9.020 shall read:

To receive referrals from the district court, the private agency must:

A. be an independent contractor and not an agent, servant, or employee of the court;

B. have no individual or fiduciary financial relationship with a judge of the district in which the agency has been approved to provide services, nor with the judge's spouse, nor with a minor child of the judge residing within the judge's household;

C. not have as a principal officer, director or trustee, or the spouse of said officer, director or trustee, anyone related by blood or marriage within the third degree of relationship to any judge or the spouse of any judge in the district for which the agency has been approved to provide services;

D. maintain and provide upon request liability insurance in an amount equal to a minimum of $1 million dollars;

E. agree in writing to accept pro bono referrals from the district court on a proportional basis with all other private probation companies providing approved services to a district court;

F. must provide the district court a written schedule of fees to be charged, including a sliding scale fee schedule for indigent defendants based upon the individual's ability to pay; and,

G. agree in writing to assess fees in strict conformity with the fee schedule submitted to and approved by the district court.

59. SCR 9.030 Requirements of District Court in referring a convicted offender to a private agency.

A new rule SCR 9.030 shall read:

When utilizing a private agency for probation monitoring, the district court must:

A. assure the private agency has no discretion as to the terms or conditions of probation, including, but not limited to the condition of or the amount of restitution;

B. assure the private agency shall not collect any fines, fees and court costs for the district court;

C. approve all fees to be charged by the private agency, and assure all fees actually charged comply with the approved schedule of fees submitted to the district court;

D. assure no employee of the private agency is seated inside the bar within the courtroom;

E. assure the terms of probation or conditional discharge are clearly stated on the court's docket or other forms provided by the Administrative Office of the Courts and not on forms provided by the private agency;

F. assign pro bono cases proportionately to all private agencies approved by the district court to provide services to the court;

G. require all private agencies to report to the district court on a monthly basis all pro bono cases referred to such agency by the court and whether such agency accepted or rejected the pro bono referral and, if rejected, the reasons for such rejection.

60. SCR 9.040 Disqualification.

A new rule SCR 9.040 shall read:

Non-compliance with the rule by any private agency shall constitute grounds for the district court to deny or rescind approval for the private agency to provide services to the district court.

61. MODEL MEDIATION RULES

Model Mediation Rules are hereby adopted and shall read:

RULE 1 PREAMBLE AND SCOPE

The ________________ County Trial Courts find that under some circumstances the process known as mediation may provide an efficient and cost-effective alternative to traditional litigation, and, further, that the wise and judicious use of mediation may benefit litigants.

Mediation is intended to help both litigants and the Courts facilitate the settlement of disputes. Litigants should participate in good faith and in an earnest attempt to resolve their differences.

This Rule refers to mediation. Nothing in this Rule shall prohibit parties from resolving disputes through other methods. However, in any case where one party may pose a risk of harm (such as domestic violence) to another party or family member, mediation should not be used.

Rule 2 MEDIATION DEFINED

Mediation is an informal process in which a neutral third person(s) called a mediator facilitates the resolution of a dispute between two or more parties. The process is designed to help disputing parties reach an agreement on all or part of the issues in dispute. Decision- making authority remains with the parties, not the mediator. The mediator assists the parties in identifying issues, fostering joint problem-solving, and exploring settlement alternatives.

Rule 3 REFERRAL OF CASES TO MEDIATION

At any time on its own motion or on motion of any party, the Court may refer a case or portion of a case for mediation. In this decision, the court shall consider:

(a) the stage of the litigation, including the need for discovery, and the extent to which it has been conducted;

(b) the nature of the issues to be resolved;

(c) the value to the parties of confidentiality, rapid resolution, or the promotion or maintenance of on-going relationships;

(d) the willingness of the parties to mutually resolve their dispute;

(e) other attempts at dispute resolution; and

(f) the ability of the parties to participate in the mediation process.

Rule 4 NO STAY OF PROCEEDINGS

Unless otherwise ordered by the Court, mediation shall not stay any other proceedings.

Rule 5 APPOINTMENT OF MEDIATOR

Within fifteen (15) days of referral, the parties shall agree on a mediator or a mediation service. If the parties cannot agree, they shall notify the court, which will select a mediator or a mediation service.

Rule 6 MEDIATOR COMPENSATION

The mediator shall be compensated at the rate agreed between the mediator and the parties if the mediator is chosen by agreement. If the mediator is appointed by the Court, the fee for the mediator shall be reasonable and no greater than the mediator's standard rate as a mediator. Unless otherwise agreed by the parties or ordered by the Court, the parties shall equally divide the mediator's professional fees.

Rule 7 MEDIATION PROCEDURE

Following selection of the mediator, the mediator shall set an initial mediation conference within thirty (30) days. The mediation conference shall be held in the county in which the case is pending or at a site agreed upon by the parties. The mediator may meet with the parties or their counsel prior to the mediation conference for the purpose of establishing a procedure for the mediation conference. The mediator may require the parties to submit a confidential statement of the case or other materials that the mediator may reasonably believe appropriate for efficiently conducting the mediation conference.

Rule 8 ATTENDANCE AT MEDIATION CONFERENCE

The parties must attend the mediation conference. Counsel shall attend the mediation conference unless otherwise agreed to by the parties and the mediator or ordered by the Court. If a party is a public entity, it shall appear by the physical presence of a representative with full authority to negotiate on behalf of the entity and to recommend settlement to the appropriate decision making body or officer of the entity. If a party is an organization other than a public entity, it shall appear by the physical presence of a representative, other than the party's counsel of record, who has full authority to settle without further consultation. If any party is insured for the claim in dispute, that party shall also be required to have its insurer(s) present by the physical presence of a representative of the insurance carrier(s) who is not that carrier's outside counsel; this representative must have full settlement authority. The foregoing requirements of attendance may be varied only by stipulation of the parties or by order of the Court for good cause shown.

Rule 9 COMPLETION OR TERMINATION MEDIATION

The mediator may terminate the mediation conference after a settlement is reached or when the mediator determines that continuation of the process would be unproductive. After the initial mediation conference, mediation shall continue only by the agreement of the parties, their counsel and the mediator, or by order of the Court.

Rule 10 REPORT TO THE COURT

The mediator shall report to the court that the mediation has not occurred, has not been completed, or that the mediation has been completed with or without an agreement on any or all issues. With the consent of the parties, the mediator may also identify those matters which, if resolved or completed, would facilitate the possibility of a settlement.

Rule 11 AGREEMENT

If an agreement is reached during the mediation conference, it shall be reduced to writing and signed by the parties. The parties shall be responsible for the drafting of the agreement, although the mediator may assist in the drafting of the agreement with the consent of the parties.

Rule 12 CONFIDENTIALITY

A. Mediation sessions shall be closed to all persons other than the parties, their legal representatives, and other persons invited by the mediator with the consent of the parties.

B. Mediation shall be regarded as settlement negotiations for purposes of K.R.E. 408.

C. Mediators shall not be subject to process requiring the disclosure of any matter discussed during the mediation, but rather, such matters shall be considered confidential and privileged in nature except on order of the Court for good cause shown. This privilege and immunity reside in the mediator and may not be waived by the parties.

D. Nothing in this rule shall prohibit the mediator from reporting abuse according to KRS 209.030, KRS 620.030, or other applicable law.

62. BY LAWS OF THE KBA - Section 4

Section 4 of the By Laws of the KBA is amended to read as follows:

Section 4 - The Board of Governors

(c) Nomination of a candidate for the Board shall be by written petition signed by not less than twenty members in good standing who are residents of that Supreme Court. All nominating petitions shall be received by the Executive Director at the Kentucky Bar Center prior to 5:00 p.m., Eastern Time, of the last regular business day of the month of October. If only one candidate is nominated in a District, he/she shall be declared elected to that office and the Executive Director shall at once so certify to the Board and the candidate. Where two or more candidates are nominated, an election shall be held as provided in Section 9.

All sitting and all concur, except as follows: Stumbo, J., dissents as to SCR 3.022 and SCR 3.024. As to the proposed amendments to SCR 3.150(1) and (2), Lambert, C.J., and Johnstone and Keller, JJ., voted in favor of adoption. With respect to the adoption of the Model Mediation Rules, Cooper, Graves and Stumbo, JJ., voted no.

ENTERED: November 29, 1999.

Chief Justice