

Supreme Court of Kentucky

2020-21

In Re: Order Amending Rules of the Supreme Court

The following rule amendments shall be effective May 1, 2020:

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

SCR 2.007 shall read:

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

SCR 2.040 Character and Fitness Committee; nominations

SCR 2.040 shall read:

(1) There is hereby created a Committee on Character and Fitness, hereinafter referred to as the Committee.

(2) The Committee shall be composed of seven attorneys and two lay members, appointed by the Supreme Court. The Supreme Court may appoint additional members upon request of the Committee or at its own discretion. The Supreme Court shall appoint the Chair of the Committee. The lay members appointed to

the Committee should have training in substance abuse, mental health, financial management or another area of value to the assessment of good moral character and fitness to practice law.

(3) The terms of all members shall be three years. For the year 2020 only, the Chief Justice will appoint three members to serve a one-year term on the Commission to allow for staggered terms among the membership.

(4) Subject to the approval of the Supreme Court, the committee shall have the power to adopt and amend rules and regulations governing the manner in which it carries out its duties.

(5) The Committee on Character and Fitness is charged with the responsibility of determining the age, character and fitness, education and general qualifications of those applicants for admission to the bar of the Commonwealth whose applications are referred to it by the Clerk of the Supreme Court. The Character and Fitness Committee is further charged with the duty of certifying to the Supreme Court persons who appear qualified to perform legal services as interns under Rule 2.540.

(6) The Character and Fitness Committee, in determining the character and fitness of an applicant for admission to the bar of the Commonwealth, and in determining the character and fitness of a person seeking to perform legal services as an intern under Rule 2.540, may have such persons investigated by the National Conference of Bar Examiners or any other reputable investigative agency. Subject to the approval of the Supreme Court, the Character and Fitness Committee may compensate any person or agency making such investigation out of funds held for that purpose.

(7) 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.

(8) From time to time, the Character and Fitness Committee shall recommend to the Supreme Court admission to the bar without examination of applicants for such admission who qualify therefor under the provisions of Rule 2.110.

(9) The Character and Fitness Committee shall have the power to issue subpoenas and to assess costs as it shall determine necessary.

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

SCR 2.300 shall read:

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

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 or mailed to the Kentucky Bar Association in accordance with SCR 3.500 and SCR 3.510.

(b) Any applicant for reinstatement who is a member of the bar in any other jurisdiction must provide, along with the application, a statement from the disciplinary authority of each jurisdiction listing any complaint or charge that has been filed against the applicant and its disposition. Reciprocal discipline, based on a Kentucky disciplinary order, shall also be disclosed.

(c) Any applicant who is permanently disbarred in another jurisdiction is not eligible to apply for reinstatement in Kentucky.

(d) Upon receipt of a complete application for reinstatement and payment of necessary fees by an applicant who has been suspended more than one hundred eighty (180) days (and in some cases where the suspension has been less than one hundred eighty (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.

(e) Upon receipt of a Reinstatement Application from the Kentucky Bar Association, the Kentucky Office of Bar Admissions, Character and Fitness Committee will instruct the applicant to electronically file a Character and

Fitness Certification for Reinstatement Form in accordance with the instructions contained on it from the Office of Bar Admissions website, www.kyoba.org.

(f) 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, 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 60 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.

This Order shall be effective May 1, 2020.

Entered this 9th day of April 2020.


CHIEF JUSTICE

All sitting; all concur.