

Supreme Court of Kentucky

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

2005-10

ORDER CORRECTING

Amendments contained in Numbers 16 and 32 of Supreme Court Order 2005-10 are hereby corrected to read as follows:

16. SCR 3.175(1) Efficient enforcement; notice of attorney's address

Section (1) of SCR 3.175 shall read:

(1) In order to facilitate the efficient enforcement of the Kentucky Rules of Professional Conduct, the rules of the Continuing Legal Education Commission, the dues obligations of attorneys, and such other communications of importance to the profession as the Supreme Court may consider appropriate, each attorney licensed by the Supreme Court to practice law in this Commonwealth shall:

(a) maintain with the Director a current address at which he or she may be communicated with by mail, the said address to be known as the member's Bar Roster address, and shall upon a change of that address notify the Director within thirty (30) days of the new address; and

(b) include his or her five (5) digit member identification number in all communications to the Association including, but not limited to, any and all communications relating to his or her membership status, membership record, dues obligations, compliance with continuing legal education requirements or disciplinary proceedings in which he or she is a respondent.

(c) If the member provides a Post Office address, he or she must also provide a current address for service of process.

(d) Failure to maintain a current address which allows for physical service of process with the Director may be prosecuted in the same manner as a violation of the Rules of Professional Conduct.

32. SCR 3.810(2), (4) and (5) Legal fee arbitration

Sections (2), (4), and (5) of SCR 3.810 shall read:

(2) Definitions.

(A) "Attorney" means an attorney-at-law who is a member in good standing of the Association.

(B) "Association" means the Kentucky Bar Association.

(C) "Director" means the Director of the Kentucky Bar Association.

(D) "Vice-President" means the Vice-President of the Kentucky Bar Association.

(E) "Controversy" means a dispute or disagreement between an attorney and his or her client relative to the fee due the attorney for particular legal services rendered, and it may also mean a dispute or disagreement between attorneys concerning the amount of the fees due each attorney for particular legal services rendered.

(F) "Amount in controversy" means the difference between the sum of money an attorney proposes to charge for legal services and the sum of money the client offers to pay for such services.

(G) "Panel" means the arbitrator or arbitrators appointed or designated to arbitrate the fee disagreement as hereinafter provided.

(4) Institution of Proceedings.

(A) Proceedings hereunder shall be begun by completing three (3) copies of a petition. The petition must be signed by one of the parties to the dispute. The petition shall state the origin and details of the dispute, the nature and degree of legal services rendered, and the amount claimed due as a result of the dispute alleged. Upon the filing of the petition, the petitioner shall also sign three (3) copies of an arbitration agreement. The petition and arbitration agreement shall be on forms provided by the Association and when completed, shall be filed in the office of the Association.

(B) Upon the filing of the petition, the Director of the Association shall forward a copy of the petition to the Vice-President. The Vice-President, upon receipt of the petition, shall determine whether this plan applies under these Rules. The decision of the Vice-President on that matter shall be final. The Vice-President shall have full power to require additional information from the petitioner in all disputes wherein additional information is deemed desirable or necessary.

(C) In the event the Vice-President determines that the Association shall not accept jurisdiction of a fee dispute, the petition shall be returned to the Director, with a brief explanation as to why jurisdiction has been refused. The Director shall then notify the petitioner that the Association has not accepted jurisdiction and will not arbitrate the dispute and shall advise the

petitioner why the Association has not accepted jurisdiction of the matter.

(D) In the event the Vice-President determines that the Association shall accept jurisdiction, the Vice-President shall notify the Director and shall return the petition to the Director or other designated employee of the Association. The Director shall then forward to respondent a copy of the petition and three (3) copies of the arbitration agreement signed by the petitioner, and shall request the respondent to sign and return to the Director two (2) copies of the arbitration agreement and three (3) copies of the respondent's answer to the petition. The letter to the respondent shall state that respondent has twenty (20) days in which to answer and return the two (2) signed arbitration agreements, and that if respondent's answer is not received within twenty (20) days, the Association will construe such failure to answer as constituting a refusal to submit to arbitration. Upon receipt of the respondent's answer, the Director shall forthwith forward to the petitioner one (1) signed copy of the arbitration agreement and one (1) copy of the respondent's answer.

(E) In the event of the respondent's refusal to submit the fee dispute to arbitration, or if respondent fails to sign and return the arbitration agreement and answer within twenty (20) days, the Director shall so notify the petitioner and the file of the Association shall be closed.

(5) Arbitration Panel.

(A) Composition.

(i) Where the amount in controversy is two thousand five hundred dollars (\$2,500.00) or less, the panel shall consist of one (1) person who shall be a practicing Attorney.

(ii) Where the amount in controversy exceeds two thousand five hundred dollars (\$2,500.00), the panel shall consist of three (3) persons, two (2) of whom shall be practicing Attorneys and the third (3rd) member shall be a non-lawyer.

(iii) The practicing Attorney(s) referred to in paragraph (5)(A)(i) and (5)(A)(ii) above, shall each:

(a) be a member in good standing of the Association;

(b) be appointed or designated for a particular controversy by the Vice-President;

(c) if engaged in the private practice of law shall maintain an office and carry on such practice more than fifty (50) miles from the county seat of the county where the attorney who is a party to the fee dispute maintains his or her principal office for the practice of law. If the fee dispute is between two (2) or more attorneys, then the attorney member(s) of any panel shall maintain any principal law practice and offices within fifty (50) miles of the county seat of the county where the attorney petitioning for arbitration maintains his or her principal office for the practice of law.

(iv) Any attorney appointed or designated by the Vice-President may refuse to serve. Such refusal shall be by written notice to the Director within ten (10) days of the appointment.

(v) The non-lawyer referred to in paragraph (5)(A)(ii) shall be selected by the presiding judge or Chief Judge of the circuit court of the county where the attorney involved in the fee dispute maintains his or her principal office for the practice of law. If the dispute is between two attorneys, the selection of the non-lawyer member of the panel shall be made by the presiding judge or Chief Judge of the circuit court of the county where the attorney petitioning for arbitration maintains his or her principal office for the practice of law. If there be no presiding or Chief Judge, but more than one judge of that circuit court, then the judge of the court senior in terms of service as a circuit court judge shall select the non-lawyer member of the panel.

(vi) The Vice-President, in cases of a three-member panel, shall designate one member of the panel as Chair of the panel.

(B) Objections.

(i) Either party to a fee dispute may object for cause to any of the panel members. Such objection shall be in writing and shall be made within twenty (20) days of written notification of the names of the panel members. Failure to object within twenty (20) days shall constitute a waiver of any objection to the composition of the panel. The following shall constitute grounds for objection for cause to a proposed panel member serving:

(a) If the panel member is associated in any business or profession with or related in any way to any of the parties or their attorneys;

(b) If the panel member has a personal or financial interest or any bias or prejudice regarding any of the parties or the nature of the controversy;

(c) If the panel member has pending any business transactions or controversy as a party with any party to the controversy or as attorney or has then pending any business transactions or controversies as an attorney with any party to the controversy or any attorney for a party, and there is such a conflict that it would render the arbitrator incapable of fairly exercising independent judgment.

(ii) Objections to panel members shall be made to the Chair of the panel and shall be ruled upon by the Chair of the panel whose decision shall be final. Each side may have one preemptory strike.

(C) Compensation.

Members of the panel shall not be paid or compensated for their services.

(D) Vacancies.

If any arbitrator should resign, die, withdraw, refuse to act or be disqualified or unable to act, the Vice-President shall declare the office vacant and, if the matter has already been heard, it shall be reheard, unless

the parties otherwise agree. In the absence of such agreement a new arbitration panel shall be selected in accordance with these Rules.

(E) Communication Between the Parties and Panel Members.

There shall be no communication between the parties and the members of the arbitration panel upon the subject matter of the arbitration other than at arbitration proceedings. Copies of any written communication between members of the panel and any party, or any attorney for any party or between parties or their attorneys and the panel shall be furnished contemporaneously to each participant in the proceeding, and filed with the Director.

ENTERED: October 26, 2005



Chief Justice

Supreme Court of Kentucky

**IN RE:
ORDER AMENDING
RULES OF THE SUPREME COURT (SCR)
BY-LAWS OF THE KENTUCKY BAR ASSOCIATION**

2005-10

The following rules' amendments shall become effective January 1, 2006.

AMENDMENTS TO THE RULES OF THE SUPREME COURT

1. SCR 3.010 General definitions

SCR 3.010 shall read:

As used throughout this Rule 3, the following definitions shall apply unless the context clearly requires a different meaning:

"Association" is the Kentucky Bar Association.

"Attorney" is a person licensed or authorized to practice law.

"Board" is the Board of Governors of the Association.

"Bylaws" means the bylaws of the Association.

"Charge" means the pleading by which the Association charges an attorney with unprofessional conduct.

"Circuit clerk" is the clerk of the court of respondent's present or last known residence.

"Clerk" is the Clerk of the Supreme Court of Kentucky.

"Committee" means the Committee on Character and Fitness as defined in Rule 2.040.

"Complainant" means the party who causes to be initiated an investigation of an attorney, or who causes to be initiated a proceeding under Rule 3.160. The complainant may be a person or entity.

"Court" is the Supreme Court of Kentucky.

"Director" is the Director of the Association.

"District" means a prescribed geographical and political area of the state.

"Governor" is an elected member of the board.

"Law student" means any person enrolled in an approved law school who has successfully completed the first year therein.

"Member" means an attorney in good standing as required by the rules of the court.

"Officer" means a member elected or appointed pursuant to the rules.

"President" is the President of the Association.

"President-Elect" is the President-Elect of the Association.

"Registrar" is the Registrar of the Association.

"Respondent" is an attorney against whom a charge is filed.

"Rules" are the rules of the Court.

"Section" means a body of members actively interested in and promoting improvements in a particular branch of law.

"Time" is computed as under the Rules of Civil Procedure.

"Treasurer" is the Treasurer of the Association.

"Trial commissioner" means the commissioner appointed pursuant to the provisions of Rule 3.230 and other rules governing disciplinary procedures.

"Vice-President" is the Vice-President of the Association.

2. **SCR 3.070 The board; functions and membership**

SCR 3.070 shall read:

The Board is the governing body of the Association and the agent of the Court for the purpose of administering and enforcing the Rules. It shall consist of the President, the President-Elect, the Vice-President, the immediate Past President, the Chair of the Young Lawyer's Section, and two attorneys elected from the membership of the Association in each appellate district of the state as presently existing or hereafter created.

3. **[SCR 3.110 The house; functions, membership, terms and vacancies]**

SCR 3.110 is deleted.

4. SCR 3.120 (2) Fiscal provisions

Section (2) of SCR 3.120 shall read:

(2) An annual budget including all income and expenditures shall be prepared by a budget and finance committee composed of the President-Elect and two members of the Board appointed by him/her; the Vice-President; two members at large appointed by the President-Elect; a member of the Inquiry Commission; a member of the Continuing Legal Education Commission; a member of the IOLTA Trustees; a member of the Clients' Security Fund Trustees; and the Director. The President-Elect shall act as chair.

5. SCR 3.130(7.02)(1)(g) Definitions

Subsection (g) of section (1) of SCR 3.130(7.02) shall read:

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

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

(g) Any communication by a lawyer to third parties that is further distributed by a third party who is not in any way controlled by the lawyer, and for which distribution the lawyer pays no consideration, shall be exempt from all the provisions of these Rules except Rule 7.10, 7.15 and 8.3.

6. SCR 3.130(7.03),(5),(7)and new section(8) Attorneys' Advertising Commission

Sections (5), (7) and new section (8) of SCR 3.130(7.03) shall read:

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

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

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

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

(d) Review advertisements, issue advisory opinions concerning the compliance of an advertisement with the Advertising Rules and Advertising Regulations, conduct such proceedings or investigations as it deems necessary, or delegate this authority to a Commission member or a hearing officer who shall proceed in the name of the Commission.

(e) Seek out violations of the Advertising Rules and the Advertising Regulations, resolve the violations under Rule 7.06(4), or refer violations to the Inquiry Commission. Referral to the Inquiry Commission may be by any panel or by a majority of a quorum of the entire commission.

(7) The Commission shall act upon advertisements, or issue advisory opinions in panels of three (3) persons. A quorum to act upon an advertisement shall consist of not fewer than two (2) members of a panel. A quorum to do business in meetings of the entire Commission shall consist of not fewer than five of its members in attendance.

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

7. SCR 3.130(7.04) Advertising of fees

SCR 3.130(7.04) shall read:

A lawyer who advertises a fee for routine services and accepts the employment must perform such services for the amount advertised. In addition, a detailed description of what services are included in the "routine services" must be supplied to the Commission with each advertisement and to each prospective client. If the client is required to pay court costs and/or case expenses in addition to the attorney's fee, the advertisement shall state in all capital letters, "COURT COSTS AND CASE EXPENSES WILL BE THE RESPONSIBILITY OF THE CLIENT."

8. SCR 3.130(7.05) Filing of advertisements

SCR 3.130(7.05) shall read:

No lawyer may advertise unless the lawyer complies with SCR 3.130 (7.02) - (7.50).

(1)(a) A lawyer may employ the following in an advertisement:

1. Name, including name of law firm and names of professional associates, addresses, telephone numbers, fax numbers and e-mail addresses;

2. One or more fields of law in which the lawyer or law firm practices, or a statement that practice is limited to one or more fields of law, to the extent authorized under Rule 7.40;

3. Date and place of birth;

4. Date and place of admission to the bar of state and federal courts;

5. Schools attended, with dates of graduation, degrees and other scholastic distinctions;

6. Public or quasi-public offices;
7. Military services;
8. Authorships;
9. Teaching positions;
10. Memberships, offices and committee assignments, in bar associations;
11. Membership and offices in legal fraternities and legal societies;
12. Technical and professional licenses;
13. Memberships in scientific, technical and professional associations and societies;
14. Foreign language ability;
15. Names and addresses of bank references;
16. With their written consent, names of clients regularly represented;
17. Prepaid or group legal services programs in which the lawyer participates;
18. Whether credit cards or other credit arrangements are accepted;
19. Office and telephone answering service hours;
20. Fee for an initial consultation;
21. Availability upon request of a written schedule of fees and/or an estimate of the fee to be charged for specific services;
22. Contingent fee rates provided that the statement discloses whether percentages are computed before or after deduction of court costs and case expenses;
23. Range of fees for services, provided that the statement discloses that the specific fee within the range which will be charged will vary depending upon the particular matter to be handled for each client and the client is entitled to without obligation to an estimate of the fee within the range likely to be charged, in print size equivalent to the largest print used in setting forth the fee information;
24. Hourly rate, provided that the statement discloses that the total fee charged will depend upon the number of hours which must be devoted to the particular matter to be handled for each client and the client is entitled to without obligation an estimate of the fee likely to be charged, in print size at least equivalent to the largest print used in setting forth the fee information;
25. Fixed fees for specific legal services to the extent authorized under these Rules; or

26. Any other information specified in any regulation adopted by the Commission. Any lawyer may petition the Commission for the adoption of such a regulation in which case the petition shall be published as provided in these Rules. (b) If the advertisement contains only those items listed in SCR 3.130(7.05)(1)(a), the lawyer shall mail or deliver to the Commission, c/o the Director of the Kentucky Bar Association, three (3) copies of the advertisement. If the advertisement is to be published by broadcast media, including radio or television, a fair and accurate representation of the advertisement plus three (3) copies of a typed transcript of the words spoken shall be submitted. Any such advertisement is exempt from a fee for submission. Submission under this subsection shall occur no later than the publication of the advertisement.

(2) If the advertisement does not qualify under SCR 3.130(7.05)(1) for submission without a fee, the lawyer shall mail or deliver to the Commission, c/o the Director of the Kentucky Bar Association, three (3) copies of the advertisement. If the advertisement is to be published by broadcast media, including radio or television, a fair and accurate representation of the advertisement plus three (3) copies of a typed transcript of the words spoken shall be submitted. A filing fee of \$50.00 for each advertisement filed under this subsection shall accompany each submission. Submission under this subsection shall occur no later than the publication of the advertisement. If an advisory opinion has been sought under SCR 3.130(7.06)(1) no additional fee is required.

(3) The fair and accurate representation of a broadcast media advertisement required in SCR 3.130 (7.05)(1) and (2) shall include three (3) copies of a video cassette (VHS), digital video disc (DVD), or audio cassette plus three (3) copies of a typed transcript of the advertisement.

9. **SCR 3.130(7.06) Advisory opinions**

SCR 3.130(7.06) shall read:

(1) For any advertisement submitted as required by SCR 3.130(7.05)(2), a lawyer may request an advisory opinion by the Commission before the advertisement is published. Such request shall be in writing made at least 30 days before the advertisement is published. The request shall be accompanied by an administrative fee of \$50, which is in lieu of the fee required by SCR 3.130(7.05)(2). Within 30 days after such request is received, the Commission shall issue its advisory opinion as to the compliance of the advertisement with the Advertising Rules and Advertising Regulations.

(2) If a lawyer has received an advisory opinion that an advertisement complies with the Advertising Rules and Advertising Regulations, that lawyer shall not be disciplined for any use of that advertisement, except as otherwise provided in SCR 3.130 (7.06)(6).

(3) If a lawyer has requested an advisory opinion and the Commission finds that the advertisement does not comply with the requirements of the Advertising Rules or the Advertising Regulations, the Commission, or its designee, shall issue an advisory letter setting forth the factual and legal basis for the opinion. The lawyer may submit a corrected advertisement under SCR 3.130(7.05)(2) that conforms to the advice in the advisory letter with no additional fee required.

(4) If the Commission determines that the Advertising Rules or Advertising Regulations have been violated by a lawyer, it shall determine whether the violation can be dealt with administratively, or can be presumed to be intentional. The Commission may address administrative violations. Intentional violations include but are not limited to: (1) publishing the advertisement after receiving notice that the advertisement is in violation of the Advertising Rules or the Advertising Regulations; (2) a manifest indifference to the Advertising Rules or Advertising Regulations; or (3) a pattern of repeated disregard for these Advertising Rules or Advertising Regulations. Intentional violations may be referred to the Inquiry Commission.

(5) If the Commission has notified the lawyer that the advertisement violated the Advertising Rules or Advertising Regulations, and has further determined that the publication of the advertisement may be contrary to the public interest, the Commission or its designee shall notify the lawyer whose advertisement is under consideration and the Director of the Association. The Director may upon receiving such notification bring an action in compliance with this Rule.

(6) If an advertisement is discovered to be false, misleading or deceptive, or information provided to the Commission in connection with the submission is discovered to be false, misleading or deceptive after the Commission has issued its advisory opinion, it, or its designee, may notify the Advertising lawyer that all prior advisory opinions concerning such advertisement are withdrawn and the advisory opinion shall not constitute a defense to the subsequent use of the advertisement.

10. SCR 3.130(7.07) Review of filings

SCR 3.130(7.07) shall read:

For any advertisement on which an advisory opinion has not been sought, the Commission, or its designee, shall review such filings for compliance with the Advertising Rules and Advertising Regulations. If the Commission, or its designee, determines a violation of the Advertising Rules or Advertising Regulations has occurred, it may notify the advertising attorney that a violation has occurred, or refer the matter to the Inquiry Commission.

COMMENTARY

Any advisory opinion under SCR 3.130(7.06) or any letters of notification under SCR 3.130(7.07) that an advertisement does not comply with the Advertising Rules or any Advertising Regulations of the Commission does not prohibit the lawyer from using any such advertisement. However, the lawyer, as with all other Rules of Professional Conduct, is obligated to comply with the Advertising Rules and Advertising Regulations and may face disciplinary sanctions if the advertisement used is found to be in violation of the Advertising Rules or Advertising Regulations.

11. SCR 3.130(7.15) Communications concerning a lawyer's service

SCR 3.130(7.15) shall read:

A lawyer shall not make a false, deceptive or misleading communication about the lawyer or the lawyer's service. A communication is false, deceptive or misleading if it:

(a) Contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading; or

(b) Is likely to create an unjustified expectation about results the lawyer can achieve, or states or implies that the lawyer can achieve results by means that violate the rules of professional conduct or other law; or

(c) Compares the lawyer's services with other lawyers' services, unless the comparison can be factually substantiated.

12. SCR 3.130(7.60)Article III(2) Kentucky Disaster Response Plan

Subsection (2) of Article III of SCR 3.130(7.60) shall read:

(2) A unit of the Task Force shall consist of at least one member of the Board of Governors of the Kentucky Bar Association; one member of the Court of Justice; and one or more additional designees to each unit as appointed by the Immediate Past President of the Kentucky Bar Association.

13. SCR 3.160(1),(3), and (4) Initiation of disciplinary cases

Sections (1), (3) and (4) of SCR 3.160 shall read:

(1) After review by Bar Counsel pursuant to subparagraph (3) of this Rule, any complaint against an attorney for unprofessional conduct shall be reduced to a sworn written statement and shall be filed with the Disciplinary Clerk who shall promptly notify the attorney by certified mail, sent to the address maintained by the Director pursuant to SCR 3.175, or other means consistent with the Civil Rules, of the complaint, and that he/she has twenty (20) days to respond to the complaint. Upon completion of the investigation by the Office of Bar Counsel the matter shall be assigned to an Inquiry Commission panel by rotation.

(3) If Bar Counsel deems any written complaint against a member not to state an ethical violation, he/she may submit it to the Chair of the Inquiry Commission or designee, who may decline, without investigation, to entertain it. The Chair may authorize Bar Counsel to refer such complaints, if appropriate, to the Client Assistance Program Director for mediation. The Client Assistance Program will report to the Chair through the Office of Bar Counsel, which will return the complaint to the complaining party with a letter of explanation, or proceed to file the complaint, as the Chair so directs.

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

damages incident to such investigation or any complaint, charge, prosecution, proceeding or trial.

14. SCR 3.166(1) Automatic suspension conviction of a felony

Section (1) of SCR 3.166 shall read:

(1) Any member of the Kentucky Bar Association who pleads guilty to a felony, including a no contest plea or a plea in which the member allows conviction but does not admit the commission of a crime, or is convicted by a judge or jury of a felony, in this State or in any other jurisdiction, shall be automatically suspended from the practice of law in this Commonwealth. "Felony" means an offense for which a sentence to a term of imprisonment of at least one (1) year was imposed. The imposition of probation, parole, diversion or any other type of discharge prior to the service of sentence, if one is imposed, shall not affect the automatic suspension. The suspension shall take effect automatically beginning on the day following the plea of guilty or finding of guilt by a judge or jury or upon the entry of judgment whichever occurs first. The suspension under this rule shall remain in effect until dissolved or superseded by order of the Court. Within thirty (30) days of the plea of guilty or finding of guilt by a judge or jury or entry of judgment whichever occurs first, the suspended attorney may file a motion with the Clerk of the Supreme Court of Kentucky setting forth any grounds which the attorney believes justify dissolution or modification of the suspension.

15. SCR 3.170 Processing disciplinary cases

SCR 3.170 shall read:

Upon the expiration of sixty (60) days after service upon Respondent by certified mail or other means, or receipt of a response to a complaint, whichever is later, the Office of Bar Counsel shall refer the matter, together with such investigative evidence as may have been obtained, to the Inquiry Commission to determine whether the complaint should be dismissed or a charge should be filed. Upon motion by Bar Counsel, and with good cause shown, the Inquiry Commission may direct that the complaint be returned to Bar Counsel for further investigation.

16. SCR 3.175(1) Efficient enforcement; notice of attorney's address

Section (1) of SCR 3.175 shall read:

(1) In order to facilitate the efficient enforcement of the Kentucky Rules of Professional Conduct, the rules of the Continuing Legal Education Commission, the dues obligations of attorneys, and such other communications of importance to the profession as the Supreme Court may consider appropriate, each attorney licensed by the Supreme Court to practice law in this Commonwealth shall:

(a) maintain with the Director a current address at which he or she may be communicated with by mail, the said address to be known as the member's Bar Roster address, and shall upon a change of that address notify the Director within thirty (30) days of the new address; and

(b) include his or her five (5) digit member identification number in all communications to the Association including, but not limited to, any and all communications relating to his or her membership status, membership record, dues obligations, compliance with continuing legal education requirements or disciplinary proceedings in which he or she is a respondent.

(2) If the member provides a Post Office address, he or she must also provide a current address for service of process.

(3) Failure to maintain a current address which allows for physical service of process with the Director may be prosecuted in the same manner as a violation of the Rules of Professional Conduct.

17. SCR 3.190 Charges; form; by whom and where filed

SCR 3.190 shall read:

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

18. SCR 3.200 Notice of filing charges; time to answer

SCR 3.200 shall read:

Upon the filing of a charge, the Disciplinary Clerk shall furnish the Respondent with a copy, by certified mail return receipt requested or other means, to the Respondent's last known address, and if none is known subsequent thereto, to the Respondent's last known bar roster address, or by service on the Director as set forth in SCR 3.175, and notify the Respondent that within twenty (20) days after receipt of the notice, he/she must file an answer and three (3) copies with the Disciplinary Clerk for transmittal to the Inquiry Commission.

19. SCR 3.225 Appointment of Trial Commission

SCR 3.225 shall read:

The Chief Justice shall appoint, subject to the approval of the Supreme Court, from among the membership of the Bar Association, a Trial Commission. Members of the Trial Commission shall be lawyers licensed in the Commonwealth who possess the qualifications of a Circuit Judge. To the extent practicable, the Chief Justice shall, with the consent of the Court, appoint Trial Commissioners from each appellate district. Such Trial Commissioners shall be authorized to serve terms of two (2) years.

20. SCR 3.240(1) and (2) Notice of appointment of Trial Commissioner and hearing

Sections (1) and (2) of SCR 3.240 shall read:

(1) Upon the appointment of a Trial Commissioner, the Disciplinary Clerk shall notify the parties of his/her name and address. The Trial Commissioner shall fix the time and place of the hearing and the Disciplinary Clerk shall give notice thereof to the parties. Such hearing shall be held not less than thirty (30) days, nor more than sixty (60) days, after the date of the notice, but for good cause shown, or by agreement, said time may be extended by the Trial Commissioner.

(2) Any time, not later than ten (10) days after the appointment of a Trial Commissioner or at such point in the proceeding that facts become known sufficient for such challenge, the Respondent may, by motion, challenge for cause the Trial Commissioner. If the challenge is such as might disqualify a Circuit Judge, the Chief Justice shall relieve the challenged member and direct the Disciplinary Clerk to immediately fill the vacancy.

21. SCR 3.285(2) Motion to reconsider or dismiss a charge

Section (2) of SCR 3.285 shall read:

(2) The motion shall be verified unless filed by the Office of Bar Counsel, and shall state specifically the reasons why the matter should be reconsidered or dismissed and may be accompanied by supporting affidavits and exhibits. The motion shall be filed in the office of the Disciplinary Clerk within ten (10) days of service of the charge. Any response shall be filed within twenty (20) days of service of the motion. No other motion to reconsider or dismiss shall be permitted in regard to the reconsideration of a charge by the Inquiry Commission, unless good cause is shown. The Commission shall rule on the motion at the next meeting of the issuing panel.

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

Section (1) of SCR 3.290 shall read:

(1) Promptly after a charge is filed all further pleadings, notices, motions, orders, and briefs shall be sent to the Disciplinary Clerk. The Disciplinary Clerk shall file the original and forward one copy each: to the Inquiry Commission, through the Office of Bar Counsel, or to the Trial Commissioner, if after appointment, to Respondent or Respondent's counsel of record and to the Office of Bar Counsel. However, a motion to reconsider, dismiss, or amend a charge shall be sent only to the Inquiry Commission and to counsel of record. All other reports, inquiries, letters and letters of transmittal, and other communications shall be sent to and processed by the Clerk; however, any communication between the parties concerning negotiations for an agreed sanction 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.

23. SCR 3.320 Procedure where an attorney has been convicted of a misdemeanor or a felony

SCR 3.320 shall read:

When any member of the Association has been convicted of a felony or class "A" misdemeanor, a copy of the judgment shall be filed by the Respondent and the attorney prosecuting the case to a plea of guilty, or conviction by judge or jury, with Bar Counsel for action under SCR 3.160. Bar Counsel shall submit copies of the judgment to the Inquiry Commission which may take action under SCR 3.165.

24. SCR 3.360 Trial Commissioner to file report with Disciplinary Clerk

SCR 3.360 shall read:

(1) When a disciplinary proceeding has been finally submitted, the Trial Commissioner shall promptly file with the Disciplinary Clerk a written report setting forth his/her findings of fact and conclusions of law as to whether a violation of the rules has occurred. The Trial Commissioner's Report shall contain a concise statement of:

- (a) the charge(s) made and the defense(s) offered by the Respondent;
- (b) the proceedings had;
- (c) the facts which the Commissioner deems proved by a preponderance of the evidence, and;
- (d) the sanction, if any, recommended.

(2) The Trial Commissioner's report shall constitute a part of the record in the case. The report shall be advisory.

The Trial Commissioner shall file the report with the Disciplinary Clerk within thirty (30) days after the transcript of evidence or videotape has been filed with the Disciplinary Clerk. Said deadline may be extended by agreement of the parties or by the President upon verified motion by the Trial Commissioner. If an extension is sought by the Trial Commissioner, a verified motion stating with particularity the grounds for the extension of time shall be filed with the Disciplinary Clerk, with service on the parties. The President may grant up to a sixty (60) day extension of time for the Trial Commissioner to file the report. If the Trial Commissioner fails to timely file the report or a verified motion for extension of time, the Board shall request the Supreme Court to issue a show cause order to the Trial Commissioner.

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

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

Disciplinary Clerk. If no notice of appeal is timely filed, the entire record shall be forwarded to the Court for entry of a final order pursuant to SCR 3.370(10).

(5) Upon finality of the report, the Trial Commissioner shall return to the Disciplinary Clerk the entire transcript of the proceeding, the transcript of testimony and such papers as may have been filed and are in the possession of the Trial Commissioner.

25. SCR 3.370(4), (8) and (12) Procedure before the Board and the Court

Sections (4), (8) and (12) of SCR 3.370 shall read:

(4) Within sixty (60) days of completion of briefing by the parties, the Board shall consider and act upon the entire record. Only the President, the President-Elect, the Vice-President, the fourteen (14) duly-elected members of the Board from their respective Supreme Court Districts, and four (4) adult citizens of the Commonwealth who are not lawyers appointed by the Chief Justice as hereinafter described, shall be eligible to be present, participate in and vote on any disciplinary case. Any member, including a non-lawyer member, who has participated in any phase of a disciplinary case submitted to the Board under this rule, or who has been challenged on grounds sufficient to disqualify a Circuit Judge shall be disqualified. If disqualification results in lack of a quorum the Chief Justice shall appoint a member or members (or, if applicable, non-lawyer participants) sufficient to provide a quorum to consider and act on the cases. Any challenge to a member's qualifications shall be determined by the Chief Justice in accordance with KRS 26A.015, et seq.

(8) Bar Counsel or the Respondent may file a notice for the Court to review the Board's decision within thirty (30) days after the Board's decision is filed with the Disciplinary Clerk, stating reasons for review, accompanied by a brief supporting his/her position on the merits of the case. The opposing party may file a brief within thirty (30) days thereafter. Before the notice for review can be filed, the Respondent shall furnish a bond with surety acceptable to the Disciplinary Clerk, conditioned that if the principal in the bond be disciplined by the Court, he/she will promptly pay all costs incurred in the proceeding, including those certified under Rule 3.370. If Respondent files a response *in forma pauperis*, no bond shall be required.

(12) In each case to be presented to the Trial Commissioner, there shall be supplied with the Disciplinary Clerk's file a sealed envelope containing a statement of the Respondent's years of membership in the Association, all orders of unprofessional conduct, and all withdrawals from the association and reasons therefor. The envelope will be opened only if the Trial Commissioner makes a finding of a violation and may be considered in deciding what discipline to impose. Such statement will become part of the record of the case and be transmitted with the rest of the file to the Disciplinary Clerk, Board and/or Supreme Court. Before submission of a case to the Trial Commissioner or the Board a copy of said statement shall be sent to the Respondent, who may review documents relative to it at the Bar Center, and may comment to the Trial Commissioner or the Board upon the statement and point out errors contained in it.

26. SCR 3.380 Degrees of discipline

SCR 3.380 shall read:

Upon findings of a violation of these rules, discipline may be administered by way of private reprimand, public reprimand, suspension from practice for a definite time, all of which may be with or without such conditions as the Court may impose, or permanent disbarment.

27. SCR 3.455 Subpoena power

SCR 3.455 shall read:

Upon application by the Office of Bar Counsel or a claimant, or upon the initiation of the Trustees of the Client's Security Fund, the Director may issue a subpoena to any person or legal entity to appear before it and to produce to the Trustees any evidence deemed by the Trustees to be material to the investigation of a claim for compensation being considered under the Client's Security Fund Plan of the Association. The Director shall mail a copy of the application to the person or legal entity to be subpoenaed, to the claimant, the Office of Bar Counsel, and to the attorney against whom the claim is made, each of whom shall have twenty (20) days from the date of the application to file an objection. If no objection is made, or a timely objection is overruled by the Chair of the Trustees the Director shall issue the subpoena. The subpoenaed party shall appear or produce the documents, whichever is directed by the subpoena. Any such documents will be produced to the Clients' Security Fund Trustees by delivery to the Office of Bar Counsel, which shall provide copies to the claimant and the attorney against whom the claim is made.

28. SCR 3.665(2) Procedure for accreditation of continuing legal education activities and obligations of sponsors

Section (2) of SCR 3.665 shall read:

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

(a) Applications submitted by sponsors for activities greater than two hours in length-\$50.00 per activity. Activities repeated on different dates or at different locations are separate activities and require separate applications and separate fees.

(b) Applications submitted by sponsors for activities two hours or less in length-\$20.00 per activity. Activities repeated on different dates or at different locations are separate activities and require separate applications and separate fees.

(c) Applications submitted by members or former members, regardless of length of activity-\$20.00. Each separate activity submitted for accreditation is a separate application requiring a separate fee.

29. SCR 3.666(4), (6), (7), (8) and (9) Exemptions and removal of exemptions

Sections (4), (6), (7), (8), and (9) of SCR 3.666 shall read:

(4) Exemptions granted pursuant to Rule 3.666(2)(a) shall not be effective retroactively unless the applicant certifies that he or she has not practiced law, as defined in Rule 3.020, within the Commonwealth, for all time periods covered by such exemption. Members shall not practice law as defined in Rule 3.020 while said exemption is in effect. Practice of law as defined in Rule 3.020, within the Commonwealth, during the effective period of an exemption pursuant to Rule 3.666(2)(a) shall constitute unauthorized practice. Information known by the Commission regarding the practice of law during any period for which a member has certified non-practice status pursuant to SCR 3.666(2)(a) and SCR 3.666(3) is not confidential as provided at SCR 3.690 and shall be provided along with the member's continuing legal education transcript by the Director to the Office of Bar Counsel and the Inquiry Commission in writing.

(6) A member seeking removal of a non-practice exemption granted pursuant to Rule 3.666(2)(a) shall be required to file a written application with the Commission, addressed to the Director, for the removal of said exemption. Required as attachment to the application for removal of said exemption shall be certification of completion of sufficient continuing legal education credits to meet the minimum annual continuing legal education requirement for each educational year during which he or she was exempt, excluding the current educational year. The member shall be notified in writing, via certified mail, of the Commission's action on the application for the removal of the exemption. In no case shall a member be required to certify completion of more than twenty-five (25) credits, including applicable ethics credits, as a condition of removal of the exemption. Timely certification shall include only continuing legal education credits earned during the current educational year and two prior educational years. This Rule in no way affects the member's responsibility to complete the current year minimum annual education requirement by June 30th. The current year minimum educational requirement must be completed as set forth at SCR 3.661.

(7) Application for removal of an exemption as provided in SCR 3.666(6) shall be made by completion of forms provided by the Association. The application shall include certification of completion of such continuing legal education activities as required by these rules, including SCR 3.661(3), SCR 3.662, SCR 3.663, SCR 3.665, or as otherwise specified by the Commission.

(8) The Commission shall approve the application for removal of a non-practice exemption if it appears that the member has satisfied the requirements of this Rule.

(9) Application for removal of an exemption granted pursuant to SCR 3.666(2)(a) may not be made within thirty (30) days of the granting of the exemption.

30. SCR 3.675(2) Continuing legal education requirements for restoration or reinstatement to membership: procedures

Section 2 of SCR 3.675 shall read:

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

31. SCR 3.800(2), (4) and (5) Legal negligence arbitration

Sections (2), (4), and (5) of SCR 3.800 shall read:

(2) Definitions.

(A) "Attorney" means an attorney-at-law who is a member in good standing of the Association.

(B) "Association" means the Kentucky Bar Association.

(C) "Director" means the Director of the Kentucky Bar Association.

(D) "Vice-President" means the Vice-President of the Kentucky Bar Association.

(E) "Controversy" shall mean any claim of legal negligence in the amount of ten thousand dollars (\$10,000.00) or less.

(F) "Panel" means the arbitrator or arbitrators appointed or designated to arbitrate claims of legal negligence as hereinafter provided.

(4) Institution of Proceedings.

(A) Proceedings hereunder shall be begun by completing three (3) copies of a petition. The petition must be signed by one of the parties to the dispute. The petition shall state the origin and details of the dispute, the acts or omissions deemed to be negligent, and the amount claimed due as a result of the negligence alleged. Upon the filing of the petition, the petitioner shall also sign three (3) copies of an arbitration agreement. The petition and arbitration agreement shall be on forms provided by the Association and when completed shall be filed in the office of the Association.

(B) Upon the filing of the petition, the Director of the Association shall forward a copy of the petition to the Vice-President. The Vice-President, upon receipt of the petition, shall determine whether this plan applies under these Rules. The decision of the Vice-President on that matter shall be final. The Vice-President shall have

full power to require additional information from the petitioner in all disputes wherein additional information is deemed desirable or necessary.

(C) If the Vice-President determines that the Association shall not accept jurisdiction, the petition shall be returned to the Director, with a brief explanation as to why jurisdiction has been refused. The Director shall then notify the petitioner that the Association has not accepted jurisdiction and will not arbitrate the claim and shall advise the petitioner why the Association has not accepted jurisdiction of the matter.

(D) If the Vice-President determines that the Association shall accept jurisdiction, the Vice-President shall notify the Director and shall return the petition to the Director or other designated employee of the Association. The Director shall then forward to respondent a copy of the petition and three (3) copies of the arbitration agreement signed by the petitioner and shall request the respondent to sign and return to the Director two (2) copies of the arbitration agreement and three (3) copies of the respondent's answer to the petition. The letter to the respondent shall state that respondent has twenty (20) days in which to answer and return the two (2) signed arbitration agreements, and that if respondent's answer is not received within twenty (20) days, the Association will construe such failure to answer as constituting a refusal to submit to arbitration. Upon receipt of the respondent's answer, the Director shall forthwith forward to the petitioner one (1) signed copy of the arbitration agreement and one (1) copy of the respondent's answer.

(E) If the respondent's refusal to submit to arbitration, or if respondent fails to sign and return the arbitration agreement and answer within twenty (20) days, the Director shall so notify the petitioner, and the file of the Association shall be closed.

(5) Arbitration Panel.

(A) Composition.

(i) Where the amount in controversy is two thousand five hundred dollars (\$2,500.00) or less, the panel shall consist of one (1) person who shall be a practicing Attorney.

(ii) Where the amount in controversy exceeds two thousand five hundred dollars (\$2,500.00), but is not in excess of ten thousand dollars (\$10,000.00), the panel shall consist of three (3) persons who shall be practicing Attorneys.

(iii) The practicing Attorneys referred to in paragraph (5)(A)(i) and (5)(A)(ii) above shall each:

(a) be a member in good standing of the Association;

(b) be appointed or designated for a particular controversy by the Vice-President;

(c) if engaged in the private practice of law, maintain or carry on such practice more than fifty (50) miles from the county seat of the county where the attorney who is a party to the arbitration maintains his or her principal office for the practice of law. If the claim for negligence is between two (2) or more attorneys, then the attorney member(s) of any panel shall maintain any principal law practice and

offices at a distance greater than fifty (50) miles from the county seat of the county where the attorney petitioning for arbitration maintains his or her principal office for the practice of law. Under no circumstances will any of the arbitrators be within the same county or congressional district of the parties to the arbitration.

(iv) Any attorney appointed or designated by the Vice-President may refuse to serve. Such refusal shall be by written notice to the Director within ten (10) days of the appointment.

(v) The Vice-President, in cases of a three-member panel, shall designate one member of the panel as Chair of the panel.

(B) Objections.

(i) Either party to the arbitration may object for cause to any of the panel members. Such objection shall be in writing and shall be made within twenty (20) days of written notification of the names of the panel members. Failure to object within twenty (20) days shall constitute a waiver of any objection to the composition of the panel. The following shall constitute grounds for cause to a proposed panel member serving:

(a) If the panel member is associated in any business or profession with or related in any way to any of the parties or their attorneys;

(b) If the panel member has a personal or financial interest or any bias or prejudice regarding any of the parties or the nature of the controversy;

(c) If the panel member has pending any business transactions or controversy as a party with any party to the controversy or as attorney or has then pending any business transactions or controversies as an attorney with any party to the controversy or any attorney for a party, and there is such a conflict that it would render the arbitrator incapable of fairly exercising independent judgment.

(ii) Objections to panel members shall be made to the Chair of the panel and shall be ruled upon by the Chair of the panel whose decision shall be final. Each side may have one preemptory strike.

(C) Compensation.

Members of the panel shall not be paid or compensated for their services.

(D) Vacancies.

If any arbitrator should resign, die, withdraw, refuse to act or be disqualified or unable to act, the Vice-President shall declare the office vacant and, if the matter has already been heard, it shall be reheard, unless the parties otherwise agree. In the absence of such agreement a new arbitration panel shall be selected in accordance with these Rules.

(E) Communication Between the Parties and Panel Members.

There shall be no communication between the parties and the members of the arbitration panel upon the subject matter of the arbitration other than at arbitration proceedings. Copies of any written communication between members of the panel

and any party, or any attorney for a party or between parties or their attorneys and the panel shall be furnished contemporaneously to each participant in the proceeding, and filed with the Director.

32. SCR 3.810(2), (4) and (5) Legal fee arbitration

Sections (2), (4), and (5) of SCR 3.810 shall read:

(2) Definitions.

(A) "Attorney" means an attorney-at-law who is a member in good standing of the Association.

(B) "Association" means the Kentucky Bar Association.

(C) "Director" means the Director of the Kentucky Bar Association.

(D) "Vice-President" means the Vice-President of the Kentucky Bar Association.

(E) "Controversy" means a dispute or disagreement between an attorney and his or her client relative to the fee due the attorney for particular legal services rendered, and it may also mean a dispute or disagreement between attorneys concerning the amount of the fees due each attorney for particular legal services rendered.

(F) "Amount in controversy" means the difference between the sum of money an attorney proposes to charge for legal services and the sum of money the client offers to pay for such services.

(G) "Panel" means the arbitrator or arbitrators appointed or designated to arbitrate the fee disagreement as hereinafter provided.

(4) Institution of Proceedings.

(A) Proceedings hereunder shall be begun by completing three (3) copies of a petition. The petition must be signed by one of the parties to the dispute. The petition shall state the origin and details of the dispute, the nature and degree of legal services rendered, and the amount claimed due as a result of the dispute alleged. Upon the filing of the petition, the petitioner shall also sign three (3) copies of an arbitration agreement. The petition and arbitration agreement shall be on forms provided by the Association and when completed, shall be filed in the office of the Association.

(B) Upon the filing of the petition, the Director of the Association shall forward a copy of the petition to the Vice-President. The Vice-President, upon receipt of the petition, shall determine whether this plan applies under these Rules. The decision of the Vice-President on that matter shall be final. The Vice-President shall have full power to require additional information from the petitioner in all disputes wherein additional information is deemed desirable or necessary.

(C) In the event the Vice-President determines that the Association shall not accept jurisdiction of a fee dispute, the petition shall be returned to the Director, with a brief explanation as to why jurisdiction has been refused. The Director shall

then notify the petitioner that the Association has not accepted jurisdiction and will not arbitrate the dispute and shall advise the petitioner why the Association has not accepted jurisdiction of the matter.

(D) In the event the Vice-President determines that the Association shall accept jurisdiction, the Vice-President shall notify the Director and shall return the petition to the Director or other designated employee of the Association. The Director shall then forward to respondent a copy of the petition and three (3) copies of the arbitration agreement signed by the petitioner, and shall request the respondent to sign and return to the Director two (2) copies of the arbitration agreement and three (3) copies of the respondent's answer to the petition. The letter to the respondent shall state that respondent has twenty (20) days in which to answer and return the two (2) signed arbitration agreements, and that if respondent's answer is not received within twenty (20) days, the Association will construe such failure to answer as constituting a refusal to submit to arbitration. Upon receipt of the respondent's answer, the Director shall forthwith forward to the petitioner one (1) signed copy of the arbitration agreement and one (1) copy of the respondent's answer.

(E) In the event of the respondent's refusal to submit the fee dispute to arbitration, or if respondent fails to sign and return the arbitration agreement and answer within twenty (20) days, the Director shall so notify the petitioner and the file of the Association shall be closed.

(5) Arbitration Panel.

(A) Composition.

(i) Where the amount in controversy is two thousand five hundred dollars (\$2,500.00) or less, the panel shall consist of one (1) person who shall be a practicing Attorney.

(ii) Where the amount in controversy exceeds two thousand five hundred dollars (\$2,500.00), the panel shall consist of three (3) persons, two (2) of whom shall be practicing Attorneys and the third (3rd) member shall be a non-lawyer.

(iii) The practicing Attorney(s) referred to in paragraph (5)(A)(i) and (5)(A)(ii) above, shall each:

(a) be a member in good standing of the Association;

(b) be appointed or designated for a particular controversy by the Vice-President;

(c) if engaged in the private practice of law shall maintain an office and carry on such practice more than fifty (50) miles from the county seat of the county where the attorney who is a party to the fee dispute maintains his or her principal office for the practice of law. If the fee dispute is between two (2) or more attorneys, then the attorney member(s) of any panel shall maintain any principal law practice and offices within fifty (50) miles of the county seat of the county where the attorney petitioning for arbitration maintains his or her principal office for the practice of law.

(iv) Any attorney appointed or designated by the Vice-President may refuse to serve. Such refusal shall be by written notice to the Director within ten (10) days of

the appointment.

(v) The non-lawyer referred to in paragraph (5)(A)(i)2 shall be selected by the presiding judge or Chief Judge of the circuit court of the county where the attorney involved in the fee dispute maintains his or her principal office for the practice of law. If the dispute is between two attorneys, the selection of the non-lawyer member of the panel shall be made by the presiding judge or Chief Judge of the circuit court of the county where the attorney petitioning for arbitration maintains his or her principal office for the practice of law. If there be no presiding or Chief Judge, but more than one judge of that circuit court, then the judge of the court senior in terms of service as a circuit court judge shall select the non-lawyer member of the panel.

(vi) The Vice-President, in cases of a three-member panel, shall designate one member of the panel as Chair of the panel.

(B) Objections.

(i) Either party to a fee dispute may object for cause to any of the panel members. Such objection shall be in writing and shall be made within twenty (20) days of written notification of the names of the panel members. Failure to object within twenty (20) days shall constitute a waiver of any objection to the composition of the panel. The following shall constitute grounds for objection for cause to a proposed panel member serving:

(a) If the panel member is associated in any business or profession with or related in any way to any of the parties or their attorneys;

(b) If the panel member has a personal or financial interest or any bias or prejudice regarding any of the parties or the nature of the controversy;

(c) If the panel member has pending any business transactions or controversy as a party with any party to the controversy or as attorney or has then pending any business transactions or controversies as an attorney with any party to the controversy or any attorney for a party, and there is such a conflict that it would render the arbitrator incapable of fairly exercising independent judgment.

(ii) Objections to panel members shall be made to the Chair of the panel and shall be ruled upon by the Chair of the panel whose decision shall be final. Each side may have one preemptory strike.

(C) Compensation.

Members of the panel shall not be paid or compensated for their services.

(D) Vacancies.

If any arbitrator should resign, die, withdraw, refuse to act or be disqualified or unable to act, the Vice-President shall declare the office vacant and, if the matter has already been heard, it shall be reheard, unless the parties otherwise agree. In the absence of such agreement a new arbitration panel shall be selected in accordance with these Rules.

(E) Communication Between the Parties and Panel Members.

There shall be no communication between the parties and the members of the arbitration panel upon the subject matter of the arbitration other than at arbitration proceedings. Copies of any written communication between members of the panel and any party, or any attorney for any party or between parties or their attorneys and the panel shall be furnished contemporaneously to each participant in the proceeding, and filed with the Director.

33. SCR 3.815(2), (4) and (5) Mediation and arbitration

Sections (2), (4), and (5) of SCR 3.815 shall read:

(2) Definitions.

(A) "Attorney" means an attorney-at-law who is a member in good standing of the Association.

(B) "Association" means the Kentucky Bar Association.

(C) "Director" means the Director of the Kentucky Bar Association.

(D) "Vice-President" means Vice-President of the Kentucky Bar Association.

(E) "Controversy" means a dispute or disagreement between attorneys relative to questions of representation of clients, questions arising when law firms or other legal associations between attorneys are dissolved or otherwise terminated, or other economic disputes between attorneys.

(F) "Panel" means the arbitrator or arbitrators appointed or designated to assist in resolving the controversy as hereinafter provided.

(4) Institution of Proceedings.

(A) Proceedings hereunder shall be begun by completing three copies of a petition. The petition must be signed by one of the parties to the dispute. The petition shall state the origin and details of the dispute, acts or omissions deemed to be in controversy, and the relief desired from the mediation or arbitration. Upon the filing of the petition, the petitioner shall also sign three copies of an arbitration or mediation agreement, as applicable. The petition and agreement shall be on forms provided by the Association and when completed shall be filed in the office of the Association.

(B) Upon the filing of the petition, the Director of the Association shall forward a copy of the petition to the Vice-President. The Vice-President, upon receipt of the petition, shall determine whether the plan and this rule apply, and the Vice-President's decision on that matter shall be final. The Vice-President shall have full power to require additional information from the petition in all disputes wherein additional information is deemed desirable or necessary.

(C) If the Vice-President determines that the Association shall not accept jurisdiction of a controversy, the petition shall be returned to the Director, or other

designated employee of the Association with a brief explanation as to why jurisdiction has been refused. The Director shall then notify the petitioner that the Association has not accepted jurisdiction and will not arbitrate or mediate the controversy and shall advise the petitioner why the Association has not accepted jurisdiction of the matter.

(D) If the Vice-President determines that the Association shall accept jurisdiction, the Vice-President shall notify the Director and shall return the petition to the Director or other designated employee of the Association. The Director shall then forward to respondent a copy of the petition and three copies of the agreement signed by the petitioner, and he or she shall require the respondent to sign and return to the Director two copies of the agreement and three copies of the respondent's answer to the petition. The letter to the respondent shall state that respondent has twenty days in which to answer and return the two signed agreements, and that if respondent's answer is not received within twenty days, the Association will construe such failure to answer as constituting a refusal to submit to arbitration or mediation. Upon receipt of the respondent's answer, the Director shall forthwith forward to the petitioner one signed copy of the agreement and one copy of the respondent's answer.

(E) If the respondent's refusal to submit the controversy to arbitration or mediation, or failure within twenty days following receipt of the documents described in

(4)(D) to sign and return the agreement, the Director shall so notify the petitioner and the file of the Association shall be closed.

(5) Arbitration panel.

(A) Composition.

(i) Where the matter is to be mediated, the mediator shall consist of one person who shall be a practicing Attorney.

(ii) Where the matter is to be arbitrated, the arbitration panel shall consist of one practicing Attorney, if the amount in controversy is \$2,500.00 or less, or if it exceeds \$2,500.00, the panel shall consist of three persons, all of whom shall be practicing Attorneys.

(iii) The practicing Attorney(s) referred to in paragraph (5)(A)(i) and (5)(A)(ii) above, shall each:

(a) be a member in good standing of the Association;

(b) be appointed or designated for a particular controversy by the Vice-President;

(c) if a panel member or sole arbitrator is engaged in the private practice of law shall maintain or carry on a private law practice in an office more than fifty (50) miles from the county seat of the county where the attorneys who are parties to the controversy maintain their principal offices for the practice of law.

(iv) Any attorney appointed or designated by the Vice-President may refuse to serve. Such refusal shall be by written notice to the Director within ten (10) days of the appointment.

(v) The Vice-President, in cases of a three-member panel, shall designate one member of the panel as Chairperson of the panel.

(B) Objections.

(i) Either party to a controversy may object for cause to any of the panel members. Such objection shall be in writing and shall be made within twenty (20) days of written notification of the names of the panel members. Failure to object within twenty (20) days shall constitute a waiver of any objection to the composition of the panel. The following shall constitute grounds for objection for cause to a proposed panel member serving:

(a) If the member is associated in any business or profession with or related in any way to any of the parties or their attorneys;

(b) If the member has a personal or financial interest or any bias or prejudice regarding any of the parties or the nature of the controversy;

(c) If the member has pending any business transactions or controversy as a party with any party to the controversy or their attorney or has then pending any business transactions or controversies as an attorney with any party to the controversy or any attorney for a party, and there is such a conflict that it would render the arbitrator incapable of fairly exercising independent judgment.

(ii) Objections to panel members shall be made to the Chair of the panel and shall be ruled upon by the Chair of the panel whose decision shall be final. Each side may have one preemptory strike.

(C) Compensation.

Members of the panel shall not be paid or compensated for their services.

(D) Vacancies.

If any arbitrator or mediator should resign, die, withdraw, refuse to act or be disqualified or unable to act, the Vice-President shall declare the office vacant and, if the matter has already been heard, shall be reheard, unless the parties otherwise agree. In the absence of such agreement, a new arbitration panel shall be selected in accordance with these Rules.

(E) Communication Between the Parties and Panel Members.

There shall be no communication between the parties and the members of the arbitration or mediation panel upon the subject matter of the arbitration or mediation other than at arbitration or mediation proceedings. Copies of any written communication between members of the panel and any party, or any attorney for any parties or between parties or their attorneys and the panel shall be furnished contemporaneously to each participant in the proceeding and filed with the Director.

34. SCR 3.970(1) Agency Referrals

Section (1) of SCR 3.970 shall read:

(1) A member of the Kentucky legal community who is the subject of a pending admission, disciplinary or continuing legal education proceeding before an agency of the Supreme Court of Kentucky may authorize that agency to make a confidential request for assistance from KYLAP in evaluating or addressing any actual or potential impairment that may be relevant to the issues which the agency is charged with considering in the proceeding. In particular:

(a) A member of the Kentucky legal community who is the subject of an application for admission, restoration or reinstatement to the practice of law in the Commonwealth may authorize the Office of Bar Admissions to communicate in confidence with KYLAP for the purpose of requesting assistance from KYLAP in evaluating and addressing any actual or potential impairment that may be relevant to the OBA's consideration or disposition of the application for admission, restoration or reinstatement.

(b) A member or former member of the Association who is the subject of a disciplinary complaint or investigation pending before the Inquiry Commission may authorize that Commission to communicate in confidence with KYLAP for the purpose of requesting assistance from KYLAP in evaluating and addressing any actual or potential impairment that may be relevant to that Commission's consideration or disposition of that complaint or investigation.

(c) A member or former member of the Association who is the subject of an investigation or prosecution by the Office of Bar Counsel may authorize OBC to communicate in confidence with KYLAP for the purpose of requesting assistance from KYLAP in evaluating and addressing any actual or potential impairment that may be relevant to OBC's recommended disposition of that investigation or prosecution.

(d) A member or former member of the Association who is the subject of a continuing legal education proceeding pursuant to Rule 3.669 by the Continuing Legal Education Commission may authorize the Director for Continuing Legal Education to communicate in confidence with KYLAP for the purpose of requesting assistance from KYLAP in evaluating and addressing any actual or potential impairment that may be relevant to the CLE Commission's recommended disposition of that proceeding.

35. SCR 3.980(3) Supreme Court Assignments to KYLAP

Section (3) of SCR 3.980 shall read:

(3) When KYLAP receives a matter by assignment from the Court pursuant to paragraph (1) of this Rule:

(a) KYLAP shall proceed to provide assistance of the nature described in Rule 3.910(2) in accordance with the terms of the Court's order, and may impose additional requirements on the person who is the subject of the assignment as necessary to perform the assignment;

(b) KYLAP may provide reports to the Court, and to one or more agencies of the Court, as authorized or required by the terms of the Court's order;

(c) Any information gathered or received by KYLAP after the date of the Court's order and in the course of discharging the tasks and responsibilities assigned by the Court as part of a final disposition under paragraph (1) of this Rule may be used as evidence in any admission, disciplinary, continuing legal education, restoration or reinstatement proceeding regarding the person who is the subject of the assignment, subject to the rules of evidence and procedure in that proceeding; and

(d) One or more representatives of KYLAP may be called as witnesses in any admission, disciplinary, continuing legal education, restoration or reinstatement proceeding for the purpose of testifying about information gathered or received by KYLAP after the date of the Court's order and in the course of discharging the tasks and responsibilities assigned by the Court as part of a final disposition under paragraph (1) of this Rule, subject to the rules of evidence and procedure in that proceeding.

36. SCR 5.010 Appointment

SCR 5.010 shall read:

In each county in which no district judge resides, the chief judge of the district shall appoint a trial commissioner subject to the approval of the Chief Justice. Any trial commissioner may be removed by order of the Supreme Court. Every other trial commissioner shall be appointed by the chief judge of the district upon certification of the necessity therefor by the Supreme Court, which certification shall be initiated by a request from the chief judge of the district stating the circumstances requiring the appointment.

AMENDMENTS TO THE BY-LAWS OF THE KENTUCKY BAR ASSOCIATION

1. Section 5(i) Officers

Subsection (i) of Section 5 shall read:

The officers of the Association and of the Board, their duties, tenure, and manner of selection shall be:

(i) Executive Committee.

An Executive Committee of the Board of Governors shall consist of the following officers of the Bar: The President, who shall serve as Chair of the Executive Committee, the Immediate Past President, the President-Elect, the Vice-President, Chair of the Young Lawyers Section, and the Executive Director. The Executive Committee shall advise the President on matters concerning the operations of the Bar and provide a forum for discussion and recommendation to the Board of Governors

and provide a forum for discussion and recommendation to the Board of Governors including matters of long range planning. The Executive Committee may also act on matters of an emergency nature that may affect the Bar. When the Executive Director becomes aware of any matter that may require Executive Committee action the Executive Director shall immediately advise the President. The President shall advise the Board of any action taken or any recommendation made by the Executive Committee at the next Board meeting. The Executive Committee shall meet at such times as may be called by the President.

2. **Section 6 Nomination of Officers**

Section 6 shall read:

(a) Nomination to the offices of Vice-President and President-Elect shall be made by written petition as herein provided. All candidates for office shall be members of the Association in good standing.

(b) Nominations for the offices of Vice-President and President-Elect shall be made by written petition signed by not less than one hundred members of the Association in good standing, with not less than ten signatures on the written petition being from each Supreme Court District. Only one candidate may be nominated on a single petition and any number of petitions may be filed for a candidate.

(c) All nominating petitions for the office of Vice-President and President-Elect shall be filed with the Executive Director between October 15 and November 15 in each year. Where only one candidate has been duly nominated for an office that candidate shall be declared elected and the Executive Director shall so certify to the Board and the nominee on or before December 15 in that year.

3. **[Section 7. House of Delegates]**

Section 7 is deleted.

4. **[Section 8. Officers of the House—duties, tenure and manner of selection]**

Section 8 is deleted.

5. **Section 9. Elections**

Section 9 shall read:

Ballots for the offices of President-Elect, Vice-President, members of the Board of Governors for which there will be an election will be prepared by the Executive Director and will be mailed on December 15 with return envelopes as hereinafter provided, to each member of the Association in good standing entitled to vote in that election. Names of candidates shall be listed on the ballots in alphabetical order with each position being voted upon.

The ballot shall be sealed by the member in an unmarked inner return envelope, which, in turn shall be sealed in an outer return envelope containing the words:

"Official Ballot--Not to be opened until January 16" and lines for the signature and county address of the attorney casting the ballot.

All ballots must be received not later than January 15 by the Clerk who shall keep all such ballots in a locked box. Such box shall be opened only at the meeting of the canvassing board to tabulate the votes. Not later than January 20 the canvassing board, appointed by the President, shall meet in the office of the Clerk, or at such other place as may be designated by the President, and canvass the votes. Each candidate for a position shall be entitled to have present at the meeting of the canvassing board an official observer under a written and signed designation by such candidate. No candidate may be present at the meeting of the canvassing board.

A plurality of all votes cast for each position shall be sufficient to elect. The canvassing board shall make and file with the Clerk a written certification of each election, with a copy thereof to the Executive Director who shall promptly notify each candidate of the results of the election.

6. **Section 11 Sections**

Subsection (a) of Section 11 shall read:

(a) Sections. There are created the following sections within the Kentucky Bar Association:

- (1) Business Law.
- (2) Criminal Law.
- (3) Family Law.
- (4) Civil Litigation.
- (5) Labor and Employment Law.
- (6) Probate and Trust Law.
- (7) Taxation.
- (8) Young Lawyers.
- (9) Public Interest Law.
- (10) Corporate House Counsel.
- (11) Natural Resources Law.
- (12) Local Government Law.
- (13) Workers' Compensation Law.
- (14) Real Property Law.
- (15) Bankruptcy Law.

- (16) Senior Lawyers.
- (17) Equine Law.
- (18) Education Law.
- (19) Construction and Public Contract Law.
- (20) Small Firm Practice.
- (21) Health Care Law.
- (22) Alternative Dispute Resolution.

7. **Section 12 Committees**

Section 12 shall read:

(a) The Association shall have such committees as may be designated by the Supreme Court.

(b) The Association shall have such standing committees and special committees as the Board may from time to time authorize.

(c) Standing Committees shall include:

- (1) Ethics Committee
- (2) Unauthorized Practice of Law Committee
- (3) Publications Committee

(d) Membership and Term of Service. Unless otherwise provided by Rule the following shall apply for membership and terms of service for committees. Each committee shall have at least one member from each Supreme Court District. Each year the President shall appoint a Chair for each committee and one or more members of the Board shall be appointed to each committee whose terms will be for one (1) year. Beginning July 1, 1997, terms of service for all other committee members shall be staggered with one-third appointed for three-year terms, one-third appointed for two-year terms and one-third appointed for one-year terms. A member may be reappointed to a committee but in no event shall a member serve on a committee longer than six (6) consecutive years without a break in service of at least two (2) years. The Board, by majority vote, may modify limits on terms of committees.

(e) Meetings. Each committee shall meet at least one time during the months of June, July or August, and shall meet at such other times as designated by the committee chair or the President.

8. **[Section 13 Committees of the House]**

Section 13 is deleted.

All sitting. All concur.

ENTERED: October 18, 2005


Chief Justice