

Supreme Court of Kentucky

IN RE:
ORDER AMENDING
RULES OF CIVIL PROCEDURE (CR)
RULES OF CRIMINAL PROCEDURE (RCr)
RULES OF THE SUPREME COURT (SCR)

2006-09

The following rules' amendments shall become effective January 1, 2007.

I. 2006 AMENDMENTS TO THE RULES OF CIVIL PROCEDURE

A. CR 3.02 (2) Circuit civil fees and costs

Section (2) of CR 3.02 shall read:

(2) Additional costs, payable to the circuit clerk at the time the service is requested, shall be charged in Circuit Court civil cases as follows:

(a)	For a jury of six persons	\$15.00
(b)	For a jury of more than six	\$30.00
(c)	Filing a third party complaint	\$20.00
(d)	Preparing a certification, including Act of Congress	\$ 5.00
(e)	Providing a copy of a document (per page)	\$.25
(f)	Providing a copy of a video recording (per individual tape, disk or other media)	\$15.00
(g)	Providing a copy of an audio recording (per individual tape, disk or other media)	\$ 5.00
(h)	Issuing orders of attachment; executions, writ of possession after judgment	\$10.00
(i)	Issuing garnishments	\$ 4.00
(j)	Publishing a notice	As set by Newspaper
(k)	Certified mail fees	As set by Postal Service
(l)	Original deposition, including appearance fees and mileage	Assessed as Costs
(m)	Library fees	As set by KRS 172.180 and KRS 453.060

B. CR 3.03 (3) District civil fees and costs

Section (3) of CR 3.03 shall read:

(3) Additional costs, payable to the circuit clerk at the time the service is requested, shall be charged in District Court civil cases as follows:

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|-----|--|--|
| (a) | For a jury of six persons including paternity cases | \$15.00 |
| (b) | Filing a third party complaint | \$20.00 |
| (c) | Preparing a certification, including Act of Congress | \$ 5.00 |
| (d) | Providing a copy of a document (per page) | \$.25 |
| (e) | Providing a copy of a video recording
(per individual tape, disk or other media) | \$15.00 |
| (f) | Providing a copy of an audio recording
(per individual tape, disk or other media) | \$ 5.00 |
| (g) | Issuing orders of attachment; executions, writ of possession
after judgment | \$10.00 |
| (h) | Issuing garnishments | \$ 4.00 |
| (i) | Publishing a notice | As set by Newspaper |
| (j) | Certified mail fees | As set by Postal Service |
| (k) | Original deposition, including appearance
fees and mileage | Assessed as Costs |
| (l) | Library fees | As set by KRS 172.180
and KRS 453.060 |

C. CR 8.01(2) Claims for relief

Section (2) of CR 8.01 shall read:

(2) In any action for unliquidated damages the prayer for damages in any pleading shall not recite any sum as alleged damages other than an allegation that damages are in excess of any minimum dollar amount necessary to establish the jurisdiction of the court; provided, however, that all parties shall have the right to advise the trier of fact as to what amounts are fair and reasonable as shown by the evidence. When a claim is made against a party for unliquidated damages, that party may obtain information as to the amount claimed by interrogatories. If this is done, the amount claimed shall not exceed the last amount stated in answer to interrogatories; provided, however, that the trial court has discretion to allow a supplement to the answer to interrogatories at any time where there has been no prejudice to the defendant.

D. CR 25.01(1) Death

Section (1) of CR 25.01 shall read:

(1) If a party dies during the pendency of an action and the claim is not thereby extinguished, the court, within the period allowed by law, may order substitution of the proper parties. If substitution is not so made the action may be dismissed as to the deceased party. The motion for substitution may be made by the successors or representatives of the deceased party or by any party, and, together with the notice of hearing, shall be served on the parties as provided in Rule 5, and upon persons not parties as provided in Rule 4 for the service of summons. Upon becoming aware of a party's death, the attorney(s) of record for that party, as soon as practicable, shall file a notice of such death on the record and serve a copy of such notice in the same manner provided herein for service of the motion for substitution.

E. CR 30.02 (4) Notice of examination: general requirements; special notice; nonstenographic recording; production of documents and things; deposition of organization

Section (4) of CR 30.02 shall read:

(4) Video recorded depositions may be taken in pending actions and shall be taxed as costs. Notice to take depositions shall be in accordance with the Rules of Civil Procedure. At the deposition the video recording equipment shall be operated by a person qualified to operate such recording equipment, who is to mark the recording with the style and number of the action and the name of the witness and to file a certificate which identifies the said recording.

Video recorded depositions shall be taken under the following conditions:

(a) The party noticing the deposition shall provide the operator with a copy of this rule. At the beginning of the recording of the deposition, the operator of the video recording equipment will focus on each attorney, party and witness present at the taking of the disposition, and such person shall be identified; or the operator may read a statement introducing by name parties to the litigation and the attorneys present without focusing on each person, at the election of the noticing party.

(b) The video recording equipment will remain stationary at all times during the deposition and will not "zoom" in or out on the witness excepting those times during the deposition when the witness is displaying, for the jury's viewing, exhibits or other pieces of demonstrative proof that can only be fairly and reasonably seen on the video recording by use of the equipment "zooming" in on said evidence. The purpose of this clause is so that the video recording

equipment will not "zoom" in on a witness solely to give unfair or undue influence upon the words of the witness, and does not apply to the "zooming" in for other purposes described above.

(c) A stenographic transcript, in addition to the video recording, will not be necessary. Any party desiring such a transcript may obtain it at that party's cost.

(d) The video recording shall be kept in the possession of the attorney taking the deposition and will be available for the Court and any and all counsel to view, copy, or compare with a stenographic transcript, if any. If discrepancies appear between the stenographic transcript and the video recording, the discrepancies will be resolved by agreement of counsel or ruling of the Court if counsel cannot agree. The decision on the manner in which to handle the discrepancies, insofar as the video recording is concerned, will be included in the agreement of counsel or ruling of the Court.

(e) All objections will be reserved and shall not be stated on the video recording except for objections relating to the form of the question. Objections to testimony on the video recording will be resolved by agreement of counsel or ruling of the Court if counsel cannot agree. All objections relating to said depositions must be made at least 10 days before trial. An edited version shall be presented at trial.

(f) Admissibility of the video recording may be objected to by counsel if a review of the finished video recording reveals any technical errors giving undue influence to the testimony of the witness which would unfairly prejudice the side objecting, or if the general technical quality of the video recording is so poor that its being viewed by the jury would be unfairly prejudicial to the side so objecting.

F. CR 53.03 (5) Domestic relations commissioners

Section (5) of CR 53.03 shall read:

(5) The domestic relations commissioner shall hear all matters promptly. Testimony may be heard orally before the commissioner or by deposition or interrogatory. All actions involving indigents shall be heard by the commissioner without fee. Proceedings before the commissioner shall be reported, or recorded by audio or video.

G. CR 53.06 (1) Report

Section (1) of CR 53.06 shall read:

(1) Contents and filing.

The commissioner shall prepare a report of recommendations to the court upon the matters submitted by the order of reference or local rules of court and, if required to make findings of fact and conclusions of law, the commissioner shall set them forth in the report and shall file the report and sufficient copies for all parties with the clerk of the court. The clerk shall forthwith serve the report and notice of the filing upon all parties who have appeared in the action. A transcript of reported proceedings may be ordered by any party at that party's expense. In the case of proceedings recorded on video the untranscribed recording shall constitute the official record.

H. CR 72.04 Record on appeal from district court

CR 72.04 shall read:

The record on appeal to the circuit court shall consist of the entire original record of proceedings in the district court, including untranscribed electronic recordings made under the supervision and remaining in the custody of the district court or clerk. It need not be certified unless and until the Court of Appeals grants a motion for review of the final action of the circuit court disposing of the appeal.

I. CR 73.01(2) General Provisions

Section (2) of CR 73.01 shall read:

(2) All appeals shall be taken to the next higher court by filing a notice of appeal in the court from which the appeal is taken. Appeals from family courts that are established pursuant to Ky. Const. § 110 (5) (b) or Ky. Const. § 112 (6) shall be taken to the Court of Appeals. After such filing, if the appeal is from a circuit court, any party may file a motion for transfer of the case to the Supreme Court as provided in CR 74.02. A motion for discretionary review by the Supreme Court of a decision of the Court of Appeals, or by the Court of Appeals of an appellate decision of the circuit court, shall be made as provided in Rule 76.20.

J. CR 73.08 Certification of record on appeal

CR 73.08 shall read:

The record on appeal as constituted under Rule 75 or Rule 76 shall be prepared and certified by the clerk of the court from which the appeal is

taken within 10 days after the filing of the transcript of evidence by the court reporter. If the proceedings were taken exclusively by video recording, if there are no proceedings to transcribe, or if the appeal is from a Circuit Court order determining paternity, dependency, abuse, neglect, domestic violence, or juvenile status offense, then the record on appeal shall be certified by the clerk within 30 days after the date of filing the first notice of appeal. In Forma Pauperis cases, the time for certifying the record on appeal in cases taken exclusively by video recording or where there are no proceedings to transcribe shall run from the date the Motion to Proceed In Forma Pauperis is granted. If CR 76.03 applies to the appeal, the time for certifying the record shall begin to run as provided in CR 76.03. The appellate court, in its discretion, may extend the time for certification of the record upon motion and a showing of good cause.

K. CR 75.01 (1) Procedures for designation of evidence or proceedings reported by a court reporter

Section (1) of CR 75.01 shall read:

(1) Unless an agreed statement of the case is certified as provided in Rule 75.15, the proceedings were taken exclusively by video recording as governed by Rule 98, or there are no proceedings to transcribe, the appellant shall file a designation of untranscribed material. The designation shall be filed with the clerk of the trial court and shall be served on the appellee, the court reporter, and the clerk of the appellate court. The designation shall be filed with the clerk of the trial court within 10 days of the filing of the notice of appeal unless Rule 76.03 applies to the appeal, in which case, the designation shall be filed within 10 days of the order ending the prehearing procedure under Rule 76.03(3). The designation shall: (1) list such untranscribed portions of the proceedings stenographically or electronically recorded as appellant wishes to be included in the record on appeal and (2) list any depositions or portions thereof as have been filed with the clerk but were not read into evidence and are thus required by Rule 75.07(1) to be excluded from the record on appeal. Within 10 days after the service and filing of such designation, or within 10 days after the time for filing of such designation has expired, any other party to the appeal may file a designation of additional portions of the untranscribed proceedings stenographically or electronically recorded as that party wishes to be included. If an appellee files the original designation, the parties shall proceed under Rule 75.01 in the same manner as if the original designation had been filed by the appellant. If no designation is required, a statement identifying such depositions, if any, or any portions thereof, as have been filed with the clerk but were not read into evidence and are thus required by Rule 75.07(1) to be excluded from the record on appeal, shall be filed with the clerk of the trial court and served upon the appellee and the clerk of the appellate court within the time periods set forth in this rule.

L. CR 75.02 (1) and (3) Transcript of evidence and proceedings

Sections (1) and (3) of CR 75.02 shall read:

(1) If there be designated for inclusion any proceedings that were not electronically recorded but were stenographically recorded, the court reporter shall file promptly in the trial court the original and one copy of the transcript of the portion or portions thereof included in the designation. If the designation includes only a portion or portions of the reporter's transcript, the court reporter at the request of the appellant shall file such additional portions as the appellee would reasonably require to enable him or her to complete the record on appeal and if the appellant fails to do so the trial court on motion may require the additional material needed to be so furnished. Initially the cost of a transcript will be borne by the party designating it.

(3) In the event any of the proceedings designated for inclusion have been electronically recorded, it shall not be necessary that they be transcribed, and in lieu of a transcript the original tapes or recordings shall be transmitted by the clerk pursuant to Rule 75.07.

M. CR 75.07(1), (2) and (7) Record to be prepared and transmitted by clerk

Sections (1), (2) and (7) of CR 75.07 shall read:

(1) The clerk of the trial court shall prepare and certify the entire original record on file in his or her office, in accordance with the requirements of paragraphs (10) and (11) of this Rule 75.07, including the designations or stipulations of the parties with respect to proceedings stenographically or electronically recorded and a certified copy (rather than the original) of the docket assigned to the action, but excluding depositions not read into evidence.

(2) The transcript of proceedings stenographically recorded (or tapes or recordings of proceedings electronically recorded), or such lesser portions thereof as have been designated or agreed upon by stipulation, shall when filed with the clerk be certified as a part of the record on appeal.

(7) The record on appeal shall be retained under the responsibility and control of the clerk of the trial court until it is transmitted to the clerk of the appellate court. It will be made available first to counsel for the appellant and then to counsel for the appellee. If it is removed from the clerk's office, counsel for the appellant shall return it before submitting his or her brief to the appellate court in order that it may be available to counsel for the appellee. Counsel for the appellee shall return it before submitting his or her brief to the appellate court. If it is withdrawn by counsel for the appellant for the purpose of preparing a reply

brief it shall be returned before such brief is submitted to the appellate court. In no event shall the original of an electronic recording be removed from the clerk's office, nor shall a record on appeal be retained by counsel beyond the filing date on which his or her appellate brief is due.

N. CR 75.13(1) and (2) Narrative statement

Sections (1) and (2) of CR 75.13 shall read:

(1) In the event no stenographic or electronic record of the evidence or proceedings at a hearing or trial was made or, if so, cannot be transcribed or are not clearly understandable from the tape or recording, the appellant may prepare a narrative statement thereof from the best available means, including his/her recollection, for use instead of a transcript or for use as a supplement to or in lieu of an insufficient electronic recording. This statement shall be served on the appellee, who may serve objections or proposed amendments thereto within 10 days after service upon him/her. Thereupon the statement, with the objections or proposed amendments, shall be submitted to the trial court for settlement and approval, and as settled and approved shall be included in the record on appeal.

(2) By agreement of the parties a narrative statement of all or any part of the evidence or other proceedings at a hearing or trial may be substituted for or used in lieu of a stenographic transcript or an electronic recording.

O. CR 76.02(1) Perfecting appeals and cross-appeals

Section (1) of CR 76.02 shall read:

(1) To perfect an appeal from the circuit court the appellant shall:
(a)(i) cause the clerk's notice required by Rule 75.07(5) to be transmitted to the clerk of the appellate court or (ii) if the appeal is taken of a case recorded pursuant to CR 98(1), cause the clerk's notice required by paragraph CR 98(3)(c) to be transmitted to the clerk of the appellate court; and (b) file with the clerk of the appellate court the brief required by Rule 76.12.

P. CR 76.03(1) Prehearing conference

Section (1) of CR 76.03 shall read:

(1) This Rule, 76.03, applies to all civil actions appealed to the Court of Appeals, except prisoner applications seeking relief relating to confinement or conditions of confinement and appeals from Circuit Court

orders determining paternity, dependency, abuse, neglect, domestic violence, or juvenile status offense.

Q. CR 76.12(2)(a), (3)(b) and (4)(c)and (d) Briefs

sub-section (a) of section (2), sub-section (b) of section (3) and sub-sections (c) and (d) of section (4) of CR 76.12 shall read:

(2) Time for filing.

(a) Civil cases. In civil cases, including workers' compensation appeals, except appeals from Circuit Court orders determining paternity, dependency, abuse, neglect, domestic violence or juvenile status offense, the appellant's brief shall be filed with the clerk of the appellate court within 60 days after the date of the notation on the docket of the notification required by Rule 75.07(6). The appellee's brief (or combined briefs, if the appellee is also a cross-appellant) shall be so filed within 60 days after the date on which the appellant's brief was filed. The appellant's reply brief shall be filed within 15 days after the date on which the last appellee's brief was filed or due to be filed. If the appellant is also a cross-appellee, a combined brief may be filed within 60 days after the date on which the last appellee's brief is filed or due to be filed. When a motion for discretionary review has been granted by the Supreme Court, the time in which the movant's brief must be filed shall be computed from the date of entry of the order granting review.

(i) Civil appeals from Circuit Court orders determining paternity, dependency, abuse, neglect, domestic violence or juvenile status offense. Appeals in these cases shall be expedited. The appellant's brief shall be filed with the clerk of the appellate court within 30 days after the date of the notation on the docket of the notification required by Rule 75.07(6). The appellee's brief shall be filed within 30 days after the date of filing of the appellant's brief. The appellant's reply brief shall be filed within 10 days after the date of filing of the appellee's brief. Motions for extension of time will not be considered except under extraordinary circumstances.

(3) Number of copies.

(b) Filing of Electronic Briefs on Diskette or CD-ROM. Any party filing a brief on the merits with the Clerk of the Supreme Court or the Court of Appeals may, and is encouraged to, file with the required copies of the paper brief an electronic brief thereof on a floppy disk or CD-ROM (preferred). The appellate court clerk shall receive and file the floppy disk or CD-ROM with the papers of that case.

(i) All electronic briefs shall be on a 3.5 floppy disk or CD-ROM that can be read via Microsoft Windows and shall contain in a single file all information

contained in the paper brief, including the cover, the table of contents, and the certifications, in the same order as the paper brief. The electronic briefs may also contain hypertext links or bookmarks to cases, statutes and other reference materials available on the Internet or appended to the brief.

(ii) An electronic brief must be formatted in Microsoft Word, WordPerfect, or in a .pdf document (preferred).

(iii) An electronic brief shall contain a label indicating:

- (a) The style and docket number of the case,
- (b) The name of the document contained on the diskette or CD-Rom, and
- (c) The language format of the document.

(4) Form and content.

(c) Organization and contents-Appellant's brief.
The organization and contents of the appellant's brief shall be as follows:

(i) A brief "INTRODUCTION" indicating the nature of the case, and not exceeding two simple sentences, such as, "This is a murder case in which the defendant appeals from a judgment convicting him of 1st -degree manslaughter and sentencing him to 20 years in prison," or "This is a case in which an insurance company appeals from a judgment construing its policy as applicable, and a co-defendant's policy as not applicable, to the plaintiff's accident claim. Plaintiff also appeals against the co-defendant."

(ii) A "STATEMENT CONCERNING ORAL ARGUMENT" indicating whether the appellant desires oral argument and why appellant believes that oral argument would or would not be helpful to the Court in deciding the issues presented. This Statement should be no longer than one brief paragraph. The appellant's statement is not binding on the Court and does not preclude a party's right to file a motion to reconsider the Court's ruling that oral argument will be dispensed with. Failure to include a statement concerning oral argument will be treated as indicating that appellant does not desire oral argument in the appeal.

(iii) A "STATEMENT OF POINTS AND AUTHORITIES," which shall set forth, succinctly and in the order in which they are discussed in the body of the argument, the appellant's contentions with respect to each issue of law relied upon for a reversal, listing under each the authorities cited on that point and the respective pages of the brief on which the argument appears and on which the authorities are cited.

(iv) A "STATEMENT OF THE CASE" consisting of a chronological summary of the facts and procedural events necessary to an understanding of the issues presented by the appeal, with ample references to the specific pages of the record, or tape and digital counter number in the case of untranscribed videotape or audiotape recordings, or date and time in the case of all other untranscribed electronic recordings, supporting each of the statements narrated in the summary.

(v) An "ARGUMENT" conforming to the statement of Points and Authorities, with ample supportive references to the record and citations of authority pertinent to each issue of law and which shall contain at the beginning of the argument a statement with reference to the record showing whether the issue was properly preserved for review and, if so, in what manner.

(vi) A "CONCLUSION" setting forth the specific relief sought from the appellate court.

(vii) An "APPENDIX" with appropriate extruding tabs containing copies of the findings of fact, conclusions of law, and judgment of the trial court, any written opinions filed by the trial court in support of the judgment, the opinion or opinions of the court from which the appeal is taken, and any pleadings or exhibits to which ready reference may be considered by the appellant as helpful to the appellate court. The first item of the appendix shall be a listing or index of all documents included in the appendix. The index shall set forth where the documents may be found in the record. The appellant shall place the judgment, opinion, or order under review immediately after the appendix list so that it is most readily available to the court. Except for matters of which the appellate court may take judicial notice, materials and documents not included in the record shall not be introduced or used as exhibits in support of briefs. In workers' compensation cases the appendix shall include the opinions of the Administrative Law Judge, the Workers' Compensation Board and the Court of Appeals.

(viii) Any "INDEX" the appellant may wish to provide.

(d) Organization and contents-Appellee's brief.

The organization and contents of the appellee's brief shall be as follows:

(i) A "STATEMENT CONCERNING ORAL ARGUMENT" responsive to appellant's statement indicating why appellee believes that oral argument would or would not assist the Court in deciding the issues presented.

(ii) A "COUNTERSTATEMENT OF POINTS AND AUTHORITES" similar to the statement required of the appellant by paragraph (4)(c)(iii) of this Rule.

(iii) A "COUNTERSTATEMENT OF THE CASE" stating whether the appellee accepts the appellant's Statement of the Case and, if not, setting forth the

matters the appellee considers essential to a fair and adequate statement of the case in accordance with the requirements of paragraph (4)(c) (iv) of this Rule.

(iv) An "ARGUMENT" conforming to the appellee's Statement of Points and Authorities and to the requirements of paragraph (4)(c)(v) of this Rule with reference to record-references and citations of authority.

(v) An "APPENDIX" with appropriate extruding tabs containing copies of any papers or exhibits, not included in the appellant's brief to which ready reference may be considered by the appellee as helpful to the appellate court. The first item of the appendix shall be a listing or index of all documents included in the appendix. The index shall set forth where the documents may be found in the record.

(vi) Any "INDEX" the appellee may wish to provide.

R. CR 76.28(4)(c) Opinions

Section (4)(c) of CR 76.28 shall read:

(c) Opinions that are not to be published shall not be cited or used as binding precedent in any other case in any court of this state; however, unpublished Kentucky appellate decisions, rendered after January 1, 2003, may be cited for consideration by the court if there is no published opinion that would adequately address the issue before the court. Opinions cited for consideration by the court shall be set out as an unpublished decision in the filed document and a copy of the entire decision shall be tendered along with the document to the court and all parties to the action.

S. CR 76.36(2) and (4) Original proceedings in appellate court

Sections (2) and (4) of CR 76.36 shall read:

(2) Response.

The party against whom relief is sought and real party in interest as defined in this Rule, section (8), may within 20 days after the date of filing of the petition file a response, bearing proof of service as required by Rule 5.03, accompanied by a memorandum of authorities in support of his defense.

(4) Intermediate relief.

If the petitioner requires any relief prior to the expiration of 20 days after the date of filing the petition he/she may move the court on notice for a temporary

order on the ground that he/she will suffer immediate and irreparable injury before a hearing may be had on the petition.

T. CR 76.42(2)(a) Costs.

Sub-section (a) of section (2) of CR 76.42 shall read:

(2) Filing fees.

(a) Filing fees for docketing the following in the Court of Appeals or in the Supreme Court shall be:

(i)	Appeal, cross appeal or certification of law	\$125
(ii)	Appeals or cross appeals from Circuit Court, Family Division, to the Court of Appeals, from orders determining:	60
	(a) Paternity	
	(b) Dependency, neglect or abuse	
	(c) Domestic violence	
	(d) Juvenile status offense	
(iii)	Motion for transfer	100
(iv)	Motion or cross-motion for discretionary review	125
(v)	Petition for rehearing, modification or extension of opinion	125
(vi)	Motion for leave to file amicus curiae brief	150
(vii)	Motion for extension of time for certification of record, for intermediate relief, or for dismissal of an adversary party's appeal, if the filing fee has not been paid theretofore	125
(viii)	Motion for relief under Rules 65.07 or 65.09	125
(ix)	Original proceeding	125
(x)	Motion for reconsideration of a final order or "Opinion and Order" under Rule 76.38	125
(xi)	Petition or cross-petition for review of a decision by the Workers' Compensation Board	125

U. CR 98. Procedures for video recorded court proceedings and appeals

CR 98 shall read:

(1) Scope of Rule.

The provisions of this Rule shall apply to any court proceeding presided over by, or to any appeal from a judgment entered by, a trial judge upon his/her activation and use of video recording equipment to record the court proceeding.

(2) Record of Trial Court Proceedings.

In addition to those provisions of the Kentucky Rules of Court relating to video recorded court proceedings the following procedures shall apply:

(a) Video Recordings. The official record of these court proceedings shall be constituted as follows:

1. two (2) videotape recordings, recorded simultaneously, of court proceedings utilizing video cassette equipment; or,
2. two (2) copies of the digital video recording when court proceedings are otherwise electronically recorded.

Upon the filing of a notice of appeal, one of the two video recordings, or a court-certified copy of that portion thereof recording the court proceeding being appealed shall be filed with the clerk and certified by the clerk as part of the record on appeal. The second video recording, or a court-certified copy of that portion thereof recording the court proceeding being appealed, also shall be retained by the clerk.

(i) Method of identification. For identification purposes, the clerk shall designate on each of the two video recordings, on one line, the judicial circuit or district number, the court division number (if any), the last two digits of the current year, the letters "VR", the number of the video recording (counting all video records used since the start of the current calendar year), either the letter "A", if the video recording is retained by the clerk, or the letter "B", if the video recording is filed with the clerk, the number of the video recording used in the proceeding being identified, and the case file number of the proceeding being identified (for example: 22-3-06-VR-015-A-1, 06-CR-123). On the second line, the clerk shall designate the caption of the proceeding recorded on the video (for example: Smith v. Jones) or refer to the video recording log for the captions of the proceedings when multiple proceedings are recorded thereon. On the third line, the clerk shall designate the date on which the video record was made (for example; 10/27/06).

(ii) Duplicate copies. The clerk shall arrange for the recording of duplicate copies of video recordings for use by counsel in preparing an appeal. The clerk shall charge the person requesting a duplicate video recording a reasonable fee, which shall be set by the Administrative Office of the Courts, for each duplicate video tape, disk or other media requested.

(b) Exhibit List: Trial Log. The trial judge or his/her designee shall make a written exhibit list, a written trial log, and a written log listing the date and time of where each witness' testimony begins and ends on the video recording. The trial judge shall keep one copy of each log and list as part of the record, and shall place a second copy of each log and list with the video recording, or portion thereof.

(c) Exhibits. By pretrial order, the trial judge may require that at the time an exhibit is introduced into evidence, a photograph or photographs of the exhibit be submitted and included as part of the record, in lieu of the exhibit itself being retained by the clerk as part of the record. The photograph(s) shall serve as part of the official record, and the exhibit itself may be returned for safekeeping to the custody of the party introducing the exhibit. The clerk shall not be required to certify the exhibit itself as part of the record on appeal, unless so ordered by the appellate court.

(d) Depositions. In a court proceeding in which video recording equipment is being used to record the proceeding, the official record of a deposition admitted into evidence may be, in the trial judge's discretion, either the transcript of the deposition or the video recording of the deposition.

(e) Court Reporters in Mechanically Recorded Proceedings. Any party to the case may have a stenographic reporter present as part of the public or at counsel table and the court shall, to the extent it can do so without unduly disrupting its proceeding, accommodate the reporter inside the bar.

(3) Record on Appeal.

Unless otherwise ordered by the court, no transcript of court proceedings shall be made a part of the record on appeal except as provided in Paragraph 4 of this rule. The official video recordings, together with the clerk's written record, shall constitute the entire original record on appeal. To facilitate the timely preparation and certification of the record as set out in this rule, appellant or counsel for appellant, if any, shall provide the clerk with a list setting out the dates on which video recordings were made for all pre-trial and post-trial proceedings necessary for inclusion in the record on appeal. Designation of the video recordings shall be filed within the ten (10) day time limitation and in the manner described in Rule 75.01(1). Supplemental designation by other parties shall likewise conform with the requirements of Rule 75.01(1).

(a) Preparation and Certification by Clerk. The circuit court clerk shall prepare and certify the entire original record on file in his/her office. All parts of the written record on appeal shall be arranged in the order in which they were filed or entered. If the record comprises more than 150 pages, it shall be divided into two or more volumes not exceeding 150 pages each. Each volume shall be securely bound at the left side. There shall be a general index at the beginning

of the record and an index to each volume in the front thereof which shall show, in the order in which they appear, the pages on which all pleadings, orders, judgments, instructions, and papers may be found. Except for documents, maps and charts, and other papers reasonably capable of being enclosed in envelopes, exhibits, unless otherwise ordered by the trial court pursuant to paragraph (2)(c) of this rule, shall be retained by the clerk and shall not be transmitted to the appellate court unless specifically directed by the appellate court on motion of a party or upon its own motion. All exhibits filed with the record shall be sufficiently identified and the index shall direct where they may be found.

(b) Time for Certification. The record on appeal shall be prepared and certified by the circuit court clerk as soon after the filing of the notice of appeal as possible, but in any event within thirty (30) days after the date of filing the notice of appeal. Extension of time for certification shall be by motion for cause filed with the court to which the appeal is taken.

The matter certified under this section shall constitute the record on appeal. It is the responsibility of the appellant to see that the record is prepared and certified by the clerk within the time prescribed by this rule.

(c) Notice of Certification. The circuit court clerk shall immediately give written notice to the clerk of the appellate court when the record has been completed and certified as required herein, and shall simultaneously serve copies of such notice upon all parties to the appeal. The clerk shall enter the fact and date of such notice in the docket of the case.

(d) Withdrawal and Transmission of Record on Appeal. The circuit court clerk shall transmit the record on appeal to the appellate court when so requested by the clerk of the appellate court. Until the record on appeal is so requested, the record on appeal shall be retained under the responsibility and control of the clerk of the circuit court. Except for the official video recording of the proceedings which shall be retained by the clerk until transmitted to the appellate court, the record on appeal will be made available first to counsel for the appellant and then to the counsel for the appellee. If the record on appeal is removed from the clerk's office, counsel for the appellant shall return it before submitting his/her brief to the appellate court in order that it may be available to counsel for the appellee. If it is withdrawn by counsel for the appellant for the purpose of preparing a reply brief it shall be returned before such brief is submitted to the appellate court. A record on appeal shall not be retained by counsel beyond the filing date on which his/her brief is due. Withdrawals and returns of the record on appeal shall be noted by the clerk on the docket kept for that action.

(e) Perfection of Appeal. An appeal shall be perfected within sixty (60) days after the date of the notation on the docket of the service of notice required by paragraph (3)(c) of this rule. To perfect an appeal, the appellant shall: (1) cause

the clerk's notice required by paragraph (3)(c) of this rule to be transmitted to the clerk of the appellate court; and (2) file with the clerk of the appellate court the brief required by CR 76.12.

(4) Briefs.

The provisions of CR 76.12 pertaining to briefs shall apply to appeals taken pursuant to this rule, as well as the following provisions:

(a) Video Recording Reference. Each reference in a brief to a segment of the video recordings shall set forth in parentheses the letters "VR", the number of the video recording, and the month, day, year, hour, minute, and second at which the reference begins as recorded on the video recording. For example: (VR No. 1: 10/27/06; 14:24:05).

(b) Evidentiary Appendix. An appendix of the evidence (hereinafter, evidentiary appendix) that consists of a transcription of the evidence or other court proceeding may be attached to a brief on appeal. The filing of an evidentiary appendix and index attached to a brief shall not exceed fifty (50) pages if filed in the Supreme Court, nor twenty-five (25) pages if filed in the Court of Appeals, except that an evidentiary appendix and index attached to a reply brief shall not exceed fifteen (15) pages. An evidentiary appendix shall contain transcriptions of only those parts of the video recording that support the specific issues or contentions raised in a brief on appeal, or that relate to the question of whether an alleged error was properly preserved for appellate review.

(i) Organization of Appendix. At the top of each page of an evidentiary appendix, there shall be a video recording reference which corresponds to the transcription on each page of the appendix. Each evidentiary appendix shall include an index setting forth: (a) a list of video recording references cross-indexed to pages of the appendix; (b) an alphabetical list of witnesses whose testimony is transcribed in the appendix, listing the video recording references with the pages of the appendix where each witness' testimony begins; (c) the name of each witness at the place in the appendix where the testimony of that witness begins.

(ii) Purpose of Appendix: Sanctions. The purpose of this evidentiary appendix is to facilitate the efforts of each appellate judge in studying the briefs in a meaningful way. Inclusion of transcript unnecessary to the disposition of the case imposes a burden on both the parties and the court and may subject counsel to sanctions set forth below:

(a) The appellate court may deny costs to, or assess costs against, a party who has been responsible for the insertion of unnecessary material into an evidentiary appendix. Moreover, any counsel who so multiplies an appendix in any brief as to increase delay or costs may be required by the court to satisfy

personally such excess costs, and may be subject to the imposition of fines as set forth in CR 73.02(2)(c).

(b) The appellate court may strike any part or all of an evidentiary appendix, or brief to which it is attached, which has been determined by the appellate court to contain unnecessary material.

(5) Further Provisions.

(a) **Transcription for Appellate Court.** The appellate court may request the Administrative Office of the Courts to transcribe any portion of the video recordings it determines is necessary for a decision in the case. The costs of transcriptions under this paragraph shall be certified by the Director of the Administrative Office of the Courts, or his or her designee, and shall be paid by the parties to the appeal in such proportions as directed by the appellate court requesting the transcription.

(b) **Effect of Rule on Practice in Court of Appeals.** Nothing in this rule shall be construed to supersede the provisions of CR 76.03.

II. 2006 AMENDMENTS TO THE RULES OF CRIMINAL PROCEDURE

A. RCr 12.02 Applicability of Civil Rules

RCr 12.02 shall read:

Civil Rules 72, 73.01(2), 73.02(1)(e), 73.02(2)(c), 73.02(4), 73.08, 75.01, 75.06 to 75.15 inclusive, and 76 shall apply also in criminal actions, except that an appeal from a judgment imposing a sentence of death, life imprisonment, or imprisonment for 20 years or more shall be taken directly to the Supreme Court. Payment of the filing fee prescribed by Civil Rule 73.02(1)(b) and (c) is required.

III. 2006 AMENDMENTS TO THE SUPREME COURT RULES

A. SCR 2.024 Re-application for admission by examination

SCR 2.024 shall read:

An applicant who withdraws from or fails the bar examination shall be permitted to re-apply for the next scheduled bar examination on a form approved by the Board along with a fee of \$75.00. The \$175.00 examination fee is also required of applicants who failed the bar examination. The re-application form

must be filed by November 10 prior to the February examination and May 10 prior to the July examination.

B. SCR 2.042 Conditional admission, restoration and reinstatement

SCR 2.042 shall read:

(1) As a part of its certification process for all applicants, including applicants for restoration or reinstatement under SCR 3.500 or 3.510, the Character and Fitness Committee may require that an applicant enter into an agreement as a condition of his/her admission to the Bar. The conditions of admission, as determined by the Character and Fitness Committee, shall be set forth in a written agreement with specific terms and conditions. These terms and conditions shall be monitored by the Committee or its agents or designees.

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

(a) extend the term and impose additional condition(s).

(b) recommend to the Court revocation of the license to practice law.

(3) Additionally, in the event of failure to comply with the conditions of the agreement, or other conditions imposed by the Court upon admission, restoration or reinstatement, the Office of Bar Counsel may:

(a) request that the Court extend the term and impose additional condition(s).

(b) recommend to the Court revocation of the license to practice law.

(4) All information relating to conditional admission of an applicant or an attorney shall remain confidential in accordance with SCR 2.008.

(5) Any member whose license is revoked by the Court for failure to comply with the terms of a conditional admission agreement shall be deemed to have been subject to a disciplinary action and restoration or reinstatement shall be subject to the rules set forth in SCR 3.510.

C. SCR 3.370 (6), (8), (9) and (10) Procedure before the Board and the Court

Sections (6), (8), (9) and (10) of SCR 3.370 shall read:

(6) The Board shall decide, by a roll call vote, whether the decision of the Trial Commissioner as to the finding of a violation and degree of discipline

imposed is supported by substantial evidence or is clearly erroneous as a matter of law. The Board, in its discretion, may conduct a review *de novo* of the evidence presented to the Trial Commissioner. Both the findings and any disciplinary action must be agreed upon by eleven (11) or three-fourths (3/4) of the members of the Board present and voting on the proceedings, whichever is less. The result of each of the two (2) votes shall be recorded in the Board's minutes and in a written decision of the Board setting forth the reasons therefore as stated in paragraph seven (7) of this rule. The President shall sign and file with the Disciplinary Clerk an order setting forth the action and decision of the Board. The Disciplinary Clerk shall mail copies of such order and decision, together with a copy of the Trial Commissioner's report, to the Respondent and his/her counsel, and to each member of the Inquiry Commission, shall place ten (10) copies in the file, and file the entire record of the case with the Court. The Board by a vote of a majority of the Board present and voting, may remand the case to the Inquiry Commission for reconsideration of the form of the charge, remand the case to the Trial Commissioner for clarification of the Trial Commissioner's report, or for an evidentiary hearing on points specified in the order of remand. The Board may order the parties to file additional briefs on specific issues.

(8) Bar Counsel or the Respondent may file with the Court 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.

(9) The Court may, within ninety (90) days of the filing with the Court of the Trial Commissioner's report as provided by 3.360(4), or of the Board's decision, notify Bar Counsel and Respondent that it will review the decision. If the Court so acts, Bar Counsel and Respondent may each file briefs within thirty (30) days, with no right to file reply briefs unless by order of the Court, whereupon the case shall stand submitted. Thereafter, the Court shall enter such orders or opinion as it deems appropriate on the entire record.

(10) If no notice of review is filed by either one of the parties, or the Court under paragraph nine (9) of this rule, the Court shall enter an order adopting the decision of the Board or the Trial Commissioner, whichever the case may be, relating to all matters.

D. SCR 3.500 Restoration to membership

SCR 3.500 shall read:

(1) Any former member who has retired under Rule 3.480, or who has been suspended for failure to pay dues as provided by Rule 3.050, or any member who has failed to pay dues for such period of time as to warrant suspension under that Rule, or any member who has been suspended for failure to comply with the continuing legal education requirements as provided by Rule 3.661, and such status has prevailed for less than a period of five (5) years, may apply for restoration by completing forms provided by the Director, to include a certification from the KBA that there is no pending disciplinary matter, tendering a fee of \$250.00, and payment of dues for the current year and all back years, unless he/she has been in a retired status by order of the Court. In cases where a suspension has prevailed for five years or less and the restoration application is referred to the Character and Fitness Committee, a fee of \$250.00 shall be made payable to the Kentucky Office of Bar Admissions.

Upon receipt of such application and payments, the Clerk shall tender the same to the Director who shall refer the application to the Continuing Legal Education Commission for certification under Rule 3.675 within thirty (30) days of the referral. The Continuing Legal Education Commission shall make its certification which shall be added to the record in the restoration proceeding. The Director shall in turn advise each member of the Board and furnish them all pertinent information available.

(a) The Board shall, within thirty (30) days of review of the information, make its recommendation to the Court for approval of an entry of an order restoring the Applicant or

(b) Refer the matter to the Committee for proceedings under Rule 2.040 and SCR 2.011. The Committee's recommendation shall be made to the Board for its action and recommendation to the Court.

(c) As to any Applicants, including those who have been suspended for failure to pay dues or failure to meet continuing legal education requirements, the mere submission of the application for restoration and tendering the required fee shall not automatically restore the privilege of practicing law, and such suspension shall remain in force pending entry of the order of the Court restoring the Applicant.

(2) Any former member who has withdrawn or retired or has been suspended for failure to pay dues or has been suspended for failure to meet continuing legal education requirements, and such status has prevailed for five (5) or more years, may file an application for restoration which shall include a certification from the KBA that there is no pending disciplinary matter, and payment of \$500.00. If the former member has been suspended for

nonpayment of bar dues he shall also tender payment for current dues and all back dues. The application shall then be referred to the Committee for proceedings under Rule 2.040 and SCR 2.100 and to the Continuing Legal Education Commission for certification under Rule 3.675. An additional fee of \$500.00 shall be made payable to the Kentucky Office of Bar Admissions.

The Committee shall make its recommendation to the Board.

(3) If the Committee recommends approval of the application and the Board concurs, and the status of suspension has prevailed for five (5) or more years, then the application shall be referred to the Board of Bar Examiners, which Board shall administer a written examination which shall cover the subject of ethics and five (5) of the subjects listed in SCR 2.080(1). A general average of 75% or higher shall be deemed a passing score on the written examination. The fees required by Rules 2.022 and 2.023 shall be paid prior to taking the examination.

If an Applicant passes an examination, such fact shall be certified to the Court and the Director, together with a recommendation that the Applicant be readmitted to membership. Upon this certification, the Director shall forward the file to the Court to consider whether to restore the Applicant. If the Applicant fails to pass an examination, the Board of Bar Examiners shall certify the fact of failure to the Court and the Director. Upon certification that Applicant failed to pass, the Director shall forward the file to the Court for entry of an order denying the Applicant for restoration.

The provisions of Rules 2.015 and 2.080 shall apply where not inconsistent.

(4) If the Committee recommends disapproval of the application referred to in paragraph (2) after its hearing, then the application shall be referred to the Board for review. The Applicant and the KBA may file briefs and an oral argument may be held at the request of either party. If, after such consideration, the Board concurs in disapproval of the application, its findings and recommendation shall be filed with the Clerk, and the Applicant and the Committee shall be notified of this decision by the Director. The Applicant shall be sent notice by certified mail, return receipt requested, at his/her bar roster address.

For a period of twenty (20) days after the Clerk shall have mailed said notice, the Applicant may petition the Court for a review of the action of the Board.

Should the Board or the Court reverse the disapproval recommendation of the Committee, then the file shall be referred to the Board of Bar Examiners for procedure under paragraph (3).

(5) All costs incurred in excess of the filing fee shall be paid by the Applicant. A cash or corporate surety bond in the amount of \$2500.00 to secure costs to be incurred shall be posted with the Clerk before the Clerk files the application.

(6) The burden of proof is on the Applicant to establish his/her present qualifications to practice law in Kentucky.

(7) If the Committee and Board recommend approval of restoration on conditions, as provided in SCR 2.042, or approval with such additional conditions as the Board may recommend, the Court may include such conditions in any order of restoration.

E. SCR 3.510 Reinstatement in case of disciplinary suspension

SCR 3.510 shall read:

(1) No former member of the Association who has been suspended for a disciplinary case for more than one hundred eighty (180) days shall resume practice until he/she is reinstated by order of the Court. Application for reinstatement shall be on forms provided by the Director and Continuing Legal Education Commission, filed with the Clerk, and shall be accompanied by a filing fee of \$250.00 which shall be made payable to the Kentucky Bar Association. An additional filing fee of \$1250.00 shall be made payable to the Kentucky Office of Bar Admissions. The Clerk shall not accept an application for filing unless all costs incurred in the suspension proceeding have been paid by the former member, the Office of Bar Counsel has certified to the Applicant that there is no pending disciplinary file, and the costs in the reinstatement proceeding (whether costs of the Association or of the Character and Fitness Committee or of the Office of Bar Admissions) have been secured by the posting of a cash or corporate surety bond of \$2500.00. Any additional costs will be paid by Applicant. Upon filing of an application and payment of the filing fee, the Clerk shall promptly deliver the application to the Director together with the original record of suspension proceeding. The Director shall refer the application to the Continuing Legal Education Commission within ten (10) days of receipt for certification under Rule 3.675. The Continuing Legal Education Commission shall make its certification within twenty (20) days of the referral which shall be added to the record in the reinstatement proceedings.

(2) If the period of suspension has prevailed for one hundred eighty (180) days or less, the suspension shall expire by its own terms upon the filing with the Clerk and Bar Counsel of an affidavit of compliance with the terms of the suspension, which must include a certification from the CLE Commission that the Applicant has complied with SCR 3.675. The Registrar of the Association will

make an appropriate entry in the records of the Association reflecting that the member has been reinstated; provided, however, that such suspension shall not expire by its own terms if, not later than ten (10) days preceding the time the suspension would expire, Bar Counsel files with the Inquiry Commission an opposition to the termination of suspension wherein Bar Counsel details such information as may exist to indicate that the member does not, at that time, possess sufficient professional capabilities and qualifications properly to serve the public as an active practitioner or is not of good moral character. A copy of such objection shall be provided to the Character and Fitness Committee, to the member concerned, and to the Registrar. If such an objection has been filed by Bar Counsel, and is not withdrawn within thirty (30) days, the Character and Fitness Committee shall conduct proceedings under SCR 2.300. In cases where a suspension has prevailed for one hundred eighty (180) days or less and the reinstatement application is referred to the Character and Fitness Committee, a fee of \$1250.00 shall be made payable to the Kentucky Office of Bar Admissions.

(3) If the period of suspension has prevailed for more than one hundred eighty (180) days, the matter shall be referred to the Character and Fitness Committee for proceedings under SCR 2.300. The Character and Fitness Committee will determine whether the application of a member who has been suspended one hundred eighty (180) days or less but whose termination of suspension has been objected to, or a member who has been suspended for more than one hundred eighty (180) days, should be approved. The Character and Fitness Committee shall file with the Director and the Clerk the entire record, including a written report and recommendation by the Character and Fitness Committee. The Board shall review the record and report and recommend approval or disapproval of the application to the Court. The Court may enter an order reinstating the Applicant to the practice of law or deny the application.

(4) If the period of suspension has prevailed for more than five (5) years, the Director shall refer the application to the Character and Fitness Committee for proceedings under SCR 2.300. The Committee shall file a written report and recommendation with the Director and the Clerk. The Board shall review the record and report and recommend approval or disapproval of the application to the Court. If the Committee and the Board recommend approval of the application, the Committee shall refer the application to the Board of Bar Examiners for processing in accordance with Rule 3.500(3) and shall file the entire record with the Clerk, including the written report and recommendation of the Committee. The Board of Bar Examiners shall certify the results of the examination to the Director and the Court. If the Applicant successfully completes the examination, the Court may, at its discretion, enter an order reinstating the suspended member to the practice of law. However, if the Applicant fails to pass the examination, the Court shall enter an order denying the application.

(5) A suspended member of the Association who desires to resume practice as quickly as possible following a period of suspension may file an application to do so at any time during the last ninety (90) days of the period of suspension.

(6) If the Committee and Board recommend approval of reinstatement on conditions, as provided in SCR 2.042, or approval with such additional conditions as the Board may recommend, the Court may include such conditions in any order of reinstatement.

**F. SCR 3.530 Ethics Committee and Unauthorized Practice Committee
–Advisory opinions – Informal and formal**

SCR 3.530 shall read:

(1) The Ethics Committee and the Unauthorized Practice Committee are authorized to issue informal opinions, and to submit to the Board for its action formal opinions, on questions of ethics or unauthorized practice, as applicable.

(2) Any attorney licensed in Kentucky or admitted under SCR 3.030(2), who is in doubt as to the ethical propriety of any professional act contemplated by that attorney may request an informal opinion. The President shall designate members of the Ethics Committee to respond to such requests. Ordinarily, the request shall be directed to a member of the requestor's Supreme Court district. Such request shall be in writing or by telephone followed by a request in writing. The committee member to whom the request is directed shall attempt to furnish the requesting attorney with a prompt telephonic answer and written informal letter opinion as to the ethical propriety of the act or course of conduct in question. A copy of any such informal opinion shall be provided to the Director for safekeeping and statistical purposes, and to the Chair of the Ethics Committee, to determine whether the informal opinion has broader application.

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

(4) If the Ethics Committee determines an ethical issue to be of sufficient importance, the Committee may issue and furnish to the Board of Governors a proposed opinion authorized by such Committee for approval as a formal opinion. Such approval shall require a vote of three-

fourths of the voting members present at the meeting of the Board. If the Board is unable to approve of the opinion as written, then the Board may return the matter to the Committee for further review and consideration, or may modify the opinion and approve the opinion as modified by the three-fourths vote, or may direct the Committee to furnish the requesting attorney, if any, with an informal opinion in the form of a Chair's letter opinion, with a copy to the Director.

(5) Both informal and formal opinions shall be advisory only; however, no attorney shall be disciplined for any professional act performed by that attorney in compliance with an informal opinion furnished by the Ethics Committee member pursuant to such attorney's written request, provided that the written request clearly, fairly, accurately and completely states such attorney's contemplated professional act.

(6) Any attorney licensed in Kentucky who is in doubt as to the propriety of any course of conduct or act of any person or entity which may constitute the unauthorized practice of law may make a request in writing, or in emergencies, by telephone, to the Chair of the Unauthorized Practice Committee, or such other members of the Unauthorized Practice Committee as are designated by the Chair, for an advisory opinion thereon. Local bar associations may also request advisory opinions. The Committee member to whom the request is directed shall bring this matter to the attention of the Committee at its next meeting. The Committee may attempt to furnish the requesting attorney with a prompt telephonic answer and written informal letter opinion as to whether the conduct constitutes the unauthorized practice of law. A copy of such informal opinion shall be provided to the Director and the Chair of the Unauthorized Practice Committee.

(7) Any attorney licensed in Kentucky or admitted under SCR 3.030(2) who is in doubt as to the ethical propriety of any professional act contemplated by that attorney with respect to the unauthorized practice of law shall be referred to the Ethics Committee district member for an informal opinion as set forth in (2) and (3). Communications about such an inquiry between the requesting attorney and the unauthorized practice committee member, and between the committee members of the two committees, shall be confidential.

(8) The requesting and giving of advice by the Unauthorized Practice Committee under this Rule does not create an attorney/client relationship.

(9) If the Unauthorized Practice Committee determines an issue regarding the unauthorized practice of law to be of sufficient importance, the Committee may issue and furnish to the Board of Governors a

proposed opinion authorized by such Committee for approval as a formal opinion. Such approval shall require a vote of three-fourths of the voting members present at the meeting of the Board. If the Board is unable to approve the opinion as written, then the Board may return the matter to the Committee for further review and consideration, or may modify the opinion and approve the opinion as modified by the three-fourths vote, or may direct the Committee to furnish the requesting attorney, if any, with an informal opinion in the form of a Chair's letter opinion, with a copy to the Director.

(10) Ethics Committee and Unauthorized Practice Committee members shall be immune from suit for advice given in the performance of duties under this Rule.

(11) All formal opinions of the Board arising from either Committee shall be published in full or in synopsis form, as determined by the Director, in the edition of the KENTUCKY BENCH & BAR next issued after the adoption of the opinion.

(12) Any person or entity aggrieved or affected by a formal opinion of the Board may file with the clerk within thirty (30) days after the end of the month of publication of the KENTUCKY BENCH & BAR in which the full opinion or a synopsis thereof is published, a copy of the opinion, and, upon motion and reasonable notice in writing to the Director, obtain a review of the Board's opinion by the Court. The Court's action thereon shall be final and the Clerk shall furnish copies of the formal order to the original petitioner, if any, the movant and the Director. The movant shall file a brief in support of the review, and the Director may file a response brief thirty days thereafter.

(13) The filing fee for docketing a motion under paragraph (7) of this Rule 3.530 shall be as provided by Civil Rule 76.42(1) for original actions in the Supreme Court.

G. SCR 3.666 (2)(d) Exemptions and removal of exemptions

Sub-section (d) of section (2) and section (5) of SCR 3.666 shall read:

(2) Upon application to the Commission, the following members may be exempted from the requirements of Rule 3.661:

(d) Any member who, for any portion of an educational year, was on active duty in the United States armed forces.

(5) Exemptions granted pursuant to Rule 3.666(2)(b) and SCR 3.666(2)(d) based on hardship including military service are considered temporary in nature unless specifically designated otherwise. In order to maintain an exemption based on a temporary hardship, including an exemption based on military service, annual application is necessary. Failure to so certify will result in loss of the exempt status.

H. SCR 3.668 (1) Non-compliance, definition

Section (1) of SCR 3.668 shall read:

(1) Delinquency of Certification. Any certification of Continuing Legal Education activity for an educational year (July 1-June 30) which is submitted after the August 10th immediately following the close of that educational year, shall be deemed past due and in non-compliance. All past due reports shall be accompanied by a late filing fee of fifty dollars (\$50) per certificate or report to cover the administrative costs of recording credits to the prior year. All past due reports for completion of an activity in the immediately preceding educational year must be received by the Commission with the late fee of \$50.00 per certificate or report no later than the close of the current educational year (June 30). This deadline (June 30) will not apply in instances where the member or former member is in the process of removing an exemption per SCR 3.666(6) or attempting certification per SCR 3.675, but the late fee of \$50 per certificate or report shall be applied if the report is received after the August 10th reporting deadline described above.

All concur, except Roach and McAnulty, J.J., would have adopted the proposed new rule regarding successive collateral attacks in death penalty cases.

ENTERED: NOVEMBER 13, 2006.


CHIEF JUSTICE