

Supreme Court of Kentucky

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

2012-01

The following rules' amendments shall become effective March 1, 2012.

AMENDMENTS TO THE RULES OF THE SUPREME COURT

I. SCR 2.014 Legal education

New subsection (c) and (d) of section (2) and subsection (b) of section (3) of SCR 2.014 shall read:

(2)(c) In evaluating the education received the Board of Bar Examiners shall consider, but not be limited to, such factors as the admission of the applicant to the bar of another state or the District of Columbia, the similarity of the curriculum taken to that offered in law schools approved by the American Bar Association or by the Association of American Law Schools, and that the school at which the applicant's legal education was received has been examined and approved by other state bar associations examining the legal qualifications of non-ABA law school graduates.

(d) The attorney meets all other requirements contained in the Rules of the Supreme Court of Kentucky pertaining to Admission of Persons to Practice Law.

(3)(b) In evaluating the education received the Board of Bar Examiners shall consider, but not be limited to, such factors as the admission of the applicant to the bar of another state or the District of Columbia, the similarity of the curriculum taken to that offered in law schools approved by the American Bar Association or by the Association of American Law Schools, that the school at which the applicant's legal education was received has been examined and approved by other state bar associations examining the legal qualifications of foreign law school graduates, and the applicant's proficiency in written and spoken English.

II. SCR 2.110 Admission without examination

New section (4) of SCR 2.110 shall read:

(4) Notwithstanding the requirements stated above, if the applicant has practiced five of the last seven years in a jurisdiction that permits the admission without examination of attorneys from Kentucky, the Character & Fitness Committee may approve admission without examination under the same provisions that allow admission of Kentucky attorneys.

III. SCR 2.120 Administration of Oath and Issuance of Certificate of Admission to Practice Law

SCR 2.120 shall read:

An applicant approved for admission under SCR 2.085, 2.110, 2.111 or 2.112 must apply for and be granted a certificate of admission prior to engaging in the practice of law in this state. As prerequisites for the issuance of such a certificate an applicant shall pay the current annual dues or fees of the Kentucky Bar Association authorized under SCR 3.040, pay a fee of fifty dollars (\$50.00) to the Kentucky Office of Bar Admissions, and shall be administered the Constitutional Oath of Office either by a Justice of the Supreme Court or by the Clerk of the Supreme Court. Upon completion of the prerequisites, the Clerk shall deliver to the applicant a Certificate of Admission on a form approved by the Court, and the issuance of the certificate shall be duly recorded by the Clerk.

**IV. SCR 2.300 Reinstatement of persons to practice law
Scope and Purpose of Reinstatement Guidelines.**

New subsections (b), (c), (d), (e) and (f) of section (1) of SCR 2.300 shall read:

(1) Initial Reinstatement Application Process:

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

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

(d) Upon receipt of a complete application for reinstatement and payment of necessary fees by an applicant who has been suspended more than one hundred eighty (180) days (and in some cases where the suspension has been less than one hundred eighty (180) days) the Kentucky Bar Association will refer the application to the Kentucky Office of Bar Admissions, Character and Fitness Committee for investigation, for a hearing, if necessary, and for a formal recommendation regarding the disposition of the application in accordance with SCR 3.500, SCR 3.505, and SCR 3.510.

(e) Upon receipt of a Reinstatement Application from the Kentucky Bar Association, the Kentucky Office of Bar Admissions, Character and Fitness Committee will immediately send the applicant an Application for Admission to the Bar. The applicant must complete that form and return it to the Character and Fitness Committee with documentation specified in instructions accompanying the application.

(f) The submission of an incomplete application or the failure of an applicant to submit necessary documentation and/or fees will delay the Character and Fitness Committee's ability to render a timely recommendation. Failure of an applicant to submit the application for admission to the Bar within thirty (30) days or failure of an applicant to perfect an application within thirty (30) days of the date a notice of deficiency is sent to the applicant by the Committee may result in an unfavorable recommendation.

V. SCR 3.030 Membership, practice by nonmembers and classes of membership

Section (2) of SCR 3.030 shall read:

(2) A person admitted to practice in another state, but not in this state, shall be permitted to practice a case in this state only if that attorney subjects himself or herself to the jurisdiction and rules of the Supreme Court of Kentucky, pays a one time per case fee of two hundred seventy dollars (\$270.00) to the Kentucky Bar Association and engages a member of the association as co-counsel, whose presence shall be necessary at all trials and at other times when required by the court. No motion for permission to practice in any state court in this jurisdiction shall be granted without submission to the admitting court of a certification from the Kentucky Bar Association of receipt of this fee.

VI. SCR 3.040 Dues: date of payment and amount

Sections (1), (2) and new section (4) of SCR 3.040 shall read:

(1) On or before July 1 of each year every member of the Association, including every justice or judge of the Kentucky Court of Justice and United States judge in or who is appointed from or maintains a residence in Kentucky, except board-designated honorary members, shall be assessed dues for the ensuing twelve months. Dues shall be fixed by the Supreme Court on recommendation of the Board. Dues shall be paid to the treasurer on or before September 1 of each year.

(2) Any member of the association shall be relieved of the payment of dues for any fiscal year in which the member serves actively for a period of not less than six months in the armed services of the United States of America, other than as a career member of the armed forces.

(4) Any member of the bar may apply in writing to the Kentucky Bar Association to be relieved of the payment of dues by reason of undue hardship

arising from disability, sickness or financial condition. The application shall be copied to the Governors from the district in which the attorney lives, who may or may not recommend in writing to the President that such relief be granted, giving the reasons therefor. Thereupon the President shall have the authority to rule on the application and to notify the Treasurer by written order that the attorney is relieved of the payment of dues. The President shall file the order with the registrar along with the recommendation(s) of the Governor(s).

VII. SCR 3.050 Collection of dues; suspension for non-payment

SCR 3.050 shall read:

If dues are not paid on or before September 1, then an additional late payment fee of fifty dollars (\$50.00) shall be assessed. On or before September 15 of each year, the Treasurer shall notify a member in writing of his or her delinquency and late fee. On or before October 15 of each year, the Treasurer shall in writing certify to the Board the names of all members who remain delinquent. The Board shall cause to be sent to the member a notice of delinquency by certified mail, return receipt requested, at the member's bar roster address. Such notice shall require the member to show cause within thirty (30) days from the date of the mailing why the member's law license should not be suspended for failure to pay dues and the late fee. In addition, such notice shall inform the member that if such dues and late fee, as well as costs in the amount of fifty (\$50.00), are not paid within thirty (30) days, or unless good cause is shown within thirty (30) days that a suspension should not occur, the lawyer will be stricken from the membership roster as an active member of the KBA and suspended from the practice of law. At the conclusion of the thirty (30) days, unless the dues, late fees and additional costs payment have been received, or unless good cause has been shown as to why the member should not be suspended, the Board of Governors will vote to suspend any such member from the practice of law. A copy of the suspension notice shall be sent by the Director to the member, the Clerk of the Supreme Court of Kentucky, the Director of Membership, and the Circuit Clerk of the member's roster address district for recording and indexing. The suspended member may apply for restoration to membership under the provisions of SCR 3.500. A member may appeal to the Supreme Court of Kentucky from such suspension within thirty (30) days of the date the suspension notice is recorded in the membership records. Such appeal shall include an affidavit showing good cause why the suspension should be revoked.

VIII. SCR 3.130 (1.8) Comment 13: Conflict of interest: current clients; specific rules

Comment 13: Aggregate Settlements

Comment (13) of SCR 3.130 (1.8) shall read:

(13) Differences in willingness to make or accept an offer of settlement are among the risks of common representation of multiple clients by a single lawyer. Under Rule 1.7, this is one of the risks that should be discussed before

undertaking the representation, as part of the process of obtaining the clients' informed consent. In addition, Rule 1.2(a) protects each client's right to have the final say in deciding whether to accept or reject an offer of settlement and in deciding whether to enter a guilty or nolo contendere plea in a criminal case. The Rule stated in this paragraph is a corollary of both these Rules and provides that, before any settlement offer or plea bargain is made or accepted on behalf of multiple clients, the lawyer must inform each of them about all the material terms of the settlement, as described herein.

A non-certified, non-class aggregate settlement is a settlement of the claims of two or more individual claimants in which the resolution of the claims is interdependent. The resolution of claims in a non-class aggregate settlement is interdependent if the defendant's acceptance of the settlement is contingent upon the acceptance by a specified number or percentage of the claimants or specified dollar amount of claims; or the value of each claim is not based solely on individual case-by-case facts and negotiations. In such situations potential conflicts of interest stemming from interdependency exist, thus posing a risk of unfairness to individual claimants.

When the terms of an aggregate settlement do not determine individual amounts to be distributed to each client, detailed disclosures are required. For example, if a lump sum is offered in an aggregate settlement and the claimants' attorney is involved in dividing the settlement sum, that attorney must disclose to each client the number of his or her clients participating, specifics of each client's claim relevant to the settlement, and the method of dividing the lump sum. In addition, the attorney must disclose the total attorney fees and costs to be paid, payments to be made other than to clients, to their attorneys and for costs, the method by which the costs are to be apportioned among the clients and ultimately the amount each client receives.

By contrast, if the terms of the aggregate settlement establish the method of calculating and distributing payments to each claimant, based upon the individual claim for liability and/or damages, the disclosures to each client represented by the same attorney do not need to be as detailed. In that instance, each client should be generally informed of the terms of the aggregate settlement offer, how such terms apply specifically to such client, the fact that the attorney represents multiple clients in the settlement and, if applicable, any contingency in the settlement requiring a percentage of claimants to accept the settlement. The claimants' attorney must also disclose fees and costs to each client (including how costs are apportioned among the joint clients) but attorney fees may be stated as a percentage of the total recovery as opposed to a specific dollar amount.

IX. SCR 3.130(1.19) Dissolution of law firm

New rule SCR 3.130(1.19) shall read:

Upon dissolution of a law firm or of any legal professional corporation, the partners shall make reasonable arrangements for the maintenance of client trust account.

X. SCR 3.130(1.20) Sale of law practice

New rule SCR 3.130(1.20) shall read:

Upon the sale of a law practice, the seller shall make reasonable arrangements for the maintenance of client trust account records.

XI. SCR 3.130(5.5) Unauthorized practice of law; multijurisdictional practice of law

Subsection (1) of section (c) of SCR 3.130 (5.5) shall read:

(c)(1) comply with SCR 3.030(2), or they do not require compliance with SCR 3.030(2) due to federal statute, rule or regulation; or

XII. SCR 3.130(7.03) Attorneys' Advertising Commission

Sections (4) and (5), sub-sections (a), (b), (c), (d) and (e) to section (6) and sections (7), (8) and new section (9) of SCR 3.130(7.03) shall read:

(4) The Board shall appoint a Chair from among the Commission members. The term shall be one (1) year; however, the Chair may serve more than one (1) term.

(5) The Commission shall be provided with sufficient administrative assistance from the Director as from time to time may be required.

(6) 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 prepare a budget for the succeeding year and shall submit same to the Board of Governors for inclusion with the budget of the Association.

(8) 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.

(9) 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.

XIII. SCR 3.130(7.05) Filing of advertisements

Subsection (b) of section (1), section (2) and new section (4) of SCR 3.130(7.05) shall read:

(1)(b) If the advertisement contains only those items listed in SCR 3.130(7.05)(1)(a), or in AAC Regulation 2, the lawyer shall mail or deliver to the Commission, c/o the Director of the Kentucky Bar Association, three (3) copies of the advertisement, or electronically transmit the advertisement via facsimile or email in PDF (Portable Document Format) to the Attorneys' Advertising Commission address attorneyadvertising@kybar.org. 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. Website advertisements that do not qualify for submission without a fee must be submitted in electronic format on a data disc in PDF (Portable Document Format), or other such data storage media as the Commission may designate by regulation. Three (3) copies of the data disc

should be mailed or delivered to the Commission, c/o the Director of the Kentucky Bar Association. A filing fee of seventy five-dollars (\$75.00) 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. An additional administrative fee of one hundred dollars (\$100.00) may be imposed for late submissions. Additionally, advertisements of more than 100 pages, or longer than 10 minutes of video or audio, will require a supplemental fee of one hundred dollars (\$100.00). The same fees are required if an advisory opinion has been sought under SCR 3.130(7.06)(1).

(4) The lawyer shall retain a copy or recording of all advertisements utilized by the lawyer, as well as a record of when and where it was used, for two (2) years after its last dissemination. Electronic retention is permitted if in PDF format, or such other formats as the Commission may designate by regulation. In the event of the pendency of any disciplinary action before the Inquiry Commission, Board of Governors or Court, the lawyer shall continue to retain a copy until the termination of that proceeding.

XIV. SCR 3.130(7.09) Direct contact with potential clients

Subsections (a), (b) and new subsection (c) of section (1) of SCR 3.130(7.09) and the Supreme Court Commentary of SCR 3.130(7.09) shall read:

(1) No lawyer shall directly or through another person, by in person, live telephone, or real-time electronic means, initiate contact or solicit professional employment from a potential client unless:

(a) the lawyer has an immediate family relationship with the potential client;

(b) the lawyer has a current attorney-client relationship with the potential client; or

(c) the lawyer is advocating a public interest issue and is not significantly motivated by the lawyer's pecuniary gain.

This Rule shall not prohibit response to inquiries initiated by persons who may become potential clients at the time of any other incidental contact not designed or intended by the lawyer to solicit employment.

Supreme Court Commentary

(1) There is a potential for abuse inherent in direct in-person, live telephone or real-time electronic contact by a lawyer with a prospective client known to need legal services. These forms of contact between a lawyer and a prospective client subject the layperson to the private importuning of the trained advocate in a direct interpersonal encounter. The prospective client, who may already feel overwhelmed by the circumstances giving rise to the need for legal services, may find it difficult fully to evaluate all available alternatives with reasoned judgment and appropriate self-interest in the face of the lawyer's

presence and insistence upon being retained immediately. The situation is fraught with the possibility of undue influence, intimidation, and over-reaching.

(2) Communications to prior clients are not prohibited if the lawyer is required by the circumstances of the representation to communicate with a prior client to advise the client of changes in the law that would result in additional legal work.

(3) The rule's subsection (3) permits solicitations otherwise prohibited by the rule where the solicitation is not significantly motivated by the lawyer's pecuniary gain, in compliance with *In re Primus*, 436 U.S. 412(1978); *Ohralik v. Ohio State Bar Ass'n*, 436 U.S. 447 (1978); and *NAACP v. Button*, U.S. 415 (1963). There is far less likelihood that a lawyer would engage in abusive practices in situations in which the lawyer is motivated by considerations other than the lawyer's pecuniary gain. Also, subsection (3) is not intended to prohibit a lawyer from participating in constitutionally protected activities of public or charitable legal service organizations or bona fide political, social, civic, fraternal, employee or trade organizations whose purposes include providing or recommending legal services to its members or beneficiaries.

(4) SCR 3.130(7.09)(5) permits a lawyer to participate with an organization that uses personal contact to solicit members for its group or prepaid legal service plan, provided that personal contact is not undertaken by any lawyer who would be a provider of legal services through the plan. The organization must not be owned by or directed (whether as manager or otherwise) by any lawyer or law firm that participates in the plan. For example, paragraph (5) would not permit a lawyer to create an organization controlled directly or indirectly by the lawyer and to use the organization for the in-person or telephone solicitation of legal employment of the lawyer through memberships in the plan or otherwise. The communication permitted by these organizations also must not be directed to a person known to need legal services in a particular matter, but should be designed to inform potential plan members generally of another means of affordable legal services. Lawyers who participate in a legal service plan must make reasonable efforts to determine that the plan sponsors are in compliance with the Rules.

(5) Neither this rule nor SCR 3.130(7.20) prohibits communications authorized by law, such as notice to members of a class in class action litigation.

XV. SCR 3.130(8.3) Reporting professional misconduct

Section (f) of SCR 3.130(8.3) shall read:

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

XVI. SCR 3.166(2) Automatic suspension after conviction of a felony

Section (2) of SCR 3.166 shall read:

(2) The attorney prosecuting the case to a plea of guilty, conviction by judge or jury or entry of judgment, whichever occurs first, shall immediately notify Bar Counsel and the Clerk of the Supreme Court that such plea, finding or entry of judgment has been made.

XVII. SCR 3.180 Investigations and trials to be prompt; subpoena power

Section (3) and new section (4) of SCR 3.180 shall read:

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

(4) If any witness refuses to testify concerning any matter for which he or she may lawfully be interrogated, upon application of the Inquiry Commission to the Circuit Court of the county in which the witness resides, the Circuit Court may compel obedience by proceedings for contempt as in the case of disobedience of a subpoenas issued from the Circuit Court.

XVIII. SCR 3.181 Assistance to other lawyer disciplinary jurisdictions

New rule SCR 3.181 shall read:

(1) Upon receipt by the Director of a subpoena certified to be duly issued under the rules or laws of another lawyer disciplinary jurisdiction, or by a clients' security fund of any jurisdiction, the Inquiry Commission may authorize the Director or Disciplinary Clerk to issue a subpoena directing a person domiciled or found within the Commonwealth of Kentucky to give testimony and/or produce documents or other things for use in the other lawyer disciplinary or clients' security fund proceedings as directed in the subpoena of the other jurisdiction.

(2) The testimony or production shall be only in the county wherein the person resides or is employed, or as otherwise fixed by the Inquiry Commission for good cause shown, and shall be taken as provided in CR 28.01.

(3) Any attack on the validity of a subpoena issued by another jurisdiction may be heard and determined by the disciplinary authority of the other state in accordance with the law of the issuing jurisdiction.

(4) In addition to the relief available under the law of the requesting disciplinary jurisdiction or clients' security fund, upon motion made by a party or by the person from whom appearance or production is sought, and for good cause shown, the Inquiry Commission may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (a) that the testimony or production not be had; (b) that it may be had only on specified terms and conditions, including a designation of the time or place; (c) that it may be had only by a method other than that selected by the party seeking testimony or production; (d) that certain matters not be inquired into, or that the scope of the subpoena be limited to certain matters; (e) that the testimony be taken with no one present except persons designated by the Inquiry Commission; (f) that testimony may be sealed to be opened only by order of the original issuing jurisdiction; (g) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; (h) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the original issuing jurisdiction.

XIX. SCR 3.185 Informal admonition procedure

SCR 3.185 shall read:

After a complaint against an attorney for unprofessional conduct is investigated and a response filed, the Inquiry Commission may direct a private admonition, with or without conditions, to the attorney if the acts or course of conduct complained of are shown not to warrant a greater degree of discipline. The attorney so admonished may, within twenty (20) days from the date of the admonition, reject such admonition and request that a charge be issued and filed as is provided by Rule 3.190; whereupon, the issues shall be processed under the applicable rules. The Inquiry Commission may also issue a warning or a conditional dismissal letter including, but not limited to, conditions such as referral to KYLAP, or attendance at a remedial ethics program or related classes as directed by the Office of Bar Counsel.

XX. 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 and shall designate a chair from the 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.

XXI. SCR 3.260 Joinder and consolidation

New sections (3) and (4) of SCR 3.260 shall read:

(3) Charges against two or more attorneys may be consolidated by order of the Inquiry Commission for limited purposes including, but not limited to, preservation of testimony, out of state depositions, or document production pursuant to subpoena.

(4) Any party may file a motion with the Inquiry Commission to sever separate charges against any attorney as provided in subsection (1), or to sever charges against two or more attorneys as provided in subsection (2) or (3). However, the filing of such motions shall not delay the evidentiary hearing or the Board's consideration of the case.

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

New section (6) of SCR 3.360 shall read:

(6) Upon the finality of the report of the Trial Commissioner, the Disciplinary Clerk shall certify the record of the proceedings and send notice of certification to the parties.

XXIII. SCR 3.365 Notice of appeal

Section (2) of SCR 3.365 shall read:

(2) The notice of appeal shall specify by name the appellant and the report appealed from.

XXIV. SCR 3.390 Notice to client of suspension or disbarment

SCR 3.390 shall read:

(a) Any order suspending a lawyer from the practice of law, other than an order of suspension under SCR 3.165 or 3.166, shall take effect on the tenth (10th) day following its entry unless otherwise provided within the order. The suspended lawyer shall promptly take all reasonable steps to protect the interests of the lawyer's clients. A lawyer suspended from the practice of law shall not during the term of suspension accept new clients or collect unearned fees, and shall comply with the provisions of SCR 3.130-7.50(5).

(b) Within ten (10) days after the issuance of an order of disbarment, or suspension under SCR 3.050 or SCR 3.669(4), or upon issuance of an order of suspension from the practice of law for more than sixty (60) days, the disbarred or suspended lawyer shall notify, by letter duly placed with the United States Postal Service, all courts or other tribunals in which that lawyer has matters

pending, and all clients of the lawyer's inability to represent them and of the necessity and urgency of promptly retaining new counsel. The lawyer shall simultaneously provide a copy of all such letters of notification to the Office of Bar Counsel. Upon issuance of an order of disbarment or suspension, the affected lawyer shall immediately cancel any pending advertisements, to the extent possible, and shall terminate any advertising activity for the duration of the term of suspension or disbarment.

XXV. SCR 3.450 Recovery of Appropriate Costs

SCR 3.450 shall read:

In any case to be submitted to the Court, the Disciplinary Clerk shall file with the Court the entire record of the proceedings together with a certified bill of costs, which shall include the expenses incurred by the Kentucky Bar Association in connection with the investigation and prosecution of the matter, including the expenses associated with the trial commissioner's hearing.

Every final order of the Board or the Court which adjudges the Respondent guilty of unprofessional conduct shall provide for the recovery of appropriate costs. Immediately upon the effective date of the order, the Clerk shall furnish a bill for said costs to the Respondent. If the bill is not satisfied within ten (10) days thereafter, the Clerk shall notify the Director of the Association.

XXVI. SCR 3.500 Restoration to membership

SCR 3.500 shall read:

(1) A former member who has withdrawn from membership pursuant to SCR 3.480(1), or who was suspended for failure to pay dues as provided by SCR 3.050, or for failure to comply with the continuing legal education requirements of SCR 3.661 may be restored to membership upon compliance with the conditions set forth in this rule. No application for restoration shall be effective until entry of an order of restoration by the Board of Governors or the Court, as provided herein. Until the entry of such an order, the suspension or withdrawal from membership remains in force.

(2) A former member whose withdrawal or suspension from membership has prevailed for less than five (5) years may apply for restoration by:

(a) Submitting an application for restoration using the forms provided by the Director, with a fee of three hundred fifty dollars (\$350.00) and all applicable unpaid Bar Association dues; and

(b) Submitting with the application a certificate from the Office of Bar Counsel that the former member has no pending disciplinary matters; and

(c) Submitting with the application a certificate from the Director of Continuing Legal Education pursuant to SCR 3.675.

(d) Upon the filing of the foregoing items, the Office of Bar Counsel shall present the matter to the Board at its next meeting. Within thirty (30) days of its review of the complete application materials, the Board may restore the applicant to membership or refer the matter to the Character and Fitness Committee of the Kentucky Office of Bar Admissions for proceedings pursuant to SCR 2.040 and SCR 2.011, and subsequent review by the Supreme Court. If the matter is referred to the Character and Fitness Committee, the applicant shall pay a fee of two hundred fifty dollars (\$250.00) to the Kentucky Office of Bar Admissions. Upon completion of its review, the Character and Fitness Committee shall submit its recommendation to the Board for its action and recommendation to the Court.

(3) A former member whose withdrawal or suspension from membership has prevailed for five (5) years or longer may apply for restoration by:

(a) Submitting an application for restoration using the forms provided by the Director, with a fee of seven hundred fifty dollars (\$750.00) and all applicable unpaid Bar Association dues; and

(b) Submitting with the application a certificate from the Office of Bar Counsel that the former member has no pending disciplinary matters; and

(c) Submitting with the application a certificate from the Director of Continuing Legal Education pursuant to SCR 3.675.

(d) Upon the filing of the foregoing items, the Director shall refer the application to the Character and Fitness Committee of the Kentucky Office of Bar Admissions for proceedings pursuant to SCR 2.040 and SCR 2.011. An additional fee of five hundred dollars (\$500.00) shall be paid to the Kentucky Office of Bar Admissions. Upon completion of its review, the Character and Fitness Committee shall submit its recommendation to the Board of Governors for its action and recommendation to the Court.

(e) If the Character and Fitness Committee recommends approval of the application and the Board concurs, the application shall be referred to the Board of Bar Examiners of the Kentucky Office of Bar Admissions, for the administration of a written examination which includes the subject of professional ethics and five (5) of the subjects listed in SCR 2.080(1). A general average score of 75% or higher shall be deemed a passing score. Fees required by SCR 2.022, and SCR 2.023 shall be paid prior to taking the examination. As an alternative and upon referral from the Board of Governors, if the Applicant has practiced in a reciprocal jurisdiction after withdrawal pursuant to SCR 3.480 and meets all requirements of SCR 2.110, the Applicant may elect to have the Character and Fitness Committee consider an application for admission without examination under SCR 2.110. All fees required by that rule shall be paid prior to the processing of the application.

If the Applicant passes the examination or is approved for admission without examination, such fact shall be certified to the Court and to the Director, together with a recommendation for the Applicant's restoration to membership.

Upon this certification, the Disciplinary Clerk shall transmit the record to the Court for its consideration of the application for restoration. If the applicant fails the examination, the Board of Bar Examiners shall certify the fact of the failure to the Court and the Director. Upon that certification, the Disciplinary Clerk shall transmit the record to the Court for entry of an order denying restoration.

The provisions of SCR 2.015, SCR 2.080, and SCR 2.110 shall apply where not inconsistent with these provisions.

(f) If the Character and Fitness Committee recommends disapproval of the application, the matter shall be referred to the Board of Governors for its review. The Applicant and the KBA may file briefs and an oral argument may be held upon the request of either party. If, after its consideration, the Board concurs in the disapproval of the application, its findings and recommendation shall be filed with the Disciplinary Clerk, and the record shall be sent to the Clerk of the Supreme Court. Upon receipt of the record, the Clerk of the Supreme Court shall send notice of the filing by certified mail, return receipt requested, to the Applicant's bar roster address. Within twenty (20) days, the Applicant may petition the Court for review of the action of the Board. If the Court reverses the Board's disapproval of the application, it shall refer the matter to the Board of Bar Examiners for the procedure set forth above in paragraph 3(e).

(4) All costs incurred in excess of the filing fee shall be paid by the Applicant. Upon referral to the Character and Fitness Committee, a cash or corporate surety bond in the amount of two thousand five hundred dollars (\$2500.00) to secure the costs to be incurred shall be paid to the Office of Bar Admissions by the Applicant.

(5) The burden of proof for establishing the Applicant's present qualifications to practice law in Kentucky is on the Applicant.

(6) If the Character and Fitness Committee or the Board of Governors recommends restoration of membership on conditions as provided in SCR 2.042, such conditions may be imposed by the Board, for application processed by it under subsection (2)(d) of this rule, or by the Court in any order of restoration.

XXVII. SCR 3.600 Continuing Legal Education Definitions

SCR 3.600 shall read:

As used in SCR 3.610-3.690, the following definitions shall apply unless the context clearly requires a different meaning:

"Approved activity" is a continuing legal education activity that has been approved for credit by the CLE Commission.

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

"Award" is the Continuing Legal Education Award.

“Commission” is the Continuing Legal Education Commission.

“Continuing legal education,” or “CLE,” is any legal educational activity or program which is designed to maintain or improve the professional competency of the practicing attorneys and is accredited by the Commission.

“Credit” is a unit for measuring continuing legal education activity.

“Educational year” is the reporting period for mandatory continuing legal education and runs from July 1st each year through June 30th of the successive year.

“Ethics, professional responsibility and professionalism” is the category by which “ethics credits” shall be earned and includes, but is not limited to programs or seminars or designated portions thereof with instruction focusing on the Rules of Professional Conduct independently or as they relate to law firm management, malpractice avoidance, attorneys fees, legal ethics, and the duties of attorneys to the judicial system, the public, clients and other attorneys.

“In-house activity” is an activity sponsored by a single law firm, single corporate law department, or single governmental office for lawyers who are members or employees of the firm, department or office.

“Legal writing” is a publication which contributes to the legal competency of the applicant, other attorneys or judges and is approved by the Commission. Writing for which the author is paid shall not be approved.

“Non-compliance” means not meeting continuing legal education requirements set forth in Rule 3.661 and Rule 3.652 and includes both lack of certification and lack of completion of activities prior to established time requirements.

“Technological transmission” is a CLE activity delivery method other than live seminars and includes video tape, DVD, audio tape, CD-ROM, computer on-line services, or other appropriate technology as approved by the Commission.

XXVIII. SCR 3.620 Selection and tenure of the commission, filling vacancies on the commission

SCR 3.620 shall read:

The Court shall appoint all members of the Commission from a list consisting of three times the number to be appointed submitted to the Court by the Board. A chairman shall be designated by the Court for such time as the Court may direct. Of the members first appointed, three shall be appointed for one year, two for two years and two for three years. Thereafter, appointments shall be made for a three-year term. Members may be reappointed but no member shall serve more than two successive three-year terms. Each member shall serve until a successor is appointed and qualified. Vacancies occurring

through death, disability, inability or disqualification to serve or by resignation shall be filled for the vacant term in the same manner as initial appointments are made by the Court. Members of the Commission shall serve without compensation but shall be paid their reasonable and necessary expenses incurred in the performance of their duties. The Association shall have the responsibility of funding the Commission and any necessary staff who shall be employees of the Association.

XXIX. SCR 3.630 Commission member's qualifications

SCR 3.630 shall read:

Each Commission member must be a citizen of the United States, licensed to practice law in the courts of this Commonwealth and have been a resident in the appellate district from which nominated for two years immediately preceding the appointment.

XXX. SCR 3.635 Commission quorum

SCR 3.635 shall read:

A quorum consisting of at least four (4) Commission members is required for conducting the business of the Commission.

XXXI. SCR 3.640 Commission staff

SCR 3.640 shall read:

The Commission shall be provided with a Director for Continuing Legal Education and sufficient administrative and secretarial assistants as are from time to time required. Selection and qualifications of the Director for Continuing Legal Education shall be determined by the Board except that the person selected shall be an attorney licensed to practice law in the courts of this Commonwealth. The Director for Continuing Legal Education shall be responsible to the Commission for the proper administration of the rules applying to the Commission and any regulations issued by the Commission.

XXXII. SCR 3.650 Commission duties

Sections (2), (6) and (7) of SCR 3.650 shall read:

(2) Conduct, sponsor, or otherwise provide high quality continuing legal education, specifically including, but not limited to, one (1) twelve and one-half (12.5) credit seminar in each Supreme Court District each year.

(6) Promulgate rules and regulations for the administration of the mandatory continuing legal education program subject to approval of the Board and the Court.

(7) Report annually, on or before September 15, and as otherwise required, to the Board and the Court on the status of continuing legal education in the Commonwealth. Such report shall include recommended changes to these rules and regulations and their implementation.

XXXIII. SCR 3.651 Kentucky Law Update Seminars in Each Appellate District

SCR 3.651 shall read:

(1) Each educational year, the Commission shall conduct a twelve and one-half (12.5) credit continuing legal education seminar in each Supreme Court District. Subjects taught at each seminar shall include the latest Kentucky Supreme Court and Court of Appeals decisions, procedural rule changes, Federal Court decisions, legal ethics, professional responsibility and professionalism, Kentucky statutory changes and other subjects relating to improvements in basic legal skills. Each program shall include a minimum of two (2.0) credits for subjects specifically addressing legal ethics, professional responsibility and professionalism.

(2) Registration for the Kentucky Law Update seminars shall be free to all members in good standing of the Association.

(3) Members may attend Kentucky Law Update seminars in any location. The maximum credit that may be earned for attending any one (1) Kentucky Law Update seminar is twelve (12.5) credits. However, if different tracks of programs are attended at different locations, additional credit may be approved by the Commission. Pursuant to Rule 3.664 (1) duplicate credits shall not be earned by attending the same program at a different location.

XXXIV. SCR 3.652 New Lawyer Program

SCR 3.652 shall read:

(1) At least twice each educational year, the Commission shall provide or cause to be provided a New Lawyer Program of not less than twelve and one-half (12.5) credits. The Commission may in its discretion, accredit a New Lawyer Program proposed by other CLE providers.

(2) Continuing legal education credits for the New Lawyer Program shall be awarded in a number consistent with the award of credits for other continuing legal education programs.

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

(4) The Commission or other provider accredited under SCR 3.652(1) may charge a reasonable registration fee approved by the Court for the New Lawyer Program.

(5) Within twelve (12) months following the date of admission as set forth on the certificate of admission, each person admitted to membership to the Association shall complete the New Lawyer Program.

(6) Each individual attending the New Lawyer Program shall certify to the Director the completion of the Program on the attendance certificate provided for that purpose. Such certification shall be submitted to the Director upon completion of the program and in no case shall the certification be submitted later than thirty (30) days after completion of the program. Continuing legal education credits awarded for the program shall be applied to the educational year in which the program is attended, and if applied to a year in which the individual so attending is otherwise exempt from CLE requirements under SCR 3.666(1)(b), then said credits shall carry forward in accordance with SCR 3.661(5) and (6).

(7) Members required to complete the New Lawyer Program pursuant to paragraph (5) of this Rule may, upon application to and approval by the Commission, be exempted from the requirement if the member is admitted to practice in another jurisdiction for a minimum of five (5) years, and will certify such prior admission to the Commission, or if the member has attended a mandatory new lawyer training program of at least twelve and one-half (12.5) credits, including two (2) ethics credits, offered by the state bar association of another jurisdiction and approved by the Director.

(8) The time for completion and certification set forth in paragraphs (5) and (6) of this Rule may, upon written application to and approval by the Commission or its designee, be extended. Written applications for an extension under this paragraph must be received by the Commission no later than thirty (30) days after the member's deadline to complete the Program as set forth in paragraph (5) of this Rule. All applications must be signed by the member. The Commission may approve extensions for completing the Program under the following circumstances:

(a) Where the member demonstrates hardship or other good cause clearly warranting relief. Requests for relief under this subsection must set forth all circumstances upon which the request is based, including supporting documentation. In these circumstances, the member shall complete the requirement set forth in paragraphs (5) and (6) as soon as reasonably practicable as determined by the Commission or its designee; or

(b) Where the member fails to demonstrate hardship or other good cause, clearly warranting relief, the member must pay a fee of two hundred fifty dollars (\$250.00) and complete the requirement set forth in paragraphs (5) and (6) at the next regularly scheduled New Lawyer Program.

(9) Failure to complete and certify attendance for the New Lawyer Program pursuant to paragraphs (5), (6), or (8) of this Rule shall be grounds for suspension from the practice of law in the Commonwealth or other sanctions as deemed appropriate by the Court. Ninety (90) days prior to the end of the twelve (12) month period all individuals not certifying completion of the New Lawyer Program pursuant to paragraphs (5), (6) or (8) shall be notified in writing that the

program must be completed before the end of the twelve (12) month period, indicating the date. Names of all individuals not submitting certification of completion of the New Lawyer Program within the twelve (12) month period or not being granted an extension of time, pursuant to paragraph (8) of this Rule, shall be submitted to the Court by the Director, certifying the member's failure to comply with the New Lawyer Program requirement. The Clerk shall docket the matter and the Court shall issue each such member a rule returnable within twenty (20) days thereafter to show cause why the member should not be suspended from the practice of law or otherwise sanctioned as deemed appropriate by the Court. The Commission shall be permitted to file a reply within ten (10) days following the filing of a response by a member. Unless good cause is shown by the return date of the rule, or within such additional time as may be allowed by the Court, an Order shall be entered suspending respondent from the practice of law or imposing such other sanctions as may be deemed appropriate by the Court. An attested copy of the Order shall forthwith be delivered by the Clerk to the member, the Director, and in the case of suspension, to the Circuit Clerk of the district wherein the member resides for recording and indexing as required by Rule 3.480.

XXXV. SCR 3.661 Continuing legal education requirements: compliance and certification

Sections (2), (3), (4), (5), (6) (7) and (8) of SCR 3.661 shall read:

(2) Certification of completion of approved CLE activities must be received by the Director no later than August 10th immediately following the educational year in which the activity is completed. Certification shall be submitted to the Director by the sponsor of the accredited activity or by individual attorneys. Sponsors submitting certifications to the Director shall comply with all requirements set forth in SCR 3.665(6).

(3) Programs or seminars or designated portions thereof devoted to legal ethics, professional responsibility or professionalism include but are not limited to programs or seminars, or designated portions thereof, with instruction focusing on the Rules of Professional Conduct independently or as they relate to law firm management, malpractice avoidance, attorneys fees, legal ethics, and the duties of attorneys to the judicial system, the public, clients and other attorneys.

(4) Integration of legal ethics, professional responsibility or professionalism issues into substantive law topics is encouraged, but shall not count toward the two (2) credit minimum annual requirement.

(5) A member who accumulates an excess over the twelve and one-half (12.5) credit requirement may carry forward the excess credits into the two successive educational years for the purpose of satisfying the minimum requirement for those years. Carry-forward credits are limited to a total of twenty-five (25) credits. All excess credits above a total of twenty-five (25) credits will remain on the member's records but may not be carried forward.

(6) Carry-forward credits shall be allowed to satisfy the two (2) credit annual requirement for continuing legal education addressing the topics of legal ethics, professional responsibility and professionalism, and may be carried forward into the two years immediately succeeding the year in which the hours were earned. Carry-forward credits for ethics, professional responsibility and professionalism are limited to a total of four (4) credits.

(7) Certification may be submitted by sponsors or by individuals on approved Association forms, uniform certificates, or any other format adopted by the Commission.

(8) Compliance and certification requirements concerning the New Lawyer Program are set forth at SCR 3.652(5) and (6).

XXXVI. SCR 3.662 Qualifying continuing legal education activity standards and credit limits

Subsections (b), (j), (k) and (l) of section (1), subsections (b), (c), and (h) of section (2), and subsections (a), (b), (c), (d) and new (e) of section (3) of SCR 3.662 shall read:

(1)(b) The activity deals primarily with substantive legal issues directly related to the practice of law, or practice management and includes consideration of any related issues of ethics, professional responsibility, or professionalism.

(j) The activity may be presented live or by technological transmission as defined in Rule 3.600. If presented by technological transmission, the transmission must be produced from an activity submitted and approved by the Commission pursuant to SCR 3.665. Activities including audio components must have high quality audio reproductions so that listeners may easily hear the content of the activity. Activities including video components must have high quality video reproductions so that observers may easily view the content of the activity. If activities are presented by technological transmission and an attorney facilitator is available for purposes of answering questions and leading discussions, that activity is considered a live seminar.

(k) In cases of in-house activity, as defined in SCR 3.600, such activities may be approved if all standards set forth herein for accreditation are met. A maximum of six (6.0) credits per educational year earned at in-house activities may be applied to meet the annual twelve and one-half (12.5) credit requirement. The following additional requirements must also be met for accreditation of in-house activities:

(i) At least half the instruction hours must be provided by qualified persons having no continuing relationship or employment with the sponsoring firm, department or agency. For technologically transmitted activities, the activities must meet all standards for qualifying continuing legal education activities as set forth in SCR 3.662 and must be included as part of the application as set forth at SCR 3.662(1)(k).

(ii) Members of the Court, the Commission or a Commission designee may attend or participate in any such program to observe compliance without payment of registration or other fees.

(l) In cases of law school classes attended by members, the member may receive continuing legal education credit provided the following requirements are met:

(i) The member registers for the class with the law school.

(ii) The member completes the course as required by the terms of registration, for credit or by audit.

(iii) Credit is calculated pursuant to Rule 3.663.

(2) The following categories of activities shall not qualify as a continuing legal education activity:

(b) In-house activities for which less than half the instruction is provided by qualified persons outside the firm, department or agency, and for which members of the Court, the Commission or Commission designee are prohibited from observing for compliance without charge of fees.

(c) Seminars or meetings sponsored by law firms or other organizations which are determined by the Commission to be in the nature of client development.

(h) Any activity completed prior to admission to practice in Kentucky except the program required pursuant to SCR 3.661(8) and 3.652(5).

(3)(a) Teaching or participating as a panel member or seminar leader in an approved activity. No credit may be earned for teaching or participating as a panel member or seminar leader for activities that do not meet standards set forth in Rule 3.662. A maximum of twelve and one-half (12.5) credits earned under this Rule per educational year may be applied to meet the annual minimum requirement.

(b) Researching, writing or editing material to be presented at an approved activity. No credit may be earned for researching, writing, or editing materials for activities that do not meet the standards set forth in Rule 3.662. A maximum of twelve and one-half (12.5) credits earned under this Rule per educational year may be applied to meet the annual minimum requirement.

(c) Publication of legal writing. A legal writing is a publication which contributes to the legal competency of the applicant, other attorneys or judges and is approved by the Commission. Writing for which the author is paid shall not be approved. A maximum of six (6.0) credits earned under this Rule per educational year may be applied to meet the annual minimum requirement.

(d) Public speaking. Upon application, by teaching or participating as a panel member, mock trial coach or seminar leader for law-related public service speeches to civic organizations or school groups. A maximum of two (2.0) credits earned under this Rule per educational year may be applied to meet the annual minimum requirement. Speaking for which the member is paid shall not be approved. Written copies of presentations must accompany such applications; provided, however, that, where appropriate, a narrative summary of the material presented may be sufficient.

(e) Seminars designed for non-lawyer professionals which in, case-by-case situations, will benefit the lawyer by allowing clients improved services in unique areas of practice. Credits earned for this category of seminar or activity shall not count toward the twelve and one-half (12.5) credit annual minimum requirement but may count toward continuing legal education award credits as determined by the Commission.

XXXVII. SCR 3.663 Calculation and reporting of continuing legal education credits: formulas and limits

Section (1), subsections (a) and (b) of section (3), sections (5) and (9) of SCR 3.663 shall read:

(1) Members completing or participating in the course of study of an approved activity will be granted one (1) credit for each sixty (60) minutes of actual instructional time. Instructional time shall not include introductory remarks, breaks, or business meetings held in conjunction with a continuing legal education activity. For activities involving technologically transmitted programming, actual instructional time may be deemed inappropriate for assigning credit hours. In such circumstances credits claimed will be limited by the total assigned by the Commission. The Commission's assignment of credit hours for such activities will include consideration of the sponsor's estimates of average completion time, volume of material, opportunities for interaction, duration of program and other factors as deemed appropriate. No additional credit is given for completing or participating in duplicate activities at different times or locations. Duplicate completion of or participation in any course of study of any accredited activity shall not result in duplicate continuing legal education credits awarded. Continuing legal education credit shall be claimed on forms provided by the Association, or any uniform certificate adopted by the Association, and shall be forwarded to the Director.

(3) Members may be granted preparation credit as follows:

(a) One (1) credit for each two (2) hours spent in preparation for teaching or participating as a panel member or seminar leader in an approved activity, up to a maximum of twelve and one-half (12.5) credits per educational year.

(b) One (1) credit for each two (2) hours spent researching, writing or editing material presented by another member at an approved continuing legal education activity, up to a maximum of twelve and one-half (12.5) credits per educational year.

(5) Members may earn credits for publication of legal writing up to a maximum of six (6.0) credits per year. One (1) credit is granted for each two (2) hours of actual preparation time including research, writing, and editing. Any excess credits will be applied toward the award established in Rule 3.680. The Commission may grant up to twenty (20) credit hours for published legal writing toward the award, but may only grant up to six (6.0) credits to meet the annual minimum requirement. Applications for continuing legal education credit for a published legal writing shall be made on forms provided by the Association and shall be accompanied by a copy of the published legal writing for which credit is sought. Said application shall be forwarded to the Director.

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

XXXVIII. SCR 3.665 Procedure for accreditation of continuing legal education activities and obligations of sponsors

Sections (4) and subsections (d) and (e) of section (6) of SCR 3.665 shall read:

(4) Activity sponsors which apply for accreditation and receive approval prior to the activity may announce in advertising materials, "This activity has been approved by the Kentucky Bar Association Continuing Legal Education Commission for a maximum of XX.XX credits, including XX.XX ethics credits." Sponsors who have made application for accreditation of activities that have not yet been approved may announce in advertising materials, "Application for approval of this activity for a maximum of XX.XX credits, including XX.XX ethics credits, is PENDING before the Kentucky Bar Association Continuing Legal Education Commission." Sponsors may not advertise accreditation if accreditation has not been granted by the Commission and notice of such accreditation received by the sponsor.

(6)(d) Provide to each Kentucky attorney completing an approved activity an Association approved credit reporting form and activity code. Credit reporting forms and activity numbers shall be made available to sponsors upon request from the Association for use at approved activities.

(e) Collect credit reporting forms from Kentucky attorneys and submit to the Commission all forms received within thirty (30) days of completion of the program. Failure to submit completed credit reporting forms within thirty (30) days of the activity shall be accompanied by a late filing fee from the sponsor of ten dollars (\$10.00) per form or certificate. Submit all attendance forms or certificates for activities held during the month of June no later than July 10th, immediately following the end of the educational year on June 30th. For programs held during June this provision of the rule supersedes the thirty (30) day submission provided above. Failure to submit forms or certificates pursuant to this schedule will result in the sponsor's obligation to pay a late filing fee of ten dollars (\$10.00) per form or certificate.

XXXIX. SCR 3.666 Exemptions and removal of exemptions

Subsection (b) of section (1) and subsections (b) and (c) of section (2) of SCR 3.666 shall read:

(1)(b) New lawyers who have been admitted less than one full educational year as of the June 30th deadline. Such members shall be subject to the provisions of SCR 3.652.

(2)(b) Members who practice law within the Commonwealth, but demonstrate that meeting the requirements of Rule 3.661 would work an undue hardship by reason of disability, sickness, or other clearly mitigating circumstances.

(c) Members required to complete the New Lawyer Program following procedures set forth in SCR 3.652(7).

XL. SCR 3.667 Extension of time requirements

Sections (1) and (2) of SCR 3.667 shall read:

(1) The time requirements associated with completion of continuing legal education and certification thereof, as set forth in Rule 3.661(1) and (8), may be extended by the Commission in case of hardship or other good cause clearly warranting relief. Requests for time extensions for completion of activities or certification thereof shall be made to the Commission in writing. All requests for time extension must be received by the Commission no later than the September 10th following the end of the educational year for which the time extension is sought. Requests must set forth all circumstances upon which the request is based, including supporting documentation. Applications for time extensions for completion of the New Lawyer Program may be submitted pursuant to SCR 3.652(8).

(2) A member who fails to complete the requirements of Rule 3.661 for any educational year, and who cannot show hardship or other good cause clearly warranting relief, may submit a plan for making up his or her delinquency, provided that the Commission has not approved such a plan for the member for either of the two preceding educational years. The plan must be received by the Commission no later than the September 10th immediately following the end of the educational year for which the time extension is sought. The plan will be approved only if the member pays a filing fee of two hundred fifty dollars (\$250.00) and the plan lists activities which would provide, by the September 10th immediately following the end of the educational year, the credit hours needed to make up the deficiency. Such plan shall be deemed accepted by the Commission unless within fifteen (15) days after receipt of the compliance plan and filing fee, the Commission notifies the applicant to the contrary.

XLI. SCR 3.668 Non-compliance, definition

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 (\$50.00) 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 fifty dollars (\$50.00) per certificate or report no later than the close of the current educational year (June 30). Past due reports shall be accepted only until the end of the educational year (June 30) immediately following the year during which the activity is completed. 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 fifty dollars (\$50.00) per certificate or report shall be applied if the report is received after the August 10th reporting deadline described above.

(2) Delinquency of Credits. Failure to acquire a minimum of twelve and one-half (12.5) credits to meet the minimum continuing legal education requirements of Rule 3.661 and associated certification requirements shall be grounds for suspension by the Court from the practice of law.

XLII. SCR 3.669 Non-compliance: procedure and sanctions

SCR 3.669 shall read:

(1) As soon as practicable after August 20th of each year, the Commission shall notify a member in writing of existing delinquencies of record. The writing may consist of a computer generated form setting forth said delinquency. If any statement incorrectly reflects the continuing legal education status of the member it shall be the duty of the member to promptly notify the Commission of any claimed discrepancy in the education statement.

(2) If, by the first day of November immediately following, a member has neither certified completion by the June 30th immediately prior, of the minimum continuing legal education requirements set forth in Rule 3.661, nor applied for and satisfied the conditions of an extension under Rule 3.667 or exemption under Rule 3.666, the Commission shall certify the name of that member to the Board.

(3) The Board shall cause to be sent to the member a notice of delinquency by certified mail, return receipt requested, at the member's bar roster address. Such notice shall require the attorney to show cause within thirty (30) days from the date of the mailing why the attorney's license should not be suspended for failure to meet the mandatory minimum CLE requirements of

SCR 3.661. Such response shall be in writing, sent to the attention of the Director for CLE, and shall be accompanied by costs in the amount of fifty dollars (\$50.00) payable to the Kentucky Bar Association.

(4) Unless good cause is shown by the return date of the rule, or within such additional time as may be allowed by the Board, the lawyer will be stricken from the membership roster as an active member of the KBA and will be suspended from the practice of law or will be otherwise sanctioned as deemed appropriate by the Board. A copy of the suspension notice shall be delivered by the Director to the member, the Clerk of the Kentucky Supreme Court, the Director of Membership, and to the Circuit Clerk of the district wherein the member resides for recording and indexing as required by Rule 3.480.

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

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

XLIII. SCR 3.670 Appeal of Commission actions

New section (5) of SCR 3.670 shall read:

(5) Commission certification of non-compliance filed with the Supreme Court pursuant to SCR 3.652 (9) or SCR 3.669 may not be appealed under Sections (3) and (4) of this Rule.

XLIV. SCR 3.675 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 CLE in writing and shall submit with said written request a fee of fifty dollars (\$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.

XLV. SCR 3.680 Continuing Legal Education Award

Sections (2), (3), (4), (5) and (6) of SCR 3.680 shall read:

(2) The Commission shall notify the member and issue the award.

(3) Approved awards are valid for one year, beginning on the first day of July of the year of application award notification.

(4) The validity of an award may be renewed for an additional year following the initial awards date, in which the member who holds the award completes a minimum of twenty (20) approved credit.

(5) Failure to earn twenty (20) credits in any educational year following the initial award date shall disqualify the member from further renewals of that award. The member may only become eligible for another award by earning sixty-two and one-half (62.5) approved credit hours in a period separate and distinct from the period for which a prior award was issued.

(6) Each member who holds a valid, unexpired award shall receive a 25% discount from the normal registration fee for the Kentucky Bar Association Annual Convention.

XLVI. SCR 3.910 Kentucky Lawyer Assistance Program (KYLAP)

New section (8) of SCR 3.910 shall read:

(8) KYLAP may, with the approval of the Board, establish such non-profit tax exempt Foundations as are necessary for the purpose of carrying out its mission. This may include establishment of a Foundation to obtain donations in order to furnish financial assistance, in the form of loans, to enable members of the legal community to obtain treatment for their impairment. The Board will appoint the Directors of any such Foundation.

XLVII. SCR 4.130 Confidentiality

New subsection (a) and subsection (b) of section (1) of SCR 4.130 shall read:

All papers and information obtained by or on behalf of the Commission shall be confidential except as provided in this rule or by order of the Supreme Court.

(1)(a) Following the procedure set forth in SCR 4.170, upon filing of an answer to a notice of formal proceedings, or expiration of time for filing an answer, the notice and all subsequent pleadings filed with the Commission shall not be confidential, except that the Commission's internal papers such as investigative reports and staff memoranda, and similar matters, shall remain confidential and shall not be a part of the formal file.

(b) The Commission may reveal information to appropriate law enforcement authorities or to the judge under investigation that it believes is reasonable necessary in order to protect the public or the administration of justice.

XLVIII. SCR 4.310 (2) and (4) Judicial ethics committee and opinions

Sections (2) and (4) of SCR 4.310 shall read:

(2) Opinions as to the propriety of any act or conduct and the construction or application of any canon shall be provided by the committee upon request from any justice, judge, trial commissioner or by any judicial candidate. Communications between the questioner and the Judicial Ethics Committee and its members shall be confidential. If the committee finds the question of limited significance, it shall provide an informal opinion to the questioner. If, however, it finds the question of sufficient general interest and importance, it shall render a formal opinion, in which event it shall cause the opinion to be published in complete or synopsis form, without specific identification of the questioner. Likewise, the committee may issue formal opinions on its own motion under such circumstances as it finds appropriate.

(4) Any person affected by a formal opinion of the ethics committee may obtain a review thereof by the Supreme Court by filing with the clerk of that court within thirty (30) days after the end of the month in which it was published a motion for review stating the grounds upon which the movant is dissatisfied with the opinion. The motion shall be accompanied by a copy of the opinion or synopsis as published and shall be served upon the ethics committee and, if the movant is someone other than the party who initiated the request for the opinion, upon the initiating justice, judge or commissioner. The filing fee for docketing such motion shall be as provided by Civil Rule 76.42(1) for original actions in the Supreme Court. The ethics committee may file a response to the motion for review within thirty (30) days after its receipt of the motion. Notwithstanding the provisions of this subsection of the rule, the Supreme Court on its own initiative may review a judicial ethics opinion at any time.

XLVIX. SCR 7.030 Nomination and election – regular elections

Section (2), subsections (a), (b) and (c) of section (3), sections (4) and (6) of SCR 7.030 shall read:

(2) On or before June 1 of the years in which regular elections are to be held under this rule the board shall by majority vote nominate candidates for election to the various commissions as specified in paragraph (c) of this rule. The board shall immediately certify the names of its nominees to the director. On or before July 1 the director shall publish by appropriate means to the members specified in paragraph (c) of this rule a list or lists of the candidates so nominated.

(3) (a) For the commission for the Supreme Court and the Court of Appeals the board shall nominate one (1) qualified member from each appellate district. The director shall publish by appropriate means a list of the candidates so nominated to each member residing in the Commonwealth of Kentucky.

(b) For the commissions for each judicial circuit the board shall nominate two (2) qualified members. To the extent practicable, in multi-county circuits the

board shall nominate candidates from different counties in the circuit. The director shall publish by appropriate means a list of the candidates so nominated to each member residing in the circuit.

(c) Lists of the board's nominees for election to the various commissions may be combined as one list and may be included in one publication of names.

(4) Any other qualified member may file a written petition for candidacy for the commission for the Supreme Court and the Court of Appeals, signed by himself and not less than ten (10) other members residing in the Commonwealth of Kentucky, or may file a written petition for candidacy for the commission for a judicial circuit, signed by himself and not less than two (2) other members residing in the circuit. In his petition the member shall state that he does not hold any other public office or any office in a political party or organization. All such petitions shall be filed with the director on or before August 15 of the year in which the regular election for members of the commissions is to be held. The director shall acknowledge receipt of each candidate's petition by return mail. All petitions shall be considered public records and shall be available for inspection at reasonable hours. On or before September 1 the director shall publish by appropriate means to the members specified in paragraph (c) of this rule a list or lists of the candidates, including those nominated by the board and those nominated by petition.

(6) Ballots shall be prepared by the director. The various commissions shall be on separate ballots but may be included in one mailing. The ballot for each commission shall include the names of the candidates, listed in alphabetical order, and the addresses at which they reside. There shall be printed on each ballot in boldface type the words "This ballot must be received by the director on or before the first Tuesday following the first Monday in November" and the words, "You must vote for two and two only or your ballot will not be counted."

L. SCR 7.040 Nomination and election – special elections

Sections (1) and (2) of SCR 7.040 shall read:

(1) On or before ten (10) days after receipt of the notice to the director (hereinafter referred to as "Director's notice") of the need for a special election, to fill an unexpired term resulting from a vacancy in the bar representation on any commission, the board shall nominate the bar representative for each vacancy in the same manner as provided in Rule 7.030(2) and (3).

(2) On or before twenty (20) days after the director's notice, the director shall cause to be published by appropriate means to each member residing in the circuit or jurisdiction concerned a list of candidates nominated by the board.

All sitting. All concur, except:

Justice Scott, would not adopt the amendments to SCR 3.050, SCR 3.130(1.19) or (1.20). Justice Cunningham and Justice Scott, would not adopt the amendments to SCR 3.130(7.09).

Justice Scott, concurring with the majority's decision not to adopt amendments to SCR 3.150: Given this Court's recent opinion which extends "full immunity" to persons or institutions filing frivolous or malicious bar complaints, *Morgan & Pottinger, Attorneys, P.S.C. v. Botts*, 348 S.W.3d 599 (Ky. 2011)—one of such complaints I suggest this Court just wisely caught and rejected—I cannot, at this time, vote for this amendment. Moreover, the amendment would necessarily do away with the penalty of a "private" reprimand in many instances, now rightly reserved for only the most minor of infractions. See *Kentucky State Bar Ass'n v. Taylor*, 482 S.W.2d 574, 577 (Ky. 1972) ("Publicity cuts both ways. Sometimes the desirability of having it is outweighed by the desirability of protection from it . . . Usually it is the respondent . . . whose protection from it is sought in a disciplinary case, but quite often there are others whose protection is equally important."). That being said, the current process, once concluded, fully discloses to the public by permanent publication the attorney's name, all the charges, all the conduct underlying the same, as well as the penalty imposed in all cases except those where a respondent is found "not guilty" of the charges or the minor infractions found warrant only a private reprimand. Plainly, this Court is not an advocate of unbridled secrecy. For these reasons, I join the majority in voting "no" on this proposed amendment at this time.

Justice Abramson, joined by Chief Justice Minton and Justice Schroder, dissents from the majority's decision not to adopt amendments to SCR 3.150 opening the lawyer disciplinary process to the public upon a finding of probable cause and the issuance and service of a charge. The public access amendment proposed by retired Circuit Judge John W. Potter is a much-needed change and would align Kentucky's lawyer disciplinary process with that of 38 sister states, the Model Rules of the American Bar Association and the rules applicable to other professionals in the Commonwealth of Kentucky. Missteps by lawyers, often inexperienced lawyers, that fall short of "serious misconduct" can still be addressed by informal resolution, warning letter or other measures identified in SCR 3.160, undermining any argument that minor violations would be unfairly publicized. Other states and other professions in Kentucky have balanced public access for more serious allegations with private discipline for minor infractions and the proposed amendment would allow that balance.

Justice Scott, would not adopt the amendments to SCR 3.180, the new rule SCR 3.181, or the amendments to SCR 3.500. Justice Abramson and Justice Venters, would adopt an amendment to increase the fee to five hundred (\$500.00) dollars in SCR 3.510(1). Justice Cunningham, Justice Noble and Justice Scott, would adopt the amendments to SCR 3.662(3)(e) pertaining to Pro Bono Legal Services Credit. Justice Cunningham and Justice Scott, would not adopt the amendment to SCR 3.666(2)(b).

Justice Scott, would not adopt the amendments to SCR 3.669. Justice Scott, would adopt the amendments to SCR 4.300. Justice Scott, would not adopt the amendments to SCR 4.310(2) and (4).

ENTERED: January 18, 2012.



CHIEF JUSTICE