

KENTUCKY BAR ASSOCIATION 2011 CONVENTION



**PURSUING JUSTICE**  
IN THE 21ST CENTURY

# SUPREME COURT RULES HEARING

CLE Credit: 2.0  
Wednesday, June 15, 2011  
8:30 a.m. - 10:40 a.m.  
Bluegrass Ballroom  
Lexington Convention Center  
Lexington, Kentucky



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**Kentucky Bar Association**

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# THE PRESENTERS



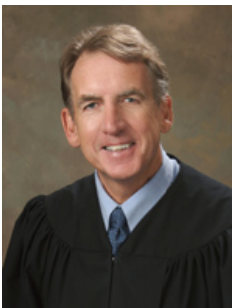
Chief Justice John D. Minton, Jr.  
Supreme Court of Kentucky  
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**CHIEF JUSTICE JOHN D. MINTON JR.** is currently serving as the Chief Justice on the Kentucky Supreme Court. Chief Justice Minton was sworn in as the fifth chief justice of Kentucky on June 27th, 2008. He had previously been elected to the Kentucky Supreme Court after sitting on the Kentucky Court of Appeals, and before that on the Warren Circuit Court. Chief Justice Minton also served by special appointment as the chief regional judge of the Green River Region, an administrative post assisting the chief justice with assigning special judges. Prior to his service on the bench, Chief Justice Minton engaged in the private practice of law in Bowling Green, Kentucky for more than fifteen years. He earned his Bachelors degree from Western Kentucky University, graduating with honors in 1974, before going on to receive his J.D. from the University of Kentucky College of Law in 1977. Chief Justice Minton has been recognized for his leadership in forming Warren County Drug Court and for his commitment to law-related education programs. In 2003, the Kentucky Bar Association honored him with its Outstanding Judge Award. Chief Justice Minton is also a longtime member of the Education Committee of the Kentucky Circuit Judges Association.

Justice Lisabeth Hughes Abramson  
Supreme Court of Kentucky  
Jefferson County Judicial Center  
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Louisville, Kentucky 40202-4737  
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**JUSTICE LISABETH HUGHES ABRAMSON** was sworn in as a Justice for the Supreme Court of Kentucky on Sept. 10, 2007, after being appointed to represent Jefferson County by Gov. Ernie Fletcher to fill the vacancy created by the retirement of the late Justice William E. McNulty, Jr. She has served on the Kentucky Court of Appeals twice in her career – she was appointed on June 30, 2006, to fill a vacancy in Division 2 of the 4th Appellate District and subsequently elected to that position in November 2006. Justice Abramson first served as a Court of Appeals judge from 1997 to 1998, following an appointment by then Governor Paul Patton. From January 1999 until her 2006 appointment to the Court of Appeals, she served as a circuit judge in Jefferson County. Justice Abramson earned a bachelor's degree from the University of Louisville, with highest honors, and graduated *magna cum laude* from the Brandeis School of Law at the University of Louisville, being named the Outstanding Graduate of her law school class. Before serving as a judge, she practiced law for fifteen years, concentrating on business and commercial litigation. Justice Abramson is a member of the American, Kentucky and Louisville Bar Associations. She serves as a trustee for the Kentucky Judicial Form Retirement System Board and is a frequent lecturer for the Kentucky Circuit Judges Judicial College. Justice Abramson is a member of the Leadership Louisville Class of 2007.



Justice Bill Cunningham  
Kentucky Supreme Court  
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**JUSTICE BILL CUNNINGHAM** was elected to the Supreme Court of Kentucky in November of 2006 to serve the 1st Supreme Court District. Justice Cunningham previously served as a Circuit Court judge for the 56th Judicial Circuit, and as the Eddyville City Attorney, Public Defender for the Kentucky State Penitentiary and as Commonwealth's Attorney for the 56th Judicial Circuit. Justice Cunningham earned his bachelor's degree from Murray State University in 1962 and his J.D. from the University of Kentucky College of Law. Justice Cunningham is also a veteran of the U.S. Army, having served in Vietnam, Korea and Germany.

Justice Mary C. Noble  
Supreme Court of Kentucky  
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**JUSTICE MARY C. NOBLE** was elected to the Supreme Court of Kentucky in November 2006 from the 5<sup>th</sup> Supreme Court District and was re-elected, unopposed, in 2008 for an eight year term. She serves as Deputy Chief Justice. Prior to her election to the Supreme Court, Justice Noble was in private practice (1981-1991), served as Domestic Relations Commissioner (1989-1991) and was elected to the Fayette Circuit Court (1991) where she served two terms as Chief Regional Circuit Judge (1998-2002). Justice Noble is one of the founders of Kentucky Drug Courts and served as a Drug Court Judge from 1996 to November 2006. She has been a member of the National Association of Drug Court Professionals Congress of State Drug Courts and has served as its president. She has also served on the board of the National Association of Drug Court Professionals, and has received the Stanley Goldstein Award, making her a member of its National Hall of Fame. Justice Noble chairs the Civil Rules Committee, and has been invited to judge trial competitions at several law schools across the country. She is been a frequent speaker at state and national conferences on a variety of legal topics.



Justice Wil Schroder  
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**JUSTICE WIL SCHRODER** was elected to the Supreme Court of Kentucky in November 2006 to serve the 6<sup>th</sup> Supreme Court District. Justice Schroder previously served on the Kentucky Court of Appeals for more than fifteen years and as a trial judge on the Kenton District Court for almost eight years. He earned his Bachelor's Degree from the University of Kentucky and he received his J.D. from the University of Kentucky College of Law. He earned an LL.M. from the University of Missouri at Kansas City. While completing his LL.M., Justice Schroder worked as an attorney for Kansas City Legal Aid Society, and as a corporate attorney for St. Paul Insurance Company. Upon returning to Kentucky, he became an assistant law professor at Northern Kentucky University Salmon P. Chase College of Law from 1972 to 1975. Justice Schroder was also in private practice and served as the city attorney for Newport, Kentucky during the beginning of Newport's early riverfront development.

Justice Will T. Scott  
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Frankfort, Ky. 40601  
Phone: 502-564-5444



**JUSTICE WILL T. SCOTT** is a Kentucky Supreme Court Justice representing the 7th Supreme Court District, which consists of twenty-two counties in Eastern Kentucky. Justice Scott previously served as Deputy Chief Justice of the Supreme Court of Kentucky from 2006 to 2010. He served as a circuit judge from 1984 to 1988 and was elected Second Vice President of the Kentucky Circuit Judges Association in 1986. Prior to his service on the bench, Justice Scott practiced law as a trial attorney and as an Assistant Commonwealth's Attorney for Pike County. Justice Scott originally enrolled in college at Eastern Kentucky University, but only completed one year before volunteering for service in the U.S. Army. After his tour in Vietnam, Justice Scott graduated with a Bachelor's Degree from Pikeville College. He earned his J.D. and a Masters Degree in Taxation from the University of Miami School of Law in Florida in 1974 and 1975, respectively. He has practiced law in Kentucky courtrooms for nearly thirty years.



Justice Daniel J. Venters  
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**JUSTICE DANIEL J. VENTERS** was appointed to the Supreme Court of Kentucky in August 2008 by Governor Steve Beshear and was subsequently elected to that office, where he represents the 3rd Supreme Court District. Justice Venters previously served on the bench as a District Court Judge for Pulaski and Rockcastle counties from 1979 to 1984, and as a Circuit Court Judge for Pulaski, Lincoln and Rockcastle counties from 1984 to 2003. In 2003, Justice Venters retired from the trial court bench and returned to private law practice until his appointment to the Supreme Court. Prior to his service on the bench, Justice Venters served as an assistant commonwealth's attorney. He has served as a member of the Kentucky Board of Bar Examiners and the Kentucky Bar Association Board of Governors, and as President of the Pulaski County Bar Association. Justice Venters earned his bachelor's degree from The Ohio State University in 1972, before going on to receive his J.D. from the University of Kentucky College of Law in 1975.

**PROPOSED AMENDMENTS TO THE  
RULES OF THE SUPREME COURT**

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**I. SCR 2.014 Legal education**

The proposed amendments to subsection (c) and new subsection (d) of section (2) of SCR 2.014 are:

(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 schools 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.

**II. SCR 2.022 Application for admission by examination**

The proposed amendments to section (2) of SCR 2.022 are:

(2) **ATTORNEY APPLICANT:** An attorney applicant who is admitted in another jurisdiction must file a complete Application for Admission By Examination form along with a fee of seven hundred seventy five dollars (\$775.00) [\$675.00] (cashier's or certified check or money order). The filing deadline is October 1 for the February Bar examination and February 1 for the July Bar examination.

**III. SCR 2.080 Bar examinations**

The proposed amendments to subsections (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), (n) and (o) of section (1) and section (4) of SCR 2.080 are:

(1) The Board of Bar Examiners shall examine such applicants as are certified to it as provided in Rule 2.040. The examination shall cover a period of two days and may cover the following subjects:

(a) [Administrative Law and Administrative Procedure

(b) Conflict of Laws]

[c] [C]contracts

(b[d]) [C]constitutional [L]law

(c[e]) [B]business [E]entities (corporations, partnerships and/or others)

(d[f]) [C]criminal [L]law and [P]procedure

(e[g]) [C]civil [P]procedure

(f[h]) [D]domestic [R]relations

(g[i]) [P]property (real and/or personal)

[(j) Federal Taxation]

(h[k]) [T]torts

(i[l]) [U]uniform [C]commercial [C]code (sales, secured transactions and/or negotiable instruments)

(j[m]) [E]estates (wills and/or trusts)

(k[n]) [E]vidence

[(o) Such other subjects as the Board may select from among questions proposed by the National Conference of Bar Examiners.]

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

(4) An applicant must pass both the essay and Multistate (MBE) portions of the examination at the same sitting. A general average of 75% or higher on the essay portion of the examination shall be deemed a passing score on the essay portion of the examination. A scaled score of 132 or higher on the Multistate (MBE) portion of the examination shall be deemed a passing score on the Multistate portion of the examination. After failing to pass five (5) Kentucky Bar Examinations, an applicant shall

not be permitted to sit for the Kentucky Bar Examination. [An applicant who has failed only one portion of the exam must only reapply to sit for the failed portion; however, a passing score on one portion of the exam may only be used for a period of three years to exempt the applicant from taking that portion of the examination.] An applicant who has taken the Multistate (MBE) examination in another jurisdiction and passed that examination, within three years of the date of the Kentucky examination may transfer a score of 132 or higher and need only sit for the essay portion of the examination. [In situations where the applicant has first passed the Kentucky essay portion of the examination, subsequently has taken the Multistate (MBE) examination in another jurisdiction, and wishes to be admitted by transferring in a score of 132 or higher that applicant must first file an update form for a character and fitness re-certification as prescribed in SCR 2.062.]

#### **IV. SCR 2.110 Admission without examination**

The proposed amendments to section (2) and new section (4) of SCR 2.110 are:

(2) An attorney applying for admission under this Rule shall file with the Kentucky Office of Bar Admissions, on the form provided for application for admission, such information as shall be requested thereon accompanied by a fee of fifteen hundred dollars (\$1500.00) [twelve hundred dollars (\$1200)], no part of which shall be refunded. An applicant shall file with the Character and Fitness Committee such other affidavits, certificates, documents and materials as shall be required to satisfy the Committee of the applicant's good moral character and fitness to be a member of the bar of this state. With respect to character and fitness, the Character and Fitness Committee shall process such applications pursuant to Rule 2.040.

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

#### **V. SCR 2.111 Limited certificate of admission to practice law**

The proposed amendments to subsection (a) of section (1) and section (2) are:

(1) Every attorney not a member of the Bar of this Commonwealth who performs legal services in this Commonwealth solely for his/her

employer, its parent, subsidiary, or affiliated entities, shall file with the Kentucky Office of Bar Admissions on a form provided, an application for limited certificate of admission to practice law in this Commonwealth. Such application shall be reviewed by the Character and Fitness Committee. If approved, a limited certificate of admission to practice law shall be granted, and shall be effective as of the date such application is approved, provided that the following [pre]requisites are satisfied.

(a) The applicant must be admitted to practice in the highest court of another state or the District of Columbia, and be a member in good standing at the Bar of such court, or in such state [at the time of filing such application].

(2) Such applicant shall pay to the Kentucky Office of Bar Admissions, at the time of submission of such application a fee of fifteen hundred dollars (\$1500.00) [one thousand dollars (\$1,000)] and shall make payment of the current annual dues or fees to the Kentucky Bar Association, as authorized under SCR 3.040.

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

The proposed amendments to sub-sections (b), (c), (d),(e) and (f) of section (1) of SCR 2.300 are:

(1) *Initial Reinstatement Application Process:*

(b) Any applicant for reinstatement who is a member of the bar in any other jurisdiction must provide with the application a statement from the disciplinary authority of each such jurisdiction indicating whether any complaint or charge has been filed against the applicant, its disposition, and any discipline imposed in that jurisdiction. In the event the discipline was reciprocal discipline based on a Kentucky disciplinary order, such shall 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.

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

The proposed amendments to section (2) of SCR 3.030 are:

(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 court governing professional conduct] Supreme Court of Kentucky, pays a one time per case fee of two hundred seventy dollars (\$270.00) [100.00] 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 any other proceedings before the court unless excused by the court, administrative and adjudicative hearings, arbitrations, 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.

**VIII. SCR 3.040 Dues: date of payment and amount**

The proposed amendments to sections (1), (2) and new section (4) of SCR 3.040 are:

(1) On or before July 1 of each year every member of the [a]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 [pay to the treasurer as] dues for the ensuing twelve months, [beginning September 1, such sums as may] Dues shall be fixed by the

Supreme Court on recommendation of the B[b]oard. Dues shall be paid to the treasurer on or before September 1 of each year. [; provided, however, that any member of the bar may be relieved of the payment of dues by reason of undue hardship arising from disability, sickness, age or financial condition. A governor from the district in which the attorney lives may recommend in writing to the president that such relief be granted, giving his reasons therefor. Thereupon the president shall have the authority to notify the treasurer by written order that the attorney is relieved of the payment of dues, and the president shall file with the registrar both the recommendation of the governor and his own order.]

(2) Any member of the association shall be relieved of the payment of dues for any fiscal year in which [he] 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 be relieved of the payment of dues by reason of undue hardship arising from disability, sickness or financial condition. A governor from the district in which the attorney lives may recommend in writing to the president that such relief be granted, giving the reasons therefor. Thereupon the president shall have the authority to notify the treasurer by written order that the attorney is relieved of the payment of dues, and the president shall file the order with the registrar along with the recommendation of the governor.

#### **IX. SCR 3.050 Collection of dues; suspension for non-payment**

The proposed amendments to SCR 3.050 are:

In the event dues are not paid on or before September 1, then an additional late payment fee of fifty dollars 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. [and an additional late payment fee of fifty dollars shall be assessed.] On or before October 15 of each year, the Treasurer shall in writing certify to the [Court]Board the names of all members who remain delinquent. The [Clerk]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.[docket the matter and the Court shall issue to such members a rule requiring each to show cause why he or she should not be suspended from the practice of law. The member shall file a response with the Clerk within twenty (20) days of the date of the entry of the show cause order, and shall serve a copy on the Director, in addition to making the required payment of the delinquent dues and the late payment fee paid to the Association. The Association shall be permitted to file a reply within ten (10) days after 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 maybe allowed by the Court, an order shall be entered suspending respondent from the practice of law.] 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 the member will be 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[n] [attested] copy of the suspension notice [order] shall be sent [delivered] by the Director [Clerk] to the member, the Clerk of the Supreme Court of Kentucky, the Director of Membership, [the Director,] and the Circuit Clerk of the member's [residential] roster address district for recording and indexing. The suspended member may apply for [reinstatement] 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 is recorded in the membership records. Such appeal shall include a filing fee of one hundred fifty dollars (\$150.00), and an affidavit showing good cause why the suspension should be revoked.

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

**Comment 13: Aggregate Settlements**

The proposed amendments to comment (13) of SCR 3.130 (1.8) are:

(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, [including what the other clients will receive or pay if the settlement or plea offer is accepted] 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.

## **XI. SCR 3.130(1.19-1.23) RULES FOR CLIENT TRUST ACCOUNT RECORDS**

The proposed new rule SCR 3.130(1.19) is:

### **SCR 3.130(1.19) Recordkeeping generally**

A lawyer who practices in this jurisdiction shall maintain current financial records as provided in these Rules and required by SCR

3.130(1.15), and shall retain the following records for a period of five years after termination of the representation:

(a) receipt and disbursement journals containing a record of deposits to and withdrawals from client trust accounts, specifically identifying the date, source, and description of each item deposited, as well as the date, payee and purpose of each disbursement;

(b) ledger records for all client trust accounts showing, for each separate trust client or beneficiary, the source of all funds deposited, the names of all persons for whom the funds are or were held, the amount of such funds, the descriptions and amounts of charges or withdrawals, and the names of all persons or entities to whom such funds were disbursed;

(c) copies of retainer and compensation agreements with clients SCR 3.130(1.5);

(d) copies of accountings to clients or third persons showing the disbursement of funds to them or on their behalf;

(e) copies of bills for legal fees and expenses rendered to clients;

(f) copies of records showing disbursements on behalf of clients;

(g) the physical or electronic equivalents of all checkbook registers, bank statements, records of deposit, pre-numbered canceled checks, and substitute checks provided by a financial institution;

(h) records of all electronic transfers from client trust accounts, including the name of the person authorizing transfer, the date of transfer, the name of the recipient and confirmation from the financial institution of the trust account number from which money was withdrawn and the date and the time the transfer was completed;

(i) copies of monthly trial balances and quarterly reconciliations of the client trust accounts maintained by the lawyer; and

(j) copies of those portions of client files that are reasonably related to client trust account transactions.

### **Supreme Court Commentary**

(1) SCR 3.130(1.19) enumerates the basic financial records that a lawyer must maintain with regard to all trust accounts of a law firm. These include the standard books of account, and the supporting records that are necessary to safeguard and account for the receipt and disbursement of client or third person funds as required by SCR 3.130(1.15) or its

equivalent. Consistent with SCR 3.130(1.15), this Rule proposes that lawyers maintain client trust account records for a period of five years after termination of each particular legal engagement or representation. Although these Rules address the accepted use of a client trust account by a lawyer when holding client or third person funds, some jurisdictions may permit a lawyer to deposit certain advance fees for legal services into the lawyer's business or operating account. In those situations, the lawyer should still be guided by the standards contained in these Rules.

(2) SCR 3.130(1.19)(g) requires that the physical or electronic equivalents of all checkbook registers, bank statements, records of deposit, pre-numbered canceled checks, and substitute checks be maintained for a period of five years after termination of each legal engagement or representation. The "Check Clearing for the 21<sup>st</sup> Century Act" or "Check 21 Act", codified at 12 U.S.C. §5001 *et. seq.*, recognizes "substitute checks" as the legal equivalent of an original check. A "substitute check" is defined at 12 U.S.C. §5002(16) as "paper reproduction of the original check that contains an image of the front and back of the original check; bears a magnetic ink character recognition ("MICR") line containing all the information appearing on the MICR line of the original check; conforms with generally applicable industry standards for substitute checks; and is suitable for automated processing in the same manner as the original check. Banks, as defined in 12 U.S.C. §5002(2), are not required to return to customers the original canceled checks. Most banks now provide electronic images of checks to customers who have access to their accounts on internet-based websites. It is the lawyer's responsibility to download electronic images. Electronic images shall be maintained for the requisite number of years and shall be readily available for printing upon request or shall be printed and maintained for the requisite number of years.

(3) The ACH (Automated Clearing House) Network is an electronic funds transfer or payment system that primarily provides for the inter-bank clearing of electronic payments between originating and receiving participating financial institutions. ACH transactions are payment instructions to either debit or credit a deposit account. ACH payments are used in a variety of payment environments including bill payments, business-to-business payments, and government payments (e.g. tax refunds.). In addition to the primary use of ACH transactions, retailers and third parties use the ACH system for other types of transactions including electronic check conversion (ECC). ECC is the process of transmitting MICR information from the bottom of a check, converting check payments to ACH transactions depending upon the authorization given by the account holder at the point-of-purchase. In this type of transaction, the lawyer should be careful to comply with the requirements of 1.19(h).

(4) There are five types of check conversions where a lawyer should be careful to comply with the requirements of SCR 3.130(1.19)(h). First, in a "point-of-purchase conversion," a paper check is converted into a debit at the point of purchase and the paper check is returned to the issuer. Second, in a "back-office conversion," a paper check is presented at the point of purchase and is later converted into a debit and the paper check is destroyed. Third, in an "account-receivable conversion," a paper check is converted into a debit and the paper check is destroyed. Fourth, in a "telephone-initiated debit" or "check-by-phone" conversion, bank account information is provided via the telephone and the information is converted to a debit. Fifth, in a "web-initiated debit," an electronic payment is initiated through a secure web environment. Rule 1.19(h) applies to each of the type of electronic funds transfers described. All electronic funds transfers shall be recorded and a lawyer should not re-use a check number which has been previously used in an electronic transfer transaction.

(5) The potential of these records to serve as safeguards is realized only if the procedures set forth in SCR 3.130(1.19)(i) are regularly performed. The trial balance is the sum of balances of each client's ledger card (or the electronic equivalent). Its value lies in comparing it on a monthly basis to a control balance. The control balance starts with the previous month's balance, then adds receipts from the Trust Receipts Journal and subtracts disbursements from the Trust Disbursements Journal. Once the total matches the trial balance, the reconciliation readily follows by adding amounts of any outstanding checks and subtracting any deposits not credited by the bank at month's end. This balance should agree with the bank statement. Quarterly reconciliation is recommended only as a minimum requirement; monthly reconciliation is the preferred practice given the difficulty of identifying an error (whether by the lawyer or the bank) among three months' transactions.

(6) In some situations, documentation in addition to that listed in paragraphs (a) through (i) of SCR 3.130(1.19) is necessary for a complete understanding of a trust account transaction. The type of document that a lawyer must retain under paragraph (j) because it is "reasonably related" to a client trust transaction will vary depending on the nature of the transaction and the significance of the document in shedding light on the transaction. Examples of documents that typically must be retained under this paragraph include correspondence between the client and lawyer relating to a disagreement over fees or costs or the distribution of proceeds, settlement agreements contemplating payment of funds, settlement statements issued to the client, documentation relating to sharing litigation costs and attorney fees for subrogated claims, agreements for division of fees between lawyers, guarantees of payment to third parties out of proceeds recovered on behalf of a client, and copies

of bills, receipts or correspondence related to any payments to third parties on behalf of a client (whether made from the client's funds or from the lawyer's funds advanced for the benefit of the client).

**XII. SCR 3.130(1.20) Client trust account safeguards**

The proposed new rule SCR 3.130(1.20) is:

With respect to client trust accounts required by SCR 3.130(1.15):

(a) only a lawyer admitted to practice law in this jurisdiction or a person under the direct supervision of the lawyer shall be an authorized signatory or authorize transfers from a client trust account;

(b) receipts shall be deposited intact and records of deposit should be sufficiently detailed to identify each item; and

(c) withdrawals shall be made only by check payable to a named payee and not to cash, or by authorized electronic transfer.

**Supreme Court Commentary**

(1) 3.130(1.20) enumerates minimal accounting controls for client trust accounts. It also enunciates the requirement that only a lawyer admitted to the practice of law in the jurisdiction or a person who is under the direct supervision of the lawyer shall be the authorized signatory or authorize electronic transfers from a client trust account. While it is permissible to grant limited nonlawyer access to a client trust account, such access should be limited and closely monitored by the lawyer. The lawyer has a non-delegable duty to protect and preserve the funds in a client trust account and can be disciplined for failure to supervise subordinates who misappropriate client funds. See, SCR 3.130(5.1) and (5.3).

(2) Authorized electronic transfers shall be limited to (1) money required for payment to a client or third person on behalf of a client; (2) expenses properly incurred on behalf of a client, such as filing fees or payment to third persons for services rendered in connection with the representation; or (3) money transferred to the lawyer for fees that are earned in connection with the representation and are not in dispute; or (4) money transferred from one client trust account to another client trust account.

(3) The requirements in paragraph (b) that receipts shall be deposited intact mean that a lawyer cannot deposit one check or

negotiable instrument into two or more accounts at the same time, a practice commonly known as a split deposit.

**XIII. SCR 3.130(1.21) Availability of records**

The proposed new rule SCR 3.130(1.21) is:

Records required by SCR 3.130(1.19) may be maintained by electronic, photographic, or other media provided that they otherwise comply with these Rules and that printed copies can be produced. These records shall be readily accessible to the lawyer.

**Supreme Court Commentary**

(1) SCR 3.130(1.21) allows the use of alternative media for the maintenance of client trust account records if printed copies of necessary reports can be produced. If trust records are computerized, a system of regular and frequent (preferably daily) back-up procedures is essential. If a lawyer uses third-party electronic or internet based file storage, the lawyer must make reasonable efforts to ensure that the company has in place, or will establish reasonable procedures to protect the confidentiality of client information. See, ABA Formal Ethics Opinion 398 (1995). Records required by SCR 3.130(1.19) shall be readily accessible and shall be readily available to be produced upon request by the client or third person who has an interest as provided in SCR 3.130(1.15), or by the official request of a disciplinary authority, including but not limited to, a subpoena duces tecum. Personally identifying information in records produced upon request by the client or third person or by disciplinary authority shall remain confidential and shall be disclosed only in a manner to ensure client confidentiality as otherwise required by law or court rule.

(2) SCR 3.395 provides for the preservation of a lawyer's client trust account records in the event that the lawyer is suspended, disbarred, disappears, or dies.

**XIV. SCR 3.130(1.22) Dissolution of law firm**

The proposed new rule SCR 3.130(1.22) is:

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 records specified in SCR 3.130(1.19).

## **Supreme Court Commentary**

(1) SCR 3.130(1.22) and SCR 3.130(1.23) provide for the preservation of a lawyer's client trust account records in the event of dissolution or sale of a law practice. Regardless of the arrangements the partners or shareholders make among themselves for maintenance of the client trust records, each partner may be held responsible for ensuring the availability of these records. For the purposes of these Rules, the terms "law firm," "partner," and "reasonable" are defined in accordance with SCR 3.130(1.0)(c),(g), and (h).

### **XV. SCR 3.130(1.23) Sale of law practice**

The proposed new rule SCR 3.130(1.23) is:

Upon the sale of a law practice, the seller shall make reasonable arrangements for the maintenance of records specified in SCR 3.130(1.19).

### **XVI. SCR 3.130(5.4) Professional independence of a lawyer**

The proposed new sections (e), (f), (g), (h) and (i) of SCR 3.130 (5.4) are:

(e) A lawyer shall not accept a referral from a non-lawyer who has provided financial assistance or a non-recourse loan to the potential client in exchange for an agreement that said financial assistance or non-recourse loan shall be reimbursed from any future settlement or judgment obtained as a result of client's personal injury claim.

(f) A lawyer shall not accept a referral from a non-lawyer who intends or expects to receive from the lawyer, directly or indirectly, some form of financial gain or remuneration in exchange for the referral.

(g) a lawyer shall not make a referral to a third party non-lawyer who has or will provide financial assistance, services, or a non-recourse loan to the client in exchange for an assignment against the proceeds of any future settlement or judgment as a result of the client's personal injury claim.

(h) a lawyer shall not make a referral to a third party non-lawyer or participate in an arrangement with non-lawyer third parties, who have or will provide financial assistance, services, or a non-recourse loan to the client in exchange for an assignment against the proceeds of any future settlement or judgment obtained as a result of the client's personal injury claim.

(i) a lawyer shall not make a referral to a non-lawyer where there is a financial interest or benefit to the lawyer or non-lawyer for the referral.

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

The proposed amendments to subsection (1) of section (c) of SCR 3.130 (5.5) are:

(c)(1) comply with SCR 3.030(2), or they do not require compliance with SCR 3.030(2) [but are legal services before an administrative tribunal] due to federal statute, rule or regulation; or

**XVIII. SCR 3.130(5.7) Employment of disbarred or suspended lawyers**

The proposed new rule SCR 3.130(5.7) is:

(a) A lawyer shall not employ, nor accept services related to the practice of law from, a person the lawyer knows or reasonably should know is disbarred or suspended from the practice of law for more than one hundred eighty (180) days in any jurisdiction, or is suspended from the practice of law pursuant to SCRs 3.165 or 3.166 or comparable interim suspension rule.

(b) A lawyer may employ persons who are suspended from the practice of law in any jurisdiction for one hundred eighty (180) days or less, for failure to pay Association dues as required by SCR 3.050, or for failure to comply with continuing legal education requirements as required by SCR 3.661, to perform certain limited services during the period of suspension. None of these limited services may be performed for the benefit of any clients or former clients of the suspended lawyer or the law firm or associates with whom the suspended lawyer was associated at any time on or after the date of the acts which resulted in the suspension. The limited services that may be performed by such persons are:

(1) Clerical, copying, word processing or editing work of others;

(2) Administrative, distributing and/or coordinating work, maintaining client files, and/or scheduling events/appearances;

(3) Information technology support, maintaining computer systems, data organization, data entry, software support, and data retrieval;

(4) Legal research to be reviewed by a lawyer, but not including the drafting/preparation of pleadings, briefs, memoranda or other similar documents;

(5) Review and preparation of summaries of deposition transcripts and/or medical and business records;

(6) Title searches; and

(7) Functions which are permitted by federal law

(c) In all employment permitted by paragraph (b), a suspended lawyer is prohibited from any interaction with the public from which it might reasonably appear that the suspended lawyer is a lawyer in good standing. This prohibition applies to communication with any clients of the employing lawyer and communication with any lawyers other than the employing lawyer. Further, a suspended lawyer shall not receive, disburse, or otherwise handle any client or trust account funds; nor appear on behalf of the employing lawyer or client at any deposition, hearing, meeting, or conference, wherever held. The suspended lawyer may be present on behalf of the employing lawyer or client only in such portions of a courthouse, justice center, or court of justice as are required for the limited purpose of performing title searches.

(d) When a lawyer employs a suspended lawyer, as authorized in paragraph (b), the employing lawyer, within fourteen (14) days shall notify in writing the Association's Bar Counsel of that fact. The notification shall state that the employing lawyer accepts responsibility for the services to be performed by the suspended lawyer, and that all of the suspended lawyer's services will be limited to those services permitted by paragraph (b). Upon termination of such employment, the employing lawyer shall notify Bar Counsel in writing within fourteen (14) days of such termination.

(e) For the purposes of this Rule, the term "employ" means (1) engaging a person to perform services as an employee or independent contractor, or (2) as a volunteer, or accepting any service from a person regardless of whether any compensation is paid to such person.

#### **XIX. SCR 3.130(7.03) Attorneys' Advertising Commission**

The proposed amendments to sections (4), (5), (6), (7), (8) and (9) of SCR 3.130 (7.03) are:

(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.

**XX. SCR 3.130(7.05) Filing of advertisements**

The proposed amendments to subsection (b) of section (1), section (2) and new section (4) of SCR 3.130(7.05) are:

(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.

**XXI. SCR 3.130(7.09) Direct contact with potential clients**

The proposed amendments to subsections (a) and (b) and new subsection (c) of section (1) of SCR 3.130(7.09) are:

(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; **[or]**

(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.

**XXII. SCR 3.130(8.1) Bar admission and disciplinary matters**

The proposed amendments to section (b) of SCR 3.130(8.1) are:

(b) fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority ~~], except that].~~ Information that is the subject matter of a confidentiality order or agreement shall be disclosed, however the lawyer may take appropriate steps to obtain a protective order under SCR 3.150. ~~T[th]is Rule does not require disclosure of information otherwise protected by Rule 1.6.~~

**XXIII. SCR 3.130(8.3) Reporting professional misconduct**

The proposed amendments to section (f) of SCR 3.130(8.3) are:

(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 [the Director] Bar Counsel of such event.

#### **XXIV. SCR 3.150 Access to disciplinary information**

The proposed amendments to section (1), subsection (b) of section (2) and subsection (a) of section (5) of SCR 3.130(8.3) are:

(1) Confidentiality. In a discipline matter, prior to [a rendition of a finding of a violation of these Rules by the Trial Commissioner or the Board and the recommendation of the imposition of a public sanction,] the issuance and service of a charge, the proceeding is confidential; thereafter all records related to the disciplinary matter, except the work product of Bar Counsel or the Inquiry Commission or the Board of Governors, shall be available to the public, unless there is a protective order issued for specific testimony, documents or records.

(2)(b) After considering the protection of the public, the interests of the Bar, and the interest of the Respondent in maintaining the confidentiality of the proceeding prior to [a finding of a violation of the Rules,] the issuance and service of a charge, the pendency, subject matter and status may also be disclosed by Bar Counsel at the discretion of the Chair of the Inquiry Commission, or of the Chair's lawyer member designee, if:

i. The proceeding is based upon an allegation that the Respondent has been charged with a crime arising from the same nexus of facts; or

ii. The proceeding is based upon a finding by a court in a civil matter that an attorney has committed conduct that may constitute a violation of the Rules of Professional Conduct.

(5) Public Proceedings. Upon [a finding by the Trial Commissioner or the Board that an attorney has committed a violation of these rules meriting public discipline,] the issuance and service of a charge, or upon the filing of a petition for reinstatement, the record of the Disciplinary Clerk, and any further proceedings before the Inquiry Commission, the Trial Commissioner, the Board or Court, shall be public except for:

(a) deliberations of the Inquiry Commission, the Trial Commissioner, Board of Governors, or the Court; or

(b) information with respect to which a protective order has been issued.

## XXV. SCR 3.165 Temporary suspension by the Supreme Court

The proposed amendments to subsection (d) and new subsection (e) of section (1), new section (5), and sections (6), (7) and (8) of SCR 3.165 are:

(1)(d) It appears that probable cause exists to believe that an attorney is mentally disabled or is addicted to intoxicants or drugs and probable cause exists to believe he/she does not have the physical or mental fitness to continue to practice law. If the attorney denies that he/she is mentally disabled or denies that he/she is addicted to intoxicants or drugs, the Court may order the attorney to submit to a physical or mental examination by a physician or other health care professional appointed by the Court. The examining health care professional shall file with the Clerk of the Court a detailed written report setting out the findings of the health care professional, including results of all tests made, diagnosis and conclusions, together with like reports of all earlier examinations by any health care professional of the same condition. The Clerk of the Court shall furnish a copy of the examining health care professional's entire report to the attorney and to Bar Counsel. The Court may order the attorney to produce to the Court and Bar Counsel any relevant medical, psychiatric, psychological or other health care or treatment records, including alcohol or drug abuse patient records, evidencing prior or ongoing treatment for mental disability or addiction to drugs or to execute appropriate releases which would comply with applicable federal and state law in order to permit the treating health care professional to release those records to the Court and Bar Counsel. Any such order and the resulting records regarding the treatment shall be confidential and sealed in the record; or, [.]

(e) An attorney has failed to cooperate with a disciplinary investigation. Such failure to cooperate may include but is not limited to the following: an attorney's failure to submit a written response to a complaint containing allegations of misconduct that has been filed by the Disciplinary Clerk and transmitted under SCR 3.160(1); failure to respond to any lawful demand for information made by the Office of Bar Counsel or Inquiry Commission in connection with any investigation or prosecution of any disciplinary matter; failure to respond or file as good faith objection to a subpoena issued pursuant to either SCR 3.180 or SCR 3.330; or unexcused failure to appear at any hearing before the Trial Commissioner on a Charge issued under SCR 3.190.

(5) In the event the lawyer is suspended only under the provisions of (1)(e) above, the suspension shall be terminated upon the filing of a joint notice of compliance by the Respondent and the Inquiry Commission, and payment by the Respondent of associated costs. Such a notice will

be filed only after the Respondent has corrected the failure to respond or to appear that led to the suspension, and if there is no objection by the Inquiry Commission. A lawyer suspended under the provision of (1)(e) may also proceed to request relief under (4) above.

(6) Within twenty (20) days from the date of the entry of the order of temporary suspension, the attorney shall notify all clients in writing of his/her inability to continue to represent them and shall furnish copies of all such letters of notice to the Director.

(7) Upon the issuance of an order of temporary suspension, the attorney affected shall immediately, to the extent reasonably possible, cancel and cease any advertising activities in which the attorney is engaged, and remove the attorney's name from any firm with which the attorney is associated.

(8) Failure to comply with this rule shall subject the Respondent to a charge of contempt of court.

#### **XXVI. SCR 3.166(2) Automatic suspension after conviction of a felony**

The proposed amendments to section (2) of SCR 3.166 are:

(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 [the Director of the Kentucky Bar Association] Bar Counsel and the Clerk of the Supreme Court that such plea, finding or entry of judgment has been made.

#### **XXVII. SCR 3.180 Investigations and trials to be prompt; subpoena power**

The proposed amendments to section (3) and new section (4) of SCR 3.180 are:

(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) Upon application of the Inquiry Commission, the Supreme Court may issue such orders as it deems appropriate to compel compliance with a subpoena issued in accordance with this Rule, including the imposition of sanctions for non-compliance.

## **XXVIII. SCR 3.181 Assistance to other lawyer disciplinary jurisdictions**

New rule proposal SCR 3.181 is:

(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.

**XXIX. SCR 3.185 Informal admonition procedure**

The proposed amendments to SCR 3.185 are:

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, [answer] reject such admonition and request that [the private admonition be treated as if] a charge be issued and filed [had been filed against the attorney] 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.

**XXX. SCR 3.225 Appointment of Trial Commission**

The proposed amendments to SCR 3.225 are:

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.

**XXXI. SCR 3.260 Joinder and consolidation**

The proposed new sections (3) and (4) of SCR 3.260 are:

(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 deconsolidate separate charges against any attorney as provided in subsection (1), or to deconsolidate 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.

**XXXII. SCR 3.360 Trial Commissioner to file report with Disciplinary Clerk**

The proposed new section (6) of SCR 3.360 is:

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

**XXXIII. SCR 3.365 Notice of appeal**

The proposed amendments to section (2) of SCR 3.365 are:

(2) The notice of appeal shall specify by name, the Appellant, and the [order] report appealed from.

**XXXIV. SCR 3.370 Procedure before the Board and the Court**

The proposed amendments to SCR 3.370 are:

(1) [Upon receipt of the report of the Trial Commissioner, the Disciplinary Clerk shall certify the record of the prior proceedings and send notice of certification to the parties. The entire record, together with a certified bill for costs and expenses incurred in the investigation preliminary to and in the conduct of the proceedings, as well as the expenses associated with the Trial Commissioner's hearing, shall be filed with the Disciplinary Clerk.]

~~[(2)]~~ Thirty (30) days after the [record is certified] filing of the notice of appeal, the Appellant shall file a brief supporting his/her position on the merits of the case. Fifteen (15) days thereafter, the Appellee shall file his/her brief. No reply brief shall be permitted.

~~(2)~~ Upon motion by the parties or upon the Board's own motion, oral arguments may be scheduled before the Board.

~~(3)~~ Within sixty (60) days of completion of briefing by the parties, the Board shall consider and act upon the entire record. Only the President, the President Elect, the Vice President, the fourteen (14) duly-elected members of the Board from their respective Supreme Court

Districts, and four (4) adult citizens of the Commonwealth who are not lawyers appointed by the Chief Justice as hereinafter described, shall be eligible to be present, participate in and vote on any disciplinary case. Any member, including a non-lawyer member, who has participated in any phase of a disciplinary case submitted to the Board under this rule, or who has been challenged on grounds sufficient to disqualify a Circuit Judge shall be disqualified. If disqualification or absence results in lack of a quorum the Chief Justice shall appoint a member or members (or, if applicable, non-lawyer participants) sufficient to provide a quorum to consider and act on the cases. Any challenge to a member's qualifications shall be determined by the Chief Justice in accordance with KRS 26A.015, et seq.

(4) Eleven (11) of those qualified to sit in a disciplinary matter must be present to constitute a quorum for consideration of such matters.

(5) (a) The Board, after deliberation, and consideration of oral argument, if any, shall decide, by a roll call vote: [,]

(1.) [whether the decision of] To accept the Trial Commissioner's Report as to the [finding of a violation and degree of discipline imposed is supported by substantial evidence or is] guilt, innocence, and the discipline imposed, by concluding that the Trial Commissioner's report is supported by substantial evidence and is not clearly erroneous as a matter of law, or, [.]

(2.) [The Board, in its discretion, may] To conduct a [review] de novo review, in its discretion. In that event it shall make findings as to the guilt or innocence on each Count, and the appropriate discipline to be imposed, and take separate votes as to each. If the Board votes to take a de novo review of the case, said review shall be confined to the evidence presented and the record of the case. The Board may consider the admissibility of evidence as well as the appropriate weight of it. The Board shall state, in its written report required by subsection (8) the difference between its findings and recommendations and the report of the Trial Commissioner.

(b) In the event of a case submitted under SCR 3.210, the Board shall decide, by a roll call vote, guilt or innocence on each Count and on the appropriate discipline to be imposed, if any, make findings of fact in the event of a disputed fact, and make conclusions of law. Failure to Answer may be deemed an admission of the facts stated in the charge.

(c) Each roll [of the evidence presented to the Trial Commissioner. Both the findings and any disciplinary action must

be] call vote made under (6)(a) or (b) shall 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]

(d) At any time during deliberations 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.

(6) The Board shall issue a written decision within [thirty (30)] forty five (45) days of voting on the cases. The Disciplinary Clerk shall mail copies of such report to the Respondent and his counsel, if any, and to each member of the Inquiry Commission. The Disciplinary Clerk shall place ten (10) copies of the report in the record and file the entire record of the case with the Court, unless the Board has taken actions under subsection (6)(d), in which case the matter will proceed in accordance with the Board's direction. [The Board shall, in its decision, state wherein it differs with the findings of fact and law of the Trial Commissioner and will state the degree of discipline, if any is imposed.]

(7) 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] SCR 3.450. If Respondent files a response *in forma pauperis*, no bond shall be required.

(8) 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.

(9) 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.

(10) When the Respondent is proceeded against by warning order, the notice in paragraph three (3) and paragraph nine (9) of this rule shall be deemed to have been served thirty (30) days after the date of the making of the warning order.

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

#### **XXXV. SCR 3.390 Notice to client of suspension or disbarment**

The proposed amendments to SCR 3.390 are:

(a) In all cases where a lawyer has been suspended from the practice of law, except a suspension under SCR 3.165 or 3.166, the suspension shall take effect beginning on the tenth (10<sup>th</sup>) day following the order of suspension. In such cases the suspended lawyer shall take all reasonable steps to insure that the clients will be protected. After issuance of the order the suspended lawyer may not accept new clients or collect unearned fees. In addition, the lawyer shall comply with the provisions of SCR 3.130-7.50(5).

(b) [There shall be contained in every] In the event of an opinion or order, imposing disbarment or a suspension of more than sixty (60) days, [a direction] and any suspension under SCR 3.050 and SCR 3.669(4), [that] such suspended or disbarred attorney must notify all Courts in which [he/she] the lawyer has matters pending, and all clients [for whom he/she is actively involved in litigation and similar legal matters,] of [his/her] the suspended lawyer's inability to continue to represent them and of the necessity and urgency of promptly retaining new counsel. Such notification shall be by letter duly placed in the United States mail within ten (10) days of the date of entry of the order of suspension or disbarment [becomes effective], and such suspended or disbarred attorney shall simultaneously provide a copy of all such letters to the [Director of the Association] Office of Bar Counsel. Upon the issuance of said opinion or order the attorney affected shall immediately, to the extent possible, cancel and cease any advertising activities in which the attorney is engaged.

(c) Failure to comply with this rule shall subject the Respondent to a charge of contempt of Court or disciplinary action. Failure to comply with this rule shall prohibit the respondent from applying for reinstatement.

#### **XXXVI. SCR 3.450 Recovery of Costs**

The proposed amendments to SCR 3.450 are:

In all cases to be submitted to the Court, the entire record, together with a certified bill for costs and expenses incurred in the investigation preliminary to and in the conduct of the proceedings, as well as any expenses associated with the Trial Commissioner's hearing, shall be forwarded to the Court by the Disciplinary Clerk.

Every final order of the Board or the Court which adjudges the Respondent guilty of unprofessional conduct shall provide for the recovery of all costs, including those certified by the Disciplinary Clerk [under SCR 3.370]. Immediately upon the effective date of the order the Clerk shall furnish a cost bill to the Respondent[, and i] If the bill is not satisfied within ten (10) days thereafter, the Clerk shall [issue one or more executions thereon, directed to the sheriffs of the counties in which the Respondent and the sureties on his bond reside. So much of the costs collected by the Clerk as represent those incurred by the Board shall be promptly refunded to] notify the Director of the Association.

#### **XXXVII. SCR 3.500 Restoration to membership**

The proposed amendments to subsections (a), (b) and (c) of section (1), sections (2), (3), (4) (5), (6) and (7) of SCR 3.500 are:

(1) No former member who has withdrawn under Rule 3.480, or who has been suspended for failure to pay dues as provided by Rule 3.050, or who has failed to pay dues for such period of time as to warrant suspension under that Rule, or 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 can be restored to membership unless the former member, applies for restoration by completing forms provided by the Director, to include a certification from the KBA's Office of Bar Counsel that there is no pending disciplinary matter, tendering a fee of three hundred fifty dollars (~~[\$250.00]~~ 350.00), and payment of dues for the current year and all back years, unless he/she has been in withdrawal status by order of the Court. In cases where a suspension or withdrawal has prevailed for five (5) years or less and the restoration application is referred to the Character and Fitness Committee, a fee of two hundred fifty dollars (~~(\$250.00)~~) shall be made payable to the Kentucky Office of Bar Admissions.

Upon receipt of such application and payments, the Director 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]~~ issue an order restoring the Applicant; or

~~[(b) R]~~referring 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)]~~(b) 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 or withdrawal shall remain in force pending entry of the order of the ~~[Court]~~ Board or of the Court restoring the Applicant.

(2) No former member who has withdrawn 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, can be restored to membership unless the former member applies, for restoration by completing forms provided by the

Director, which shall include a certification from the KBA's Office of Bar Counsel that there is no pending disciplinary matter, and tendering payment of seven hundred fifty dollars (\$750.00)~~[500.00]~~. If the former member has been suspended for nonpayment of bar dues or CLE noncompliance he/she 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]~~ 2.110 and to the Continuing Legal Education Commission for certification under Rule 3.675. An additional fee of five hundred dollars (\$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 the 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. Or, as an alternative, 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 & Fitness Committee consider an application for admission without examination under SCR 2.110. The fees required by Rule 2.110 shall be paid prior to the processing of the application.

If an applicant takes and passes an examination or is approved for admission without 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]~~ forward the application to the President to enter an order 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]~~ enter an order denying the Applicant for restoration. The applicant may appeal to the court within thirty (30) days. Such appeal will be accompanied by a filing fee of one hundred fifty dollars (\$150.00).

The provision of Rules 2.015 and 2.080, or if applicable, 2.110, 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, it shall enter an order denying restoration. [its findings and recommendation shall be filed with the Clerk, and t] 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] Director shall have mailed said notice, the Applicant may petition the Court for a review of the action of the Board. Such appeal will be accompanied by a filing fee of one hundred fifty dollars (\$150.00). 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 c] Cash [or corporate surety] bond in the amount of two thousand five hundred dollars (\$2500.00) to secure costs to be incurred shall be posted with the Office of Bar Admissions upon the filing of [the] an application under subsection (2), or referral to Character and Fitness under subsection (1).

(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] or 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] Board may include such conditions in any order of restoration.

### **XXXVIII. SCR 3.510 (1) Reinstatement in case of disciplinary suspension**

The proposed amendments to section (1) of SCR 3.510 are:

(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 Director, and shall be accompanied by a filing fee of one thousand dollars (\$1,000.00) [250.00] which shall be made payable to the Kentucky Bar Association. An additional filing fee of one thousand two hundred fifty dollars (\$1250.00) shall be made payable to the Kentucky Office of Bar Admissions. The Director 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 Kentucky Office of Bar Admissions) have been secured by the posting of a cash or corporate surety bond of two thousand five hundred dollars (\$2500.00). Any additional costs will be paid by Applicant. 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.

### **XXXIX. SCR 3.600 Continuing Legal Education Definitions**

The proposed amendments to SCR 3.600 are:

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 ~~[c]~~Continuing ~~[l]~~Legal ~~[e]~~Education ~~[c]~~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, **[or]** 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, [live broadcast transmission, satellite simulcast, teleconference, video conference,] CD-ROM, [data conference,] computer on-line services, or other appropriate technology as approved by the Commission.

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

The proposed amendments to SCR 3.620 are:

The Court shall appoint all members of the [c]Commission from a list consisting of three times the number to be appointed submitted to the [c]Court by the [b]Board. A chairman shall be designated by the [c]Court for such time as the [c]Court may direct [at the pleasure of the court]. 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 [c]Court. [The] [m]Members of the [c]Commission shall serve without compensation but shall be paid their reasonable and necessary expenses incurred in the performance of their duties. The [a]Association shall have the responsibility of funding the [c]Commission and any necessary staff who shall be employees of the [a]Association.

**XLII. SCR 3.630 Commission member's qualifications**

The proposed amendments to SCR 3.630 are:

Each [c]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 [next] immediately preceding [his] the appointment.

**XLIII. SCR 3.635 Commission quorum**

The proposed amendments to SCR 3.635 are:

[A quorum to do business in meeting of the Commission shall require the attendance of not less than four members of the Commission.] A quorum consisting of at least four (4) Commission members is required for conducting the business of the Commission.

**XLIV. SCR 3.640 Commission staff**

The proposed amendments to SCR 3.640 are:

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 [C]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.

**XLV. SCR 3.650 Commission duties**

The proposed amendments to sections (2), (6) and (7) of SCR 3.650 are:

(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[s] in each Supreme Court District each year.

(6) Promulgate rules and regulations for the administration of the [M]andatory [C]continuing [L]legal [E]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[s] shall include recommended changes to these rules and regulations and their implementation.

**XLV. SCR 3.651 [District bar programs] Kentucky Law Update Seminars in Each Appellate District**

The proposed amendments to sections (1), (2) and (3) of SCR 3.651 are:

(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 [district bar education programs] Kentucky Law Update seminars shall be free to all members in good standing of the Association. [Non-members may be charged an amount set to cover the cost of program materials.]

(3) Members may attend [district bar education programs] Kentucky Law Update seminars in any location. [Attendance at more than one seminar will not result in duplicate credits earned. The maximum credit which may be earned for the district bar meeting seminar is twelve and one-half (12.5) credits. If separate track programs are offered and attended separately, additional credits may be granted by the Commission] 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.

**XLVI. SCR 3.652 New Lawyer [Skills] Program**

The proposed amendments to SCR 3.652 are:

(1) At least once each educational year, the Commission shall provide or cause to be provided a New Lawyer [Skills] Program of not less

than twelve and one-half (12.5) credits. The Commission may in its discretion, accredit a New Lawyer [Skills] Program proposed by other CLE providers.

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

(3) The New Lawyer [Skills] 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 [Supreme] Court [of Kentucky] for the New Lawyer [Skills] 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 [Kentucky Bar] Association shall complete the New Lawyer [Skills] Program.

(6) Each individual attending the New Lawyer [Skills] 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(~~4~~ 5) and (~~5~~ 6).

(7) Members required to complete the New Lawyer [Skills] 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 [~~d~~]Director.

(8) The time for completion and certification set forth in paragraphs (5) and (6) of th[e]is 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 [and notarized]. 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[.In this circumstance], 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 [Skills] Program.

(9) Failure to complete and certify attendance for the New Lawyer [Skills] 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 [Skills] 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 [Skills] 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 [Skills] 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 [be] 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.

## **XLVII. SCR 3.661 Continuing legal education requirements: compliance and certification**

The proposed amendments to sections (2), (3), (4), (5), (6) (7) and (8) of SCR 3.661 are:

(2) Certification of completion of approved CLE activities must be received by the Director no[t] 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, [or] 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 [and/or the Rules of Professional Conduct as they are directly related 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, [or] 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 [is] 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 [next] immediately succeeding the year in which the hours were earned. Carry-forward credits for ethics, professional responsibility and professionalism [is] are limited to a total of four (4) credits.

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

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

**XLVIII. SCR 3.662 Qualifying continuing legal education activity [and] standards and credit limits**

The proposed amendments to subsections (b), (j), (k) and (l) of section (1), subsections (b), (c), and (h) of section (2), and subsections (a), (b), (c), (d) and (e) of sections (3) of SCR 3.662 are:

(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, [or] professional responsibility, or professionalism.

(j) The activity may be presented live or by technological transmission as defined in Rule 3.600 [, including: video tape, audio tape, live broadcast transmission, satellite simulcast, teleconference, video conference, CD-ROM, data conference, computer on-line services, or other appropriate technology as approved by the Commission]. If presented by technological transmission [as set forth above], the transmission [, tape, or other technologically-transmitted activity] must be produced from an activity submitted and approved by the Commission pursuant to SCR 3.665. [Activities presented by technological transmission shall be accredited for the educational year during which they are produced to guarantee timeliness of content.] 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 [must be] is available for purposes of answering questions and leading discussions, that activity is considered a live seminar. [Activities presented by technological transmission to individuals without group participation or the participation of a qualified attorney facilitator will require independent verification of credits.]

(k) In cases of in-house activity, as defined in SCR [3.010] 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. [and if t]The following additional requirements [are] must also be met for accreditation of in-house activities:[]

[(i) Applications for approval must be submitted at least thirty (30) days in advance; applications submitted less than thirty (30) days in advance or after the fact will not be approved.]

(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)[(i)].

(ii) Members of the Court, [or] 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 activity which has not been accredited at least thirty (30) days in advance.]

[(c) 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([9] g) 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, [or] 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) [Law-related education and p]Public speaking. Upon application, by teaching or participating as a panel member, mock trial coach or seminar leader for law-related [education activities or for] public service speeches to civic organizations or school groups. 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.

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

The proposed amendments to section (1), subsections (a) and (b) of section (3), sections (5) and (9) of SCR 3.663 are:

(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. [A maximum of six (6.0) credits may be applied to meet the minimum requirement set forth in Rule 3.661.] 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[s] earned pursuant to SCR 3.662(3)(d).

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

The proposed amendments to sections (4) and subsections (d) and (e) of sections (6) of SCR 3.665 are:

(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 ~~[which]~~ who have made application for accreditation of activities ~~[which]~~ 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 ~~[card]~~ form and activity code. Credit reporting ~~[cards]~~ forms and activity numbers shall be made available to sponsors upon request from the Association for use at approved activities.

(e) Collect credit reporting ~~[cards]~~ forms from Kentucky attorneys and submit to the Commission all ~~[cards]~~ forms received within thirty (30) days of completion of the program. Failure to submit completed credit reporting ~~[cards]~~ 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 ~~[card]~~ form or certificate. Submit all attendance ~~[cards]~~ forms or certificates for activities held during the month of June no[t] later than July 10th, immediately following the end of the educational year on June 30th. For programs held during June this provision of the rule supersedes the thirty (30) day submission provided above. Failure to submit ~~[cards]~~ 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 ~~[card]~~ form or certificate.

## **LI. SCR 3.666 Exemptions and removal of exemptions**

The proposed amendments to subsection (b) of section (1) and subsections (b) and (c) of sections (2) of SCR 3.666 are:

(1)(b) Members who have not completed one full educational year of Association membership on or before the June 30 of their initial admission to membership provided, however, such persons shall be subject to the provisions of [SCR 3.661(9) and] 3.652[(5)].

(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 [age,] disability, sickness, [financial condition,] or other clearly mitigating circumstances.

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

## **LII. SCR 3.667 Extension of time requirements**

The proposed amendments to sections (1) and (2) of SCR 3.667 are:

(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 [Skills] 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.

**LIII. SCR 3.668 Non-compliance, definition**

The proposed amendments to sections (1) and (2) of SCR 3.668 are:

(1) Delinquency of Certification. Any certification of ~~[C]~~continuing ~~[L]~~legal ~~[E]~~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.

**LIV. SCR 3.669 Non-compliance: procedure and sanctions**

The proposed amendments to SCR 3.669 are:

(1) As soon as practicable after August 20th of each year, the ~~[Director]~~ 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 ~~[Director]~~ of any claimed discrepancy in the education statement.

(2) If, by the ~~[10<sup>th</sup>]~~ first day of ~~[August]~~ November immediately following, a member has ~~[not]~~ neither certified ~~[that he or she completed]~~

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 [Director] Commission shall [, forthwith,] certify the name of that member to the [Court] Board.

(3) [The Clerk shall docket the matter and the Court shall issue to such member a rule returnable twenty (20) days thereafter to show cause why he or she should not be suspended from the practice of law or otherwise sanctioned by the Court. The response shall be in writing to the Supreme Court, filed with the Clerk, with a copy to the Commission, in care of the Director, and shall be accompanied by a fee, payable to the Kentucky Bar Association, in an amount to be set forth in the Court's Order. The Commission shall be permitted to file a reply within ten (10) days following the filing of a response by the member.] 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 [be] is shown by the return date of the rule, or within such additional time as may be allowed by the [Court] Board, [an Order shall be entered] 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 [suspending respondent from the practice of law] or [imposing such other sanctions] will be otherwise sanctioned as [may be] deemed appropriate by the [Court] Board. A[n attested] copy of the suspension notice [Order] shall [forthwith] be delivered by the [Clerk] Director to the member, the Clerk of the Kentucky Supreme Court, the Director of Membership, 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.

(5) A [The suspended] 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 twenty (20) days of the effective date of the suspension. Such appeal shall include a filing fee of one hundred fifty dollars (\$150.00), and an affidavit showing good cause why the suspension should be set aside. [Sanctions for failure to meet the

requirements of SCR 3.661(9) and SCR 3.652(5) are set forth at SCR 3.652(9).]

**LV. SCR 3.670 Appeal of Commission actions**

The proposed new section (5) to SCR 3.670 is:

(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.

**LVI. SCR 3.675 Continuing legal education requirements for restoration or reinstatement to membership: procedures**

The proposed amendments to section (2) of SCR 3.675 are:

(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 C[ontinuing] L[egal] E[ducation] 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.

**LVII. SCR 3.680 Continuing Legal Education Award**

The proposed amendments to sections (2), (3), (4), (5), (6), (7) and (8) of SCR 3.680 are:

(2) [When a member has completed the credits required by the Rule for the award, he or she may, during July or August of the educational year, apply for the award by filing an application form with the Commission which shall be provided by the Association.] The Commission shall notify the member and issue the award.

~~[(3) At the next meeting of the Commission following the filing of the application it shall be approved or denied by the Commission. The Director shall notify the member of the Commission's determination.]~~

~~[(4) Approved [A] awards are valid for one year, beginning on the first day of July of the year of application award notification.]~~

~~(5)~~4) The validity of an [A]award may be renewed for an additional year ~~[for each educational year,]~~ following the initial [A]awards date, in which the member who holds the [A]award completes a minimum of twenty (20) approved credit.

~~(6)~~5) Failure to earn twenty (20) credits in any educational year following the initial [A]award date shall disqualify the member from further renewals of that [A]award. The member may only become eligible for another [A]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 [A]award was issued.

~~(7)~~ Application for renewal of a Continuing Legal Education Award shall be made by members following the same procedure required for initial award application pursuant to this Rule.]

~~(8)~~6) Each member who holds a valid, unexpired [A]award shall receive a 25% discount from the normal registration fee for the Kentucky Bar Association Annual Convention.

#### **LVIII. SCR 3.910 Kentucky Lawyer Assistance Program (KYLAP)**

The proposed new section (8) to SCR 3.910 is:

(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.

#### **LIX. SCR 4.300 CANON 4 C. (3) A JUDGE SHALL SO CONDUCT THE JUDGE'S EXTRA-JUDICIAL ACTIVITIES AS TO MINIMIZE THE RISK OF CONFLICT WITH JUDICIAL OBLIGATIONS**

The proposed amendments to subsection (3) to section (C.) to Canon 4 of SCR 4.300 are:

C. Governmental, Civic or Charitable Activities.

(3) A judge may serve as an officer, director, trustee, regent or non-legal advisor of an organization or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice or of an educational, religious, charitable, fraternal or civic organization not conducted for profit, including governing boards of public

universities, subject to the following limitations and the other requirements of this Code. Service on governing boards of public universities shall not constitute governmental service under subsection (2) above.

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

The proposed amendments to sections (2) and (4) of SCR 4.310 are:

(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. Any other Supreme Court Rule or Rule of Civil or Criminal Procedure notwithstanding, 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.

**LXI. SCR 7.030 Nomination and election – regular elections**

The proposed amendments to section (2), subsections (a), (b) and (c) of section (3), sections (4) and (6) of SCR 7.030 are:

(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 [mail] 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 [mail] 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 [mail] 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 [mailing] 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 [mail] 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 [Ballots for the] various commissions shall be on separate [sheets of paper] 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."

## **LXII. SCR 7.040 Nomination and election – special elections**

The proposed amendments to sections (1) and (2) of SCR 7.040 are:

(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[s] 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 [mailed] published by appropriate means to each member residing in the circuit or jurisdiction concerned a list of candidates nominated by the board.