

# Supreme Court of Kentucky

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

2001-2

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The following rules' amendments shall become effective January 1, 2002.

**I. AMENDMENTS TO RULES OF THE SUPREME COURT**

**A. SCR 1.060 CIRCUIT COURT CLERKS**

Section (3) of SCR 1.060 shall read:

(3) The examination shall be given once not less than 30 days nor more than 60 days before the deadline for filing for election in the year in which circuit clerks are elected. No person shall be eligible to appear on any election ballot for the office for circuit clerk who has not successfully completed an examination and been so certified, except no incumbent circuit clerk shall be required to be re-certified.

**B. SCR 2.000 OFFICE OF BAR ADMISSIONS**

SCR 2.000 shall read:

There is hereby created an Office of Bar Admissions which shall be comprised of the Kentucky Board of Bar Examiners, as defined in SCR 2.020 and the Character and Fitness Committee, as defined in SCR 2.040.

Subject to the approval of the Supreme Court, the Board and Committee shall have the power to adopt and amend rules and regulations governing the manner in which each carries out its

duties.

**C. SCR 2.007 QUALIFICATION, COMPENSATION, EXPENSES, AND ASSISTANTS OF BOARD OF BAR EXAMINERS AND COMMITTEE ON CHARACTER AND FITNESS**

SCR 2.007 shall read:

Each member of the Board of Bar Examiners and each member of the Character and Fitness Committee shall have the qualifications of a circuit judge, and shall be engaged in the active practice of law, including active practice before the Supreme Court. Except for compensated expenses and allowances for services rendered as members of the Board and of the Committee as authorized by the Supreme Court to be paid out of special funds for such purposes, no member of the Board of Bar Examiners and no member of the Character and Fitness Committee shall knowingly receive, or agree to receive, directly or indirectly, compensation for any services rendered or to be rendered, either by himself/herself or another, in any matter which is before the Kentucky Supreme Court relating to the admission of a person to practice law in this state. As appointees of the Supreme Court, neither the members of the Board of Bar Examiners nor the members of the Character and Fitness Committee constitute officers or employees of any agency within the meaning of KRS 61.094, 61.096 and 61.990. Subject to the approval of the Supreme Court, the Board of Bar Examiners and the Character and Fitness Committee each may employ such personnel as it deems appropriate, compensation therefore to be paid out of special funds for such purposes.

**D. SCR 2.008 CONFIDENTIALITY**

SCR 2.008 shall read:

The Office of Bar Admissions shall not disclose to anyone other than an applicant any information with respect to the character and fitness or the examination results of any applicant except:

- (a) upon written authority of such applicant and upon

- payment of any fees required by the Board for copies of such reports;
- (b) in response to a valid subpoena from a Court of competent jurisdiction;
  - (c) to the Director, Kentucky Bar Association.

**E. SCR 2.009 IMMUNITY**

SCR 2.009 shall read:

Any person who communicates information to a member of the Board, Committee or its affiliates concerning an applicant for admission to the Kentucky Bar shall be granted immunity from all civil liability which might result from said communications.

**F. SCR 2.010 REQUIREMENTS FOR ADMISSION TO THE KENTUCKY BAR**

SCR 2.010 shall read:

All applicants for admission to the bar of this state must meet certain basic requirements regardless of whether admission is sought by examination (SCR 2.022), without examination (SCR 2.110), for a limited certificate (SCR 2.111) or as an attorney participant in a defender or legal services program (SCR 2.112). Those requirements are set forth in the following sections SCR 2.011 through SCR 2.015).

**G. SCR 2.011 MORAL CHARACTER AND FITNESS**

SCR 2.011 shall read:

All applicants for admission to the bar of this state must be of good moral character and general fitness requisite for an attorney.

- (1) Every applicant shall be of good moral character. The applicant shall have the burden of proving that he or she is possessed of good moral character. The term "good moral character" includes qualities of honesty, fairness, responsibility, knowledge of the laws of the state and the nation and respect for the rights of others and for the judicial process. Good moral

character is a functional assessment of character and fitness of a prospective lawyer. The purpose of requiring an applicant to possess present good moral character is to exclude from the practice of law those persons possessing character traits that are likely to result in injury to future clients, in the obstruction of the administration of justice, or in a violation of the Code of Professional Responsibility.

- (2) Fitness is the assessment of mental and emotional health as it affects the competence of a prospective lawyer. The purpose of requiring an applicant to possess this fitness is to exclude from the practice of law any person having a mental or emotional illness or condition which would be likely to prevent the person from carrying out duties to clients, Courts or the profession. A person may be of good moral character, but may be incapacitated from proper discharge of his duties as a lawyer by such illness or condition. The fitness required is a present fitness, and prior mental or emotional illness or conditions are relevant only so far as they indicate the existence of a present lack of fitness.
- (3) Each applicant for admission to the Kentucky Bar shall pay all investigative fees, reporting fees or other expenses required and assessed by the Character and Fitness Committee as deemed necessary in determining the character and fitness of the applicant.

**H. SCR 2.012 OATH OF ALLEGIANCE**

SCR 2.012 shall read:

No person who advocates the overthrow of the government of the United States or of this State by any unconstitutional means, shall be certified to the Supreme Court for admission and a license to practice law. Therefore every applicant shall be required to take the oath to support the Constitutions of the United States and Kentucky.

**I. SCR 2.013 INTENT TO PRACTICE LAW IN COMMONWEALTH**

SCR 2.013 shall read:

Every applicant must intend to engage in the practice of law in Kentucky and agree to abide by the rules, duties and standards imposed upon attorneys of this state. No person shall seek admission to the Bar of Kentucky for the primary purpose of using such admission as a basis for obtaining admission to the Bar of some sister state or the District of Columbia or to circumvent the admission requirements of such sister state or District. The giving of erroneous information as to intention to practice law in the State of Kentucky shall be grounds for denying the applicant's application or for disbarment.

**J. SCR 2.014 LEGAL EDUCATION**

SCR 2.014 shall read:

- (1) Every applicant for admission to the Kentucky Bar must have completed degree requirements for a J.D. or equivalent professional degree from a law school approved by the American Bar Association or by the Association of American Law Schools.
- (2) An attorney who received a legal education in the United States but is not eligible for admission by virtue of not having attended a law school approved by the American Bar Association or the Association of American Law Schools may nevertheless be considered for admission by examination provided the attorney satisfies the following requirements:
  - (a) The attorney holds a J.D. Degree, which is not based on study by correspondence, from a law school accredited in the jurisdiction where it exists and which requires the equivalent of a three-year course of study that is the substantial equivalent of the legal education provided by approved law schools located in Kentucky. The applicant shall bear the cost of the evaluation of his/her legal education, as determined by

the Board, and the application shall not be processed until the applicant's legal education is approved by the Board of Bar Examiners; and

(b) The attorney has been actively and substantially engaged in lawful practice of law as his or her principal business or occupation for at least three of the last five years immediately preceding the filing of the application; and

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

- (3) An attorney who received a legal education in a foreign country and is not eligible for admission by virtue of not having attended a law school approved by the American Bar Association or the Association of American Law Schools may nevertheless be considered for admission by examination provided the attorney satisfies the following requirements:

(a) The foreign attorney's legal education is the substantial equivalent of the legal education provided by approved law schools located in Kentucky. The applicant shall bear the cost of the evaluation of their legal education, as determined by the Board, and the application shall not be processed until the applicant's legal education is approved by the Board of Bar Examiners.

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

(c) The applicant shall, in order to qualify to sit for the Bar examination, also submit a certified copy of the record or license of the court or agency which admitted the applicant to practice law in such country, and satisfy the requirement that the applicant has been actively and substantially engaged in the lawful practice of law as his or her principal business or occupation for at least three of the last five years immediately preceding the filing of the application, in addition to any other requirements authorized by these rules.

- (4) For purposes of (2) (b) and (3) (c), the active engagement in the teaching of the law shall be considered active engagement in the practice of law.

**K. SCR 2.015 PROFESSIONAL RESPONSIBILITY EXAMINATIONS**

SCR 2.015 shall read:

- (1) No person shall be eligible for admission to the Kentucky Bar until that person has first passed the Multi-State Professional Responsibility Examination administered by the National Conference of Bar Examiners by attaining a scaled score thereon of at least 75.
- (2) No person shall sit for the Bar Examinations administered under SCR 2.080 or 3.518 unless he or she has first passed the Multi-State Professional Responsibility Examination administered by the National Conference of Bar Examiners by attaining a scaled score thereon of at least 75.

**L. SCR 2.018 APPLICATION PACKETS**

SCR 2.081 shall read:

- (1) All applications for admission to the Kentucky Bar shall be on forms approved by the Board and Committee. Application packets will be available upon written request to the Office of Bar Admissions and accompanied

by a fee of \$10.00 made payable to the Clerk of the Supreme Court of Kentucky.

- (2) The applicant must give full and complete response to all inquiries on the application as well as furnish any additional documents requested in relation to the application.
- (3) Any application received that is incomplete shall be returned to the applicant and a fee of \$20.00 shall be submitted along with the complete application prior to said application being acted upon. If an applicant fails to return the requested information within 30 days, the application will be held in abeyance and no further action will be taken and no fees shall be refundable. If the requested information is submitted after the 30 days, the Committee will determine whether or not the applicant is permitted to take the forthcoming examination.
- (4) The application is to be signed by the applicant and notarized. All answers on the application form must be completely candid. Lack of candor could result in possible denial of character and fitness certification. An applicant is required to submit in writing any circumstance or occurrence that may reflect on their character or fitness.

**M. SCR 2.020 BOARD OF BAR EXAMINERS**

SCR 2.020 shall read:

- (1) There is hereby created a Board of Bar Examiners known and designated as Kentucky Board of Bar Examiners, hereinafter referred to as "Board".
- (2) The Board shall be composed of seven (7) attorneys appointed by the Supreme Court of Kentucky for terms of three years, the members to serve until the expirations of their terms and until their successors are appointed. The Supreme Court of Kentucky shall appoint the Chair of the Board, and the Board shall select from its membership a secretary.

- (3) The Board is charged with the responsibility of administering the bar examination to qualified applicants for admission to the bar of the Commonwealth.

**N. SCR 2.021 LATE FILING OF APPLICATION FOR ADMISSION BY EXAMINATION**

Deletion of current rule SCR 2.021.

**O. SCR 2.022 APPLICATION FOR ADMISSION BY EXAMINATION**

SCR 2.022 shall read:

The application for Admission by Examination shall be on a verified form approved by the Board. Applications may not be filed more than 90 days before the filing deadline outlined below.

- (1) An applicant must file a complete Application for Admission by Examination form accompanied by a fee of \$625.00 (cashier's or certified check or money order) at the time of filing. The Filing deadline is October 1 for the February Bar examination and February 1 for the July bar examination.
- (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 \$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.
- (3) Every person who intends to apply for admission to the Kentucky Bar by examination shall file with the Clerk of the Supreme Court, Frankfort, Kentucky, a verified application on a form provided by the Office of Bar Admissions. The applicant shall provide such information as requested on the form. An application must be complete at the time of filing including a properly executed Authorization & Release form.
- (4) The Dean of each law school shall certify to the

Committee as to the character and fitness of each applicant. Each applicant shall pay all additional investigation expenses that exceed the \$200.00 fee required by the Committee in conducting the background investigation necessary for certification of eligibility. These costs are incurred when circumstances require a more intensive background investigation. The cost of any record, document or inquiry concerning an application or transcript of record as a result of a hearing shall be paid by the applicant. Any additional expenses incurred must be paid prior to the release of any examination results for the applicant.

- (5) Any applicant whose application to the Bar of another state has been refused for any reason is ineligible to take the Bar examination in this state unless the refusal was based upon a failure to pass the Bar examination in that state.
- (6) Any applicant who is a member of the bar in another jurisdiction must produce a certificate of good standing with the application. The applicant must also produce a statement from the disciplinary board of that jurisdiction indicating whether any complaints have been filed against the applicant and their disposition. Any applicant who has a complaint(s) pending, is under disciplinary action, suspended, or any other action that would prohibit the practice of law as a member of the bar in another jurisdiction is not eligible for admission in Kentucky. Any applicant who is disbarred in another jurisdiction is not eligible for admission in Kentucky.
- (7) An applicant who wishes to withdraw from the Bar examination must notify the Office of Bar Admissions, in writing, not later than five (5) days prior to the examination date or have a verified excuse, otherwise, the Bar examination fee shall be forfeited.
- (8) No part of any fees or expenses as stated in the paragraphs above shall be refundable.

**P. SCR 2.023 LATE FILING OF APPLICATION FOR ADMISSION BY EXAMINATION**

SCR 2.023 shall read:

- (1) An applicant who has failed to timely file an Application for Admission by Examination under SCR 2.022 may file a late application for Admission by Examination form from October 2 to November 10, prior to the February Bar examination and from February 2, to March 10, for the July Bar examination, accompanied by a late fee of \$200 along with the application fee (cashier's or certified check or money order).
- (2) An applicant who has failed to file an Application for Admission by Examination form by the late deadlines prescribed in paragraph (1) of this rule, may file under the extended late deadlines of November 11 to December 10 for the February Bar examination and March 11 to May 10 for the July Bar examination accompanied by an extended late fee of \$400 along with the application fee.
- (3) When an Application for Admission by Examination form is filed later than the prescribed deadlines of SCR 2.022, the Committee will determine whether or not the applicant is permitted to take the forthcoming examination.
- (4) Under no circumstances will an application to sit for the Bar examination be accepted after the above stated extended late filing deadline.

**Q. SCR 2.024 RE-APPLICATION FOR ADMISSION BY EXAMINATION**

SCR 2.024 shall read:

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

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

**R. SCR 2.025 RE-CERTIFICATION OF CHARACTER AND FITNESS**

Deletion of current rule SCR 2.025.

**S. SCR 2.041 IMMUNITY**

Deletion of current rule SCR 2.041.

**T. SCR 2.042 CONDITIONAL ADMISSION**

SCR 2.042 shall read:

- (1) As a part of its certification process, the Character and Fitness Committee may require that an applicant enter into an agreement as a condition of his/her admission to the Bar. The conditions of admission, as determined by the Character and Fitness Committee, shall be set forth in a written agreement with specific terms and conditions. These terms and conditions shall be monitored by the Committee or its agents or designees.
- (2) Upon failure to comply with the terms and conditions of the agreement, the Committee may:
  - (a) extend the term and impose additional condition(s).
  - (b) recommend to the Court revocation of license.
- (3) All information relating to conditional admission of an applicant or an attorney shall remain confidential in accordance with SCR 2.008.

**U. SCR 2.050 FORMAL AND INFORMAL HEARINGS**

SCR 2.050 shall read:

In the event an area of concern appears, whether on the application or is discovered during the investigation process, the applicant may be requested to appear before one or more Committee member(s) for an informal hearing. Notice will be served on the applicant not less than fourteen days prior to said hearing.

At the discretion of the member(s) present at the informal hearing, a formal hearing before the full Committee may be required of the applicant. The applicant shall be given written notice of the date, time and place of said hearing not less than fourteen days prior to the hearing. The hearing shall be of record and the applicant may have counsel present and present testimony. The costs involved in this hearing shall be included with costs outlined in SCR 2.011.

At the time a formal hearing is requested, the applicant will be notified in writing that he/she may not sit for the bar examination unless a final decision is submitted by the Committee prior to the examination.

A written recommendation will be submitted by the Committee to the Court either recommending the applicant be certified from a character and fitness standpoint to sit for the bar examination or that the applicant be denied certification of character and fitness. The applicant shall be supplied a copy of the recommendation. If said recommendation results in denial of the applicant's certification to sit for the bar examination, the applicant has the right to appeal such decision, as noted in SCR 2.060.

**V. SCR 2.062 RE-CERTIFICATION OF CHARACTER AND FITNESS**

SCR 2.062 shall read:

Certification of character and fitness eligibility of the applicant shall be valid for a period of three years. An applicant whose certification of eligibility is granted three

years or more from the date of the examination for which they are applying must apply for re-certification of character and fitness on a form provided by the Committee along with a fee of \$200.00.

**W. SCR 2.080 BAR EXAMINATIONS**

SCR 2.080 shall read:

- (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) Contracts
  - (d) Constitutional Law
  - (e) Business Entities (corporations, partnerships and/or others)
  - (f) Criminal Law and Procedure
  - (g) Civil Procedure
  - (h) Domestic Relations
  - (i) Property (real and/or personal)
  - (j) Federal Taxation
  - (k) Torts
  - (l) Uniform Commercial Code (sales, secured transactions and/or negotiable instruments)
  - (m) Estates (wills and/or trusts)
  - (n) Evidence
  - (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.

- (2) The Board may cover the subject matter in any manner that it sees fit, including or not including the multi-state essay examinations, multi-state performance examinations and/or multi-state Bar examinations.
- (3) The Board of Bar Examiners shall, thirty (30) days before each examination, report to the Supreme Court the method by which the examination shall be administered.
- (4) An applicant must pass both the essay and Multistate (MBE) portions of the examination. 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. 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 retaking that portion of the examination. An applicant who has taken the Multistate (MBE) examination in another jurisdiction within three years of the date of the failed 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.
- (5) The Board of Bar Examiners at the beginning of the first session shall give each applicant a numbered envelope. The applicant shall write his/her name upon

a slip of paper, seal the name in the envelope and return the envelope to the Secretary of the Board. All papers will then be signed by the applicant only with the number upon his/her envelope. When the applicant has completed answering the questions on any given subject, he/she shall deposit his/her written answers thereto with the Secretary of the Board.

- (6) The papers containing the questions and written answers given by applicants will be preserved by the Secretary of the Board for a period of one year from the time that the application for admission has passed upon by the Supreme Court, and longer if so ordered by the Court.
- (7) Upon recommendation of the Board of Bar Examiners, the Supreme Court may appoint qualified members of the bar, to be known as Bar Examination Graders, to assist the Examiners in the grading of examination papers. Persons so appointed shall hold those positions for terms of one year and until the appointment of their successors.

**X. SCR 2.082 NON STANDARD TEST ACCOMMODATIONS**

SCR 2.082 shall read:

- (1) The bar examination shall be administered by the Bar Examining authority to all eligible applicants in a manner that is fair and equitable.
- (2) An applicant with a disability, who is eligible to take the bar examination, may file an application for reasonable non standard test accommodations. For the purpose of this rule disability shall be defined as a physical or mental impairment that; (a) substantially limits one or more major life activities, (b) substantially limits the ability of an applicant to demonstrate, under standard test conditions, the skills, abilities and knowledge tested on the Kentucky bar examination, (c) this applicant has a record of having, or (d) this applicant is regarded as having.

- (3) An Application for Non Standard Test Accommodations shall be submitted on a form approved by the Board. The application forms may be obtained from the Kentucky Office of Bar Admissions.
- (4) Individuals requesting non standard test accommodations shall submit a complete Application for Non Standard Test Accommodations, including all required supporting documentation by the filing deadlines prescribed in SCR 2.022(1).
- (5) The Bar Examining authority shall make reasonable modification in the manner in which the examination is administered to an applicant with a disability whose application for non standard test accommodations has been approved by the Board, while maintaining the security and integrity of the examination.
- (6) An emergency request for non standard accommodations may be filed after the prescribed deadlines stated above if the applicant did not have the disability at the time of filing the application to take the bar examination. Due to processing complexities, an emergency request may not be granted if; a) time constraints preclude the applicant from being able to provide necessary justification for the accommodations sought, or b) there is insufficient time for the bar examining authority to properly evaluate the applicant's request or make the necessary arrangements for the non-standard test accommodations.

**Y. SCR 2.085 APPROVAL OF CERTIFICATE OF ADMISSION TO PRACTICE LAW**

SCR 2.085 shall read:

- (1) When an applicant has passed an examination as provided by Rule 2.080, the Board of Bar Examiners shall certify that fact to the Supreme Court together with a recommendation that the applicant be admitted to practice law. The Court may approve or disapprove the recommendations and, if

approved, shall authorize the Clerk of the Court to issue a certificate of admission.

- (2) When the Character and Fitness Committee determines that an applicant is eligible for admission to the Kentucky Bar without examination, the Committee's recommendation as provided for in Rule 2.040(6) shall be certified to the Supreme Court, and the recommendation for admission to the practice of law shall be considered as set forth in paragraph (1) of this rule.
- (3) When the Supreme Court has granted approval for the issuance of a certificate of admission based upon the recommendation submitted under paragraph (1) or (2), the applicant must be admitted to the Kentucky Bar within two years of said date. If an applicant fails to be admitted within the two-year period, the applicant must make new application for admission.

**Z. SCR 2.090 BAR EXAMINATIONS**

Deletion of current rule SCR 2.090.

**AA. SCR 2.091 SPECIAL TESTING ACCOMMODATION**

Deletion of current rule SCR 2.091.

**BB. SCR 2.095 APPROVAL OF CERTIFICATE OF ADMISSION TO PRACTICE LAW**

Deletion of current rule SCR 2.095.

**CC. SCR 2.100 REQUIREMENT OF ADMISSION TO PRACTICE LAW; PREREQUISITES**

Deletion of current rule SCR 2.100.

**DD. SCR 2.110 ADMISSION WITHOUT EXAMINATION**

SCR 2.110 shall read:

- (1) Any person who has been admitted to the highest Court of the District of Columbia or some sister state and who has been engaged in the active practice of law, in a state or jurisdiction which has reciprocity or comity with Kentucky, for five of the seven years next preceding the filing of an application may be admitted to the bar of this state without examination provided the applicant meets all requirements for admission to the bar under these Rules. Active engagement in the teaching of the law shall be considered active engagement in the practice of law.
- (2) An attorney applying for admission under this Rule shall file with the Clerk of the Supreme Court, on the form provided for application for admission, such information as shall be requested thereon accompanied by a fee of twelve hundred dollars (\$1200), no part of which shall be refunded. The Clerk shall forward the application to the Character and Fitness Committee. 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.
- (3) Admission under this Rule shall be conditioned on the applicant establishing that the district or state from which the applicant applies and in which the applicant performs the major portion of his professional activities has rules or other provisions providing for admission without examination and by reciprocity or comity which are at least equivalent to this Rule 2.110 and all other pertinent rules of this jurisdiction.

**EE. SCR 2.111 LIMITED CERTIFICATE OF ADMISSION TO PRACTICE LAW**

SCR 2.111 shall read:

- (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 Clerk of the Supreme Court on a form provided, an application for limited certificate of admission to practice law in this Commonwealth. The Clerk shall forward the application to the Character and Fitness Committee. Such application shall be approved and 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 prerequisites 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.
  - (b) The attorney applying for limited certificate of admission to practice law shall sign a sworn statement certifying to the Court that:
    - (i) He/she has completed the study of law in an accredited law school;
    - (ii) He/she has been admitted to practice in the highest Court of another state or the District of Columbia;
    - (iii) He/she is presently in good standing at the Bar of such Court, or such state;
    - (iv) He/she will perform legal services in this Commonwealth solely for his employer, its parent, subsidiary, or affiliated entities.
  - (c) A statement signed by a representative of such applicant's employer stating that such applicant is an employee for such employer, and performs legal services in this Commonwealth for such employer, its parent,

subsidiary, or affiliated entities, shall be filed with the application.

- (2) Such applicant shall pay to the Clerk, at the time of submission of such application a fee of one thousand dollars (\$1,000) and shall tender to the Clerk for transmittal to the Kentucky Bar Association payment of the current annual dues or fees of the Kentucky Bar Association authorized under SCR 3.040.
- (3) Upon granting of such limited certificate of admission to practice law, such applicant shall be and shall remain, during the period the limited certificate of admission to practice law remains in effect, an active member of the Kentucky Bar Association, subject to all duties and obligations of members admitted under SCR 2.110 or SCR 2.120.
- (4) The only restrictions and limitations applicable to such membership in the Kentucky Bar Association and to such attorney's right to practice in this Commonwealth shall be:
  - (a) Such attorney shall perform legal services in this Commonwealth solely for his employer, its parent, subsidiary, or affiliated entities, and shall not provide legal services in this Commonwealth, to any other individual or entity.
  - (b) Such attorney shall not appear as attorney of record for his employer, its parent, subsidiary or affiliated entities, in any case or matter pending before the Courts of this Commonwealth, without first engaging a member of the Association, admitted under SCR 2.120 or SCR 2.110, as co-counsel, whose presence shall be necessary, when required by the Court, at all trials or other times specified by the Court. Nothing herein shall prevent such attorney from appearing on his own behalf or representing himself in any case or matter to which he is a party, or appearing in the Small Claims Division of the District Court as otherwise provided in Rule 3.020.

- (5) The performance of legal services in this Commonwealth solely for such attorney's employer, its parent, subsidiary, or affiliated entities, shall be considered to be the active engagement in the practice of law for all purposes. The past performance by such applicant of legal services in this Commonwealth solely for his employer, its parent, subsidiary, or affiliated entities, shall be deemed, for all purposes, to have been the authorized active engagement in the practice of law in this Commonwealth, if such attorney, at the time of the performance of such legal services met the requirements set forth in Sections 1(b)(i), 1(b)(ii), and 1(b)(iii) of this Rule.
- (6) The limited certificate of admission to practice law in this Commonwealth shall expire if such attorney is granted a certificate of admission to practice, or is admitted to the Bar of this Commonwealth under any other rule of this Court, or if such attorney ceases to be an employee for the employer or its parent, subsidiary, or affiliated entities, listed on such attorney's application, whichever shall first occur; *provided, however,* that if such attorney, within thirty days of ceasing to be an employee for the employer or its parent, subsidiary, or affiliated entities listed on such attorney's application, becomes employed by another employer for which such attorney shall solely perform legal services, such attorney may maintain his admission under this Rule by promptly filing with the Clerk of the Supreme Court a statement to such effect, stating the date on which his prior employment ceased and his new employment commenced, identifying his new employer and reaffirming that he shall not provide legal services, in this Commonwealth, to any other individual or entity. In the event that the employment of an attorney admitted under this rule shall cease with no subsequent employment by a successor employer within thirty days, such attorney shall promptly file with the Clerk of the Supreme Court a statement to such effect, stating the date that such employment ceased.
- (7) Except as specifically limited herein, the rules,

rights and privileges governing the practice of law shall be applicable to an attorney admitted under this Rule.

**FF. SCR 2.112 ATTORNEY PARTICIPANTS IN DEFENDER OR LEGAL SERVICES PROGRAMS**

SCR 2.112 shall read:

- (a) **Scope.** This rule applies to an attorney who is not a member of the Bar of this Commonwealth but who, after having completed the study of law in a law school approved by the American Bar Association or by the Association of American Law Schools and having been admitted to practice in the highest Court of another state, wishes to become an employee of an organized public defender program or an organized legal services program in this Commonwealth providing legal assistance to indigent persons.
  
- (b) **General Rule.** An attorney to whom this rule applies shall be admitted to practice before the Courts of this Commonwealth in all matters in which the attorney is associated with an organized public defender program or an organized legal services program which program is sponsored, approved or recognized by the Kentucky Bar Association. Admission to practice under this rule shall be limited to the matters specified in the preceding sentence. An application for admission to practice under this rule shall include or be accompanied by:
  - (1) A certificate of the highest Court or agency of any other state having jurisdiction over admission to the bar and the practice of law stating that the applicant is in good standing at the bar of such Court or in such state.
  
  - (2) A statement signed by a representative

of an organized public defender program showing compliance with paragraph (a) of this rule. Any such statement shall also contain an undertaking by the program to notify the Clerk of the Supreme Court immediately whenever the attorney ceases to be an employee of such program.

(3) Such other affidavits or materials as shall be deemed necessary by the Character and Fitness Committee in order to satisfy the Committee of the applicant's moral character and fitness to practice before the Courts of this Commonwealth.

(4) Payment of a fee of one hundred dollars (\$100.00) made payable to the Clerk of the Supreme Court (cashier's or certified check or money order).

(c) **Subscription and Action.** The application for admission shall be subscribed to by a member of the bar of this Commonwealth in good standing. If the application and related documents are in proper order and if the Character and Fitness Committee finds that the applicant has the moral character and fitness to practice before the Courts of this Commonwealth, the Clerk of the Supreme Court shall enter the name of the applicant upon the docket of persons specially admitted to the bar of this Commonwealth subject to the restrictions of this rule and shall issue an appropriate certificate in evidence thereof.

(d) **Expiration of Admission.** When an attorney admitted under this rule ceases to be associated in a program as set forth in the motion previously filed, a written statement to that effect shall be filed with the Clerk

of the Supreme Court by a representative of the public defender program or legal services program. Admission to practice under this rule shall expire after eighteen months, or when the attorney ceases to be an employee of the program, whichever shall first occur.

- (e) **Rules Governing the Practice of Law.** Except for Rules 2.110 and 3.030(2), the Rules governing the practice of law shall be applicable to an attorney admitted under this rule.

**GG. SCR 2.115 QUALIFICATION, COMPENSATION, EXPENSES, AND ASSISTANTS OF BOARD OF BAR EXAMINERS AND COMMITTEE ON CHARACTER AND FITNESS**

Deletion of current rule SCR 2.115.

**HH. SCR 2.120 CERTIFICATE OF ADMISSION TO PRACTICE LAW**

SCR 2.120 shall read:

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

**II. SCR 3.030(4) MEMBERSHIP, PRACTICE BY NONMEMBERS AND CLASSES OF MEMBERSHIP**

A new section (4) of SCR 3.030 shall read:

(4) A new class of membership is established to be known as "Senior Retired Inactive Member." Any member who reaches the age of 70 years and no longer is actively practicing law and who has met the necessary CLE requirements for inactive status pursuant to SCR 3.666(2), shall upon notification to the Executive Director be classified as Senior Retired Inactive and shall not be required to pay annual dues.

**JJ. SCR 3.040(3) DUES: DATE OF PAYMENT AND AMOUNT**

New section (3) of SCR 3.040 shall read:

(3) The class of membership designated Senior Retired Inactive Member, established by the Supreme Court in SCR 3.030, shall not be required to pay annual dues.

**KK. SCR 3.110 THE HOUSE; FUNCTIONS, MEMBERSHIP, TERMS AND VACANCIES**

SCR 3.110 shall read:

The house of delegates shall consist of a number of representatives of each judicial district equal to the number of circuit judges presiding therein. The members shall advise with the board; coordinate programs of the association calculated to improve the administration of justice; and perform such other functions and duties as may be delegated to it by the board. They shall be elected for terms of two years and no member of the house who has served three consecutive full terms after July 1, 1971, shall be eligible to again serve without at least one term of said office intervening. Officers of the house shall be selected from and by its own membership; and vacancies shall be filled in such a manner as the by-laws provide. The limitation of three (3) consecutive two (2) year terms does not apply to officers of the house; however, members of the house who have served six (6) or more consecutive years, including terms as an

officer of the house, shall not be eligible to serve again without an intervening term. Each past president shall be a member of the house unless he/she is a member of the board of governors or serving as a member of the inquiry commission in which event he/she shall not, during that period, be a member of the house.

**LL. INFORMATION ABOUT LEGAL SERVICES**

**1. SCR 3.130(7.01) APPLICABILITY**

SCR 3.130(7.01) shall read:

Rule 7 shall apply to advertisements of legal services directed to residents of the Commonwealth of Kentucky or which originate in the Commonwealth of Kentucky.

**2. SCR 3.130(7.02) DEFINITIONS**

SCR 3.130(7.02) shall read:

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

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

(a) A professional card of a lawyer identifying the lawyer by name and giving the lawyer's address(es), telephone number(s), fax number(s), e-mail address(es), but no other information. A professional card of a law firm may also give the names of members and associates, and jurisdictions in which the lawyers are licensed to practice.

(b) A public service broadcast announcement identifying the sponsor as a lawyer or law firm, by name, address(es), telephone number(s), but no other information.

(c) A professional announcement stating new or changed associations or addresses or change of firm name. It shall not

state biographical data except to the extent necessary to identify the lawyer or to explain the change in his or her association, but it may state the immediate past position of the lawyer and jurisdictions in which the lawyer is licensed to practice. It may give the names and dates of predecessor firms in a continuing line of succession.

(d) A regularly published professional directory. Each separate office maintained by a lawyer may have a separate listing.

(e) A sign on or near the law office and in the building directory identifying the law office and containing only the information specified in subsection (a) of this section.

(f) A letterhead of a lawyer containing addresses, telephone numbers, fax numbers, e-mail addresses, the name of the law firm, associates, and the jurisdictions in which the lawyer is licensed to practice. A letterhead of a law firm may also give the names of members and associates, and names and dates relating to deceased and retired members. A lawyer may be designated "Of Counsel" on a letterhead if there is a continuing relationship with a lawyer or law firm, other than as a partner or associate. A lawyer or law firm may be designated "General Counsel" or by similar professional reference on stationery of a client if the lawyer or the firm devotes a substantial amount of professional time in the representation of that client. The letterhead of a law firm may give the names and dates of predecessor firms in a continuing line of succession.

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

(h) Communication to, for or on behalf of an existing client shall not be included within the definition herein. It is not the intention of the Rules to designate such communications performed in the regular course of representation of an existing client as advertising.

(i) The inclusion of any truthful information

pertaining to national certification by an organization qualifying under *Peel v. Attorney Registration and Disciplinary Commission of Illinois*, 110 S.Ct. 2281 (1990), shall not disqualify a communication otherwise exempt under these Rules.

(2) "Legal Services" means the practice of law as defined in SCR 3.020.

(3) "Commission" when used in SCR 3.130(7) means Attorneys' Advertising Commission.

### **3. SCR 3.130(7.03) ATTORNEYS' ADVERTISING COMMISSION**

SCR 3.130(7.03) shall read:

(1) There shall be created an Attorneys' Advertising Commission which shall perform such functions in regulating lawyer advertising as prescribed in these Rules.

(2) The Commission shall consist of three (3) persons appointed by the President and approved by the Board. Each Commission member shall be appointed for a term of three years, with terms so established that the term of one Commission member shall expire each year. Vacancies for unexpired terms shall be filled in the same manner as original appointees, but the appointees shall hold office only to the end of the unexpired term. No member may serve more than two (2) terms in succession, and may be removed at any time by a majority vote of the Board.

(3) Each Commission member shall be a citizen of the United States and licensed to practice law in the Courts of the Commonwealth.

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

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

(a) Issue and promulgate regulations and such forms as

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

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

(c) Delegate to an employee of the KBA designated by the Director of the Kentucky Bar Association the authority to approve advertisements on its behalf submitted pursuant to Rule 7.05(2).

(d) Hold hearings, conduct investigations, subpoena witnesses and documents and administer oaths 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 these Rules and resolve the violations under Rule 7.06(4).

(6) 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.

(7) A quorum to do business in meetings of the Commission shall consist of not fewer than two (2) of its members in attendance; provided, however, that one member, or a hearing officer appointed by the Commission, may conduct hearings and in an emergency where a quorum is unavailable one member may issue a notice of proposed disapproval under Rule 7.06.

#### **4. SCR 3.130(7.04) ADVERTISING OF FEES**

SCR 3.130(7.04) shall read:

(1) A lawyer who advertises a fee for routine services and accepts the employment must perform such services for the amount advertised. In addition, a detailed description of what services are included in the "routine services" must be supplied to the

Commission with each advertisement and to each prospective client who requests such a description. If the client is required to pay court costs and/or case expenses in addition to the attorney's fee, the advertisement shall state in all capital letters, "COURT COSTS AND CASE EXPENSES WILL BE THE RESPONSIBILITY OF THE CLIENT."

(2) No advertisement shall describe a fee or fees as "reasonable."

#### **5. SCR 3.130(7.05) APPROVAL OF ADVERTISEMENTS**

SCR 3.130(7.05) shall read:

No lawyer may advertise unless the lawyer complies with either SCR 3.130, Rule 7.05 (1) or (2).

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

1. Name, including name of law firm and names of professional associates, addresses, telephone numbers, fax numbers and e-mail addresses;
2. One or more fields of law in which the lawyer or law firm practices, or a statement that practice is limited to one or more fields of law, to the extent authorized under Rule 7.40;
3. Date and place of birth;
4. Date and place of admission to the bar of state and federal courts;
5. Schools attended, with dates of graduation, degrees and other scholastic distinctions;
6. Public or quasi-public offices;
7. Military services;
8. Authorships;

9. Teaching positions;
10. Memberships, offices and committee assignments, in bar associations;
11. Membership and offices in legal fraternities and legal societies;
12. Technical and professional licenses;
13. Memberships in scientific, technical and professional associations and societies;
14. Foreign language ability;
15. Names and addresses of bank references;
16. With their written consent, names of clients regularly represented;
17. Prepaid or group legal services programs in which the lawyer participates;
18. Whether credit cards or other credit arrangements are accepted;
19. Office and telephone answering service hours;
20. Fee for an initial consultation;
21. Availability upon request of a written schedule of fees and/or an estimate of the fee to be charged for specific services;
22. Contingent fee rates provided that the statement discloses whether percentages are computed before or after deduction of court costs and case expenses;
23. Range of fees for services, provided that the statement discloses that the specific fee within the range which will be charged will vary

depending upon the particular matter to be handled for each client and the client is entitled without obligation to an estimate of the fee within the range likely to be charged, in print size equivalent to the largest print used in setting forth the fee information;

24. Hourly rate, provided that the statement discloses that the total fee charged will depend upon the number of hours which must be devoted to the particular matter to be handled for each client and the client is entitled to without obligation an estimate of the fee likely to be charged, in print size at least equivalent to the largest print used in setting forth the fee information;
25. Fixed fees for specific legal services to the extent authorized under these Rules; or
26. Any other information specified in any regulation adopted by the Commission. Any lawyer may petition the Commission for the adoption of such a regulation in which case the petition shall be published as provided in these Rules.

(b) Simultaneously with the publication of any advertisement under this subsection, the lawyer shall mail to the Commission, c/o the Director of the Kentucky Bar Association, three (3) copies of the advertisement, or if by radio or television, a fair and accurate representation of the advertisement plus three (3) copies of a typed transcript of the words spoken. Any advertisement mailed or delivered to an individual addressee or addressees, shall be mailed to the Commission. A list of all persons or firms or groups to whom the advertisement has been sent shall be maintained in the principal office in Kentucky of the advertising lawyer or firm for a period of two (2) years and shall be made available for inspection by authorized representatives of the Commission at any reasonable time.

(2) Three (3) copies of a fair and accurate representation of any advertisement that does not qualify under Rule 7.05(1) shall be delivered to the Commission, c/o the Director, at the

Director's office, during normal office hours on a work day, no fewer than thirty (30) days before such advertisement is used. The fair and accurate representation of a broadcast media advertisement shall include appropriate video cassette or audio cassette copies along with a typed transcript of the advertisement. A filing fee of \$50.00 for each advertisement filed under this subsection shall accompany each filing and the thirty (30) day period in which the Commission must respond shall not begin until the filing fee has been received by the Commission c/o the Director at the Director's office. In the event the Commission or any member thereof, or their designee, does not issue a notice of proposed disapproval under Rule 7.06 by the end of the 30th day following receipt of such advertisement and filing fee, the advertisement shall be deemed approved. No approval so obtained shall constitute a defense against charges made under this Rule or any other Rule if the advertisement shall be subsequently determined to contain false, misleading, or deceptive information.

(3) An advertisement which has been approved may be used so long as it contains no false, misleading or deceptive information, provided there is no change in these rules which causes the advertisement not to comply therewith, and provided there is no withdrawal of approval pursuant to Rule 7.06(3).

## **6. SCR 3.130(7.06) DISAPPROVAL OF ADVERTISEMENTS**

SCR 3.130(7.06) shall read:

(1) In the event the Commission finds that there are reasonable grounds to believe that an advertisement, other than an advertisement which has previously been approved, and which approval has not been withdrawn, or has previously been deemed approved under Rule 7.05(2), does not comply with the requirements of this Rule, it or its designee shall immediately issue a notice in writing of proposed disapproval setting forth the factual and legal basis for the proposed disapproval. In the notice of proposed disapproval, an opportunity shall be provided for a hearing before one or more of its members or a hearing officer appointed by the Commission and for the filing of a brief. After consideration of any information submitted to it, the Commission shall issue its final decision in writing within

60 days. It shall be the duty of the Commission to seek informal resolution prior to issuing a formal decision. In arriving at such decision, the Commission shall consider modification of the advertisement or the disapproval decision.

(2) In the event the Commission has issued a notice of proposed disapproval and has further determined that the publication of the advertisement may be contrary to the public interest, it or its designee shall notify the lawyer whose advertisement is under consideration and the Director of the Association. The Director may upon receiving such notification bring an action in compliance with this Rule.

(3) If an advertisement is subsequently discovered to be false, misleading or deceptive, the Commission or its designee may notify the advertising lawyer and all prior approval of such advertisement shall be deemed not to apply to subsequent use thereof.

(4) If the Commission determines that any advertisement either fails to meet the requirements of Rule 7.05(1) or has not been approved under Rule 7.05(2) the Commission shall make a determination whether the violation can be dealt with administratively, or can be presumed to be intentional. The Commission may deal with administrative violations. Intentional violations are those which represent (1) failure to follow these Rules, (2) a manifest indifference to these Rules or (3) a pattern of repeated disregard for these Rules. Intentional violations shall be referred to the Inquiry Commission.

#### **7. SCR 3.130(7.07) APPEAL**

SCR 3.130(7.07) shall read:

(1) Any person aggrieved by a notice of proposed disapproval or final decision of the Commission pursuant to Rule 7.06 may appeal to the Board by filing with the Director a notice of review accompanied by a supporting brief on the merits of the case within thirty (30) days after the date of the notice of disapproval or final decision. Filing shall be made either by deposit in the United States mail, postage prepaid, or by delivery, to the Office of the Director. The Director may file a

brief within thirty (30) days thereafter in support of the Commission's decision. Review by the Board shall be on the record of the Commission, and shall be decided at the Board's next meeting after receipt of all briefs, and the decision shall be rendered within thirty (30) days thereafter.

(2) Any person aggrieved by a decision of the Board may file a notice of review with the Clerk of the Supreme Court within thirty (30) days after the Board's decision is rendered, stating reasons for review accompanied by a supporting brief on the merits of the case. The matter shall proceed as an original action and copies of all papers shall be served pursuant to Civil Rule 5. The Director may file a brief within thirty (30) days thereafter in support of the Board's decision. Thereafter, the Court shall enter such orders or opinions as it deems appropriate on the entire record.

(3) The standard of review on all appeals shall be that the decision of the Commission shall be affirmed unless the Commission has erred as a matter of law, has made clearly erroneous findings on issues of material fact, or has exercised its discretion in an arbitrary or capricious manner.

**8. SCR 3.130(7.08) OPEN RECORDS**

SCR 3.130(7.08) shall read:

The records of the Commission shall be available for inspection and copying at the offices of the Bar Association at reasonable times and upon reasonable notice. Any expense incurred shall be borne by the requesting party.

**9. SCR 3.130(7.09) DIRECT CONTACT WITH PROSPECTIVE CLIENTS**

SCR 3.130(7.09) shall read:

(1) No lawyer directly or indirectly through another person shall, in-person or by live telephone, initiate contact or solicit professional employment from a prospective client with whom the lawyer has no family or direct prior professional

relationship. This Rule shall not be interpreted to prevent discussions of employment arising out of personal appearances at lectures and seminars by a lawyer which result in inquiries from prospective clients or inquiries initiated by persons who may become prospective clients at the time of any other incidental contact not designed or intended by the lawyer to solicit employment.

(2) A lawyer shall not solicit professional employment from a prospective client even when not otherwise prohibited by paragraph (1) if:

(a) The prospective client has made known to the lawyer a desire not to be solicited by the lawyer; or

(b) The solicitation involves coercion, duress or harassment.

(3) Every written, recorded or electronic communication from a lawyer soliciting professional employment from a prospective client known or reasonably believed to be in need of legal services in a particular matter, and with whom the lawyer has no family or prior professional relationship, shall conform to Rule 7.15. In addition, each written, recorded or electronic communication must contain the words "THIS IS AN ADVERTISEMENT" in all capital letters and prominently displayed in type at least as large as the type in the body of the communication. Further, in written, recorded or electronic communications, the envelope, document or electronic device in which such communication is transmitted shall contain the word "ADVERTISEMENT" in all capital letters, and in type at least as large as the name of the addressee on the same side of the envelope, document or electronic communication upon which the lawyer's name and/or address appears. In the event of recorded telephone or radio communication, the speaker must first state the language "THE FOLLOWING IS AN ADVERTISEMENT" and shall further state at the end of the communication the language "THIS RECORDED TELEPHONE CALL/RADIO ANNOUNCEMENT HAS BEEN AN ADVERTISEMENT."

(4) Any communication pursuant to Rule 7.09(3) shall be sent to those prospective clients who have been involved in a disaster as defined in SCR 3.130(7.60) Article III (1) only after thirty (30) days have elapsed from the occurrence of the

disaster.

**10. SCR 3.130(7.10) WAIVER AND FORFEITURE OF FEES FOR  
PROHIBITED SOLICITATION**

SCR 3.130(7.10) shall read:

If a lawyer illegally or unethically solicited a client for which compensation is paid or payable, all fees arising from such transaction shall be deemed waived and forfeited and shall be returned to the client. A civil action for recovery of such fees may be brought in a court of competent jurisdiction.

**11. SCR 3.130(7.15) COMMUNICATIONS CONCERNING  
A LAWYER'S SERVICE**

SCR 3.130(7.15) shall read:

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

- (a) Contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading; or
- (b) Is likely to create an unjustified expectation about results the lawyer can achieve, or states or implies that the lawyer can achieve results by means that violate the rules of professional conduct or other law; or
- (c) Compares the lawyer's services with other lawyers' services, unless the comparison can be factually substantiated.

(2) No approval of an advertisement obtained under Rule 7.05 shall constitute a defense to charges brought under this Rule if the advertisement is used after it subsequently is found

to have violated this Rule.

#### **COMMENTARY**

##### **Supreme Court**

**1989:** This Rule governs all communications about a lawyer's services, including advertising permitted by Rule 7.2. Whatever means are used to make known a lawyer's services, statements about them should be truthful. The prohibition in paragraph (b) of statements that may create "unjustified expectations" would ordinarily preclude advertisements about results obtained on behalf of a client, such as the amount of a damage award or the lawyer's record in obtaining favorable verdicts, and advertisements containing client endorsements. Such information may create the unjustified expectation that similar results can be obtained for others without reference to the specific factual and legal circumstances. (Commentary from former SCR 3.130(7.1).)

#### **12. SCR 3.130(7.20) ADVERTISING**

SCR 3.130(7.20) shall read:

(1) A lawyer may advertise legal services through communications in compliance with these Rules.

(2) A lawyer shall not give anything of value to a non-lawyer for recommending the lawyer's services, except that a lawyer may pay the reasonable cost of advertising or communication permitted by this Rule.

(3) Any communication made pursuant to these Rules shall include the name of at least one lawyer licensed in Kentucky, or law firm any of whose members are licensed in Kentucky, responsible for its contents.

(4) Communication by a lawyer with a person or entity with whom that lawyer has a family or prior professional relationship or in response to an inquiry from any person or entity seeking information, shall be exempt from the provisions of these Rules, with the exception of Rule 7.15.

(5) If a lawyer or a law firm advertises legal services and a lawyer's name or image is used to present the advertisement, the lawyer must be the lawyer who will actually perform the service advertised unless the advertisement prominently discloses that the service may be performed by other lawyers.

#### **COMMENTARY**

##### **Supreme Court**

**1989:** [1] To assist the public in obtaining legal services, lawyers should be allowed to make known their services not only through reputation but also through organized information campaigns in the form of advertising. Advertising involves an active quest for clients, contrary to the tradition that a lawyer should not seek clientele. However, the public's need to know about legal services can be fulfilled in part through advertising. This need is particularly acute in the case of persons of moderate means who have not made extensive use of legal services. The interest in expanding public information about legal services ought to prevail over considerations of tradition. Nevertheless, advertising by lawyers entails the risk of practices that are misleading or overreaching.

[2] This Rule permits public dissemination of information consistent with SCR 3.135.

[3] Neither this Rule nor Rule 7.3 prohibits communications authorized by law, such as notice to members of a class in class action litigation.

##### **Paying Others to Recommend a Lawyer**

[4] A lawyer is allowed to pay for advertising permitted by this Rule, but otherwise is not permitted to pay another person for channeling professional work. This restriction does not prevent an organization or person other than the lawyer from advertising or recommending the lawyer's services. Thus, a legal aid agency or prepaid legal services plan may pay to advertise legal services provided under its auspices. Likewise, a lawyer may participate in not-for-profit lawyer referral programs and pay the usual fees charged by such programs. Paragraph (b) does not prohibit paying regular compensation to an assistant, such as a secretary, to prepare communications permitted by this Rule. (Commentary from former SCR 3.130(7.2).)

**13. SCR 3.130(7.25) IDENTIFICATION OF ADVERTISEMENTS**

SCR 3.130(7.25) shall read:

The Commission may require the statement "THIS IS AN ADVERTISEMENT" for any advertisement that may not be perceived as a quest for clients because of the format, manner of presentation or medium. If the statement is required, it shall be spoken in all audio advertisements at the end thereof and in all other advertisements, shall be in color and size print equal to the lawyer's or firm name and visually present for as long as the lawyer's or firm's name.

**14. SCR 3.130(7.30) DIRECT CONTACT WITH PROSPECTIVE CLIENT**

Deletion of current rule SCR 3.130(7.30)

**15. SCR 3.130(7.40)(1) COMMUNICATION OF FIELDS OF PRACTICE**

SCR 3.130(7.40)(1) shall read:

A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law. A lawyer who concentrates in, limits his or her practice to, or wishes to announce a willingness to accept cases in a particular field may so advertise or publicly state in any manner otherwise permitted by these Rules. Any such advertisement or statement shall be strictly factual and shall not contain any form of the words "certified", "specialist", "expert", or "authority." A lawyer shall not state or imply that the lawyer is a specialist except as follows:

(1) A lawyer admitted to engage in patent practice before the United States Patent and Trademark Office may use the designation "Patent Lawyer" or a substantially similar designation.

(2) A lawyer certified by an appropriate governmental agency in admiralty practice may use the designation "Admiralty", "Proctor in Admiralty", or a substantially similar designation.

(3) A lawyer may communicate the fact that he or she has achieved a national certificate by an organization qualifying under *Peel v. Attorney Registration and Disciplinary Commission of Illinois*, 110 S.Ct. 2281 (1990), by clearly identifying the certification and the organization that has conferred the distinction, and such communication may occur only for so long as the lawyer remains so certified and in good standing with the organization.

#### COMMENTARY

##### Supreme Court

**2001:** [1] This Rule permits a lawyer to indicate areas of practice in communications about the lawyer's services, for example, in a telephone directory or other advertising. If a lawyer practices only in certain fields, or will not accept matters except in such fields, the lawyer is permitted so to indicate. However, stating that the lawyer is a "specialist" is not permitted. Use of that term may be misleading unless the lawyer is certified or recognized in accordance with procedures in the state where the lawyer is licensed to practice.

[2] Recognition of specialization in patent matters is a matter of long-established policy of the Patent and Trademark Office. Designation of admiralty practice has a long historical tradition associated with maritime commerce and the federal courts. (Commentary from former SCR 3.130(7.4).)

#### 16. SCR 3.130(7.50) FIRM NAMES AND LETTERHEADS

SCR 3.130 shall read:

(1) A lawyer shall not use a firm name, letterhead or other professional designation that violates Rule 7.15.

(2) A law firm with offices in more than one jurisdiction may use the same name in each jurisdiction, but identification of the lawyers in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.

(3) The name of a lawyer holding a public office shall not be used in the name of a law firm, or in communications on its behalf, during any period in which the lawyer is not actively and regularly practicing with the firm.

(4) Lawyers may state or imply that they practice in a legal entity only if that is the fact.

#### **COMMENTARY**

##### **Supreme Court**

**1989:** With regard to paragraph (d) [now (4)], lawyers sharing office facilities, but who are not in fact partners, may not denominate themselves as, for example, "Smith and Jones," for that title suggests partnership in the practice of law. (Commentary from former SCR 3.130(7.5).)

#### **MM. SCR 3.675 CONTINUING LEGAL EDUCATION REQUIREMENTS FOR RESTORATION OR REINSTATEMENT TO MEMBERSHIP: PROCEDURES**

SCR 3.675 shall read:

- (1) Every former member, applying for or otherwise seeking restoration or reinstatement to membership pursuant to Rules 3.500 or 3.510, shall be required to have completed the minimum annual continuing legal education requirement for each year during which he or she was not a member in good standing, including any year prior to disbarment, suspension or withdrawal under threat of disbarment or suspension, during which the minimum annual continuing legal education requirement was not fulfilled. Completion of such credits shall be certified to the Commission as a condition precedent to reinstatement or restoration. In no case shall a member be required to attend more than sixty-two and one-half (62.5) continuing legal education credits, including applicable ethics credits, as a condition precedent of restoration or reinstatement to membership.
- (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. Applications or affidavits of compliance submitted for restoration or reinstatement which do not include such certification shall be considered incomplete and shall not be processed.

- (3) A former member may receive credit for any timely certification of an approved activity. No credits shall be awarded for attendance at any program unless application is submitted to the Director during the educational year in which the program was attended or the two succeeding educational years. Credits so earned shall be applicable to requirements imposed by the Commission upon application or other actions undertaken in pursuit of restoration or reinstatement.
- (4) The Commission shall approve such applications if it appears that the former member has satisfied the requirements of this Rule.
- (5) Approval of the application or provision of a certification for an affidavit of compliance shall satisfy the requirement of the applicant under Rule 3.661 for the current educational year.
- (6) In the event that a new educational year begins after approval of the application or certification for an affidavit of compliance by the Commission, but prior to Supreme Court entry of an Order of Reinstatement or Restoration, or Registrar's certification of member's name to the active roster of membership the new year minimum continuing legal education requirement must be completed and the application updated before the reinstatement or restoration can proceed to the Board of Governors or to the Court, unless a maximum of sixty-two and one-half (62.5) credits has been completed.

**NN. SCR 8.060 COMMISSION MEETINGS AND QUORUM**

SCR 8.060 shall read:

The Commission will meet at least once an educational biennium before the end of the fiscal year and at such other times as called by the Chair. A quorum to do business in meetings of the Commission shall require the attendance of not less than seven members of the Commission. Commission actions relating to the accreditation of sponsors of courses, programs and other educational activities which will satisfy the educational requirements of this rule may be taken by mail, e-mail, telephone conference or other electronic means where not less than seven members of the Commission by such means vote on said actions.

## **II. AMENDMENTS TO THE RULES OF CIVIL PROCEDURE**

### **CR 76.25(4), (8) and (10) REVIEW OF WORKERS' COMPENSATION BOARD DECISIONS**

Sections (4), (8) and (10) of CR 76.25 shall read:

#### **(4) Petition.**

The petition shall designate the parties as appellant(s) and appellee(s) and shall contain the following:

(a) The name of each appellant and each appellee and the names and addresses of their respective counsel. The appellant shall specifically designate as appellees all adverse parties and the Workers' Compensation Board.

(b) The petition shall state the date of the entry of the decision by the administrative law judge and the date of entry of the final decision of the Workers' Compensation Board.

(c) Each petition shall begin with a table of points and authorities stating the issues to be raised. The petition shall contain a clear and concise statement of (i) the material facts, (ii) the questions of law involved, and (iii) the specific reason(s) why relief from the Board's decision should be granted by the Court of Appeals. The petition shall be prepared with the expectation that it will be the only pleading filed by the appellant in the appeal.

(d) Copies of the following documents shall be attached to the original and each copy of the petition filed in the Court of Appeals: (i) the decision of the administrative law judge, (ii) the final decision of the Workers' Compensation Board, and (iii) a set of the briefs filed with the Board by the appellant and each appellee. If review is sought of a decision on a motion to reopen, copies of the motion to reopen, any responses thereto, and decisions on that motion by the administrative law judge and the Board shall be attached.

(e) The petition shall clearly state whether there is or is not any other action concerning the injury pending before any other state or federal court or administrative body.

**(8) Service of Petition and Response.**

Before filing, a copy of the petition and any response shall be served on counsel of record, or on any party not represented by counsel, and on the Workers' Compensation Board. Such service shall be shown by certificate on the petition or response when filed in the Court of Appeals pursuant to CR 5.02 and CR 5.03. In any case in which the constitutionality of a statute is questioned, a copy of the petition and response shall be served on the Attorney General of the Commonwealth by the party challenging the validity of the statute. The Attorney General may file an entry of appearance within ten (10) days of the date of such service. If no entry of appearance is filed, no further pleadings need be served on the Attorney General.

**(10) Submission.**

The petition, any responses, cross-petitions, and the record shall be submitted to the Court of Appeals for review, and the matter shall proceed further as directed by order of the Court of Appeals. The court may order the filing of briefs under CR 76.12 or direct that the appeal be submitted for decision based only upon the petition and response.

### III. AMENDMENTS TO THE BY-LAWS OF THE KENTUCKY BAR ASSOCIATION

#### BY-LAWS OF THE KENTUCKY BAR ASSOCIATION

#### SECTION II. SECTIONS

Amendments to Section II shall read: Sections:

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

- (1) Business Law.
- (2) Criminal Law.
- (3) Family Law.
- (4) Civil Litigation.
- (5) Labor and Employment Law.
- (6) Probate and Trust Law.
- (7) Taxation.
- (8) Young Lawyers.
- (9) Public Interest Law.
- (10) Corporate House Counsel.
- (11) Natural Resources Law.
- (12) Local Government Law.
- (13) Workers' Compensation Law.
- (14) Real Property Law.
- (15) Bankruptcy Law.
- (16) Senior Lawyers.
- (17) Equine Law.
- (18) Education Law.
- (19) Construction and Public Contract Law.
- (20) Small Firm Practice.
- (21) Health Care Law.

(b) **ELIGIBILITY.** All members in good standing of the Kentucky Bar Association shall be eligible for membership in any one or more of the Sections of the Kentucky Bar Association and may become members by paying the respective dues as designated by each Section.

(c) **OFFICERS.** Officers for each Section shall include, but need not be limited to, a Chair, a Chair-Elect, and a Vice-Chair, who shall be elected for a term of one or two years, from and by its own membership present and voting at the required annual Section meeting, which shall take place during the annual meeting

of the Association. Each section shall specify the term of office in the Section by-laws which term may be of either one year or two years in duration. No individual may serve in any one of the required offices of the Section for a period of greater than two years. If a Section fails to fill the required offices at their annual meeting, the Board of Governors, following a petition from the Section, may appoint an interim officer to fill the remainder of the term.

(d) **DUES.** A majority of the members of the Section in attendance at the annual meeting of the Section may fix dues for the Section. The dues shall be paid to the Treasurer (of the KBA) and disbursed by the Treasurer for programs of each Section as approved by the Executive Director.

(e) **BY-LAWS.** Every Section shall have a set of by-laws, which shall include a Section mission statement, describing the purpose of their existence. A majority of the members of the Section in attendance of the annual meeting of the Section shall adopt the by-laws which shall be subject to the approval of the Board of Governors and the Supreme Court, pursuant to the provisions of SCR 3.090.

(f) **ANNUAL REPORT.** Each section shall annually file with the Board, on or before the annual meeting, a report of Section activities which shall outline the activities and expenditures of the Section for the current fiscal year ending June 30th.

(g) **FORECAST REPORT.** Every Section's incoming chair shall submit to the Board on or before the August 1st following their election as chair, an outline of the Section's proposed activities, expenditures and meetings for the ensuing fiscal year.

(h) **APPROVAL OF ACTIVITIES AND PROJECTS.** All Section programs projects, expenditures (excluding routine in-state travel in support of Section activities, programs or projects) and meetings shall be preapproved in writing by the Executive Director.

(i) **NEW SECTIONS.** A new Section of the Kentucky Bar Association may be created upon the Board's approval following the submission of an application and petition by a current

Kentucky Bar Association member, which shall include the following:

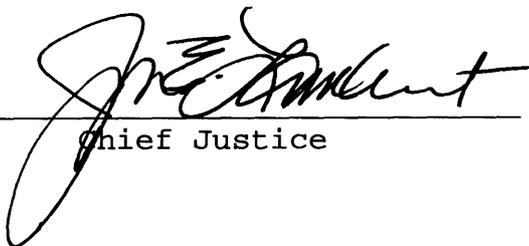
- (1) a description of the area(s) of practice the Section will cover;
- (2) statement of need and purpose;
- (3) signatures of a minimum of one hundred (100) current Kentucky Bar Association members who are interested in seeing the formation of the proposed Section.

Establishment of the Section shall become effective at the start of the following fiscal year following the Court's approval.

(j) **ABOLITION.** Upon notice by mail to all current members of a Section, the Board of Governors may abolish a Section, which would take effect at the end of the fiscal year in which notice was given.

All sitting. All concur, with the following exceptions: Johnstone and Keller, JJ., would have adopted the proposed amendments to SCR 3.651; Lambert, C.J., Graves and Keller, JJ., would have adopted the proposed amendments to SCR 2.014.

ENTERED: November 1, 2001.

  
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Chief Justice

# Supreme Court of Kentucky

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

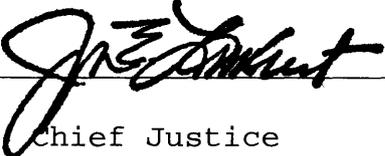
2001-2

ORDER CORRECTING

Order 2001-2 is hereby corrected to include the following deletions:

1. SCR 2.070 - Rule SCR 2.070 shall be deleted.
2. SCR 2.080(4) - The word "failed" in line 16 of the amended SCR 2.080(4) shall be deleted.

ENTERED: November 21, 2001.

  
Chief Justice