

RULES OF THE SUPREME COURT OF KENTUCKY

ADMISSION OF PERSONS TO PRACTICE LAW

SCR 2.300 Reinstatement of persons to practice law

Scope and Purpose of Reinstatement Guidelines.

The guidelines set forth in SCR 2.300 apply to applications for reinstatement filed by any person who has been suspended from the practice of law, who seeks reinstatement under the provisions of SCR 3.510, and whose application is referred by the Kentucky Bar Association to the Office of Bar Admissions, Character and Fitness Committee.

These guidelines have been formulated to govern the manner in which Reinstatement Applications are processed so that all parties, including the public at large, are insured that a systematic and thorough character and fitness investigation is conducted and applicants are assured that their applications are addressed in a timely and procedurally consistent manner.

(1) Initial Reinstatement Application Process:

(a) The initial forms necessary to apply for reinstatement may be obtained from the Kentucky Bar Association. Completed applications for reinstatement, along with the necessary fees, must be delivered, mailed to the Kentucky Bar Association in accordance with SCR 3.500 and SCR 3.510.

(b) Upon receipt of a complete application for reinstatement and payment of necessary fees by an applicant who has been suspended more than 180 days (and in some cases where the suspension has been less than 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.

(c) 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.

(d) 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.

(2) Investigative Process:

Upon receipt of a fully complete application the Character and Fitness Committee will immediately begin the necessary investigatory process, which may or may not involve the use of independent investigators. During this initial investigative period the applicant will be notified that he/she has sixty (60) days to obtain and submit any additional evidence he/she wants considered. The initial sixty (60) day period may be extended upon proper justification being submitted to the Committee in a written request by the applicant.

(3) Informal Hearings:

At the conclusion of the investigative period a member of the Character and Fitness Committee, or a designee appointed by the Committee, may elect to conduct an informal hearing in an effort to clarify or narrow issues. The informal hearing proceeding shall not be stenographically reported and sworn testimony shall not be taken.

The applicant shall be given written notice of the date, time and place of any informal hearing. Notice shall be given no less than fourteen days before the hearing. Failure of the Applicant to fully cooperate with and participate in the informal hearing process shall be a basis for an unfavorable recommendation regarding the application for readmission.

(4) Formal Hearings:

(a) At the conclusion of the investigative period, and following the informal hearing, if one is held, the applicant and Kentucky Bar Association Counsel will be given a right to request a formal hearing before the Committee pursuant to SCR 3.505(3). If a formal hearing is not requested, the Committee may elect to hold a hearing or act upon the evidence of record and issue a decision within sixty (60) days of the day the parties decline a formal hearing.

(b) If the applicant or Bar Counsel requests a formal hearing then such a hearing will be held within sixty (60) days of the request. Notice of the hearing date will be served on the parties not less than fourteen days before said 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 2.040(7) and will be paid by the applicant.

(c) The Character and Fitness Committee shall, at the hearing, inquire fully into all matters at issue, and shall not be bound by common law or statutory rules of evidence, or by technical or formal rules of procedure. The Committee shall receive into evidence the testimony of the witnesses and parties, the evidence of record, and such additional evidence as may be submitted. However, the Committee may entertain the objections of any party to the evidence submitted under this section.

(d) The conduct of the hearings and the order in which allegations and evidence shall be presented shall be within the discretion of the Character and Fitness Committee.

(5) Formal Recommendation:

Following the Formal Hearing if there are material factual disputes, the Character and Fitness Committee must resolve them by making findings of fact. Such findings of fact must be supported by the existence or absence of clear and convincing evidence. Such findings will be set forth in a formal recommendation. A formal recommendation will be issued within thirty (30) days of the date of receipt of the hearing transcript.

(6) Burden of Proof:

While the burden of proof in a disciplinary proceeding rests with the KBA, in reinstatement cases the applicant has the burden of proving by clear and convincing evidence that he/she possesses the requisite character, fitness and moral qualification for re-admission to the practice of law.

(SCR 3.330) Issues that will be considered include, but are not limited to, the following:

(a) Whether the applicant has presented clear and convincing evidence that he/she has complied with every term of the order of suspension or disbarment.

(b) Whether the applicant has presented clear and convincing evidence that his/her conduct while under suspension shows that he/she is worthy of the trust and confidence of the public.

(c) Whether the applicant has presented clear and convincing evidence that he/she possesses sufficient professional capabilities to serve the public as a lawyer.

(d) Whether the applicant has presented clear and convincing evidence that he/she presently exhibits good moral character.

(e) Whether the applicant has presented clear and convincing evidence that he/she appreciates the wrongfulness of his/her prior misconduct, that he/she has manifest contrition for his/her prior professional misconduct, and has rehabilitated himself/herself from past derelictions.

Failure to meet any of these criteria may constitute a sufficient basis for denial of a petitioner's application.

(7) Presumptions and Weight of Evidence:

A petitioner for reinstatement will be held to a substantially more rigorous standard than a first time applicant for an initial admission to the Bar. The prior determination that he/she engaged in professional misconduct continues to be evidence against him or her and the proof presented must be sufficient to overcome that prior adverse judgment.

Among the considerations to be weighed are:

The nature of the misconduct for which the applicant was suspended or disbarred.

The applicant's conception of the serious nature of his or her act.

The applicant's sense of wrongdoing.

The applicant's previous and subsequent conduct and attitude toward the courts and the practice, including the element of time elapsed since disbarment.

The applicant's candor in dealing with the Character and Fitness Committee.

The relevant knowledge of witnesses called by the applicant.

HISTORY: Amended by Order 2009-12, eff. 1-1-2010; adopted by Order 99-1, eff. 2-1-00