

**KENTUCKY BAR ASSOCIATION
RULES OF THE SUPREME COURT OF KENTUCKY**

PRACTICE OF LAW

SCR 3.150 Access to disciplinary information

(1) Confidentiality. In a discipline matter, prior to a rendition of a finding of a violation of these Rules by the Trial Commissioner or the Board and the recommendation of the imposition of a public sanction, the proceeding is confidential.

(2)(a) Notwithstanding subsection (1), the pendency, subject matter and status may be disclosed by Bar Counsel if:

- i. The Respondent has waived confidentiality;
- ii. The proceeding involves public reciprocal discipline;
- iii. The disclosure of any information is made for the purpose of conducting an investigation by the Inquiry Commission or the Office of Bar Counsel, or;
- iv. A Motion for Temporary Suspension is pending.

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

- i. The proceeding is based upon an allegation that the Respondent has been charged with a crime arising from the same nexus of facts; or
- ii. The proceeding is based upon a finding by a court in a civil matter that an attorney has committed conduct that may constitute a violation of the Rules of Professional Conduct.

(3) Duty of Participants. All Participants in a proceeding under these Rules shall conduct themselves so as to maintain the confidentiality requirement of this Rule. Nothing in the rule shall prohibit the Respondent from discussing the disciplinary matter with any potential witness or entity in order to respond in a disciplinary proceeding, or to disclose to any tribunal, or to disclose any information for the purpose of conducting a defense. This provision shall not apply to the Complainant or the Respondent after the Inquiry Commission or its Chair has taken action on a Complaint including the issuance of a charge, the issuance of a private admonition, or a dismissal, including those pursuant to SCR 3.160(3).

(4)(a) Request for Non-Public Information. A request for non-public information to the Office of Bar Counsel may be considered by the Inquiry Commission and may be granted if the request relates to an investigation by the requestor and is made by:

- i. The Character and Fitness Committee;
- ii. A Lawyer Disciplinary Enforcement Agency;
- iii. A Judicial Disciplinary Enforcement Agency;

(b) A request for non-public information to the Office of Bar Counsel may be considered by the Court if the request is made by a Law Enforcement Agency, or other official authorized by federal or any state's law to investigate or prosecute misdemeanors or felonies, or the equivalent thereof, in any jurisdiction, provided that the agency or official certifies under oath with specificity that the information is necessary to a pending investigation. In this event the Respondent shall receive notice unless the Court determines that disclosure of the request would seriously prejudice the investigation.

(c) In the absence of a third party request, the Inquiry Commission may permit the disclosure of any non- public information to any of the entities listed in (4)(a) upon application to it by the Office

of Bar Counsel.

(d) In the event of a request under (4)(a) or (c) no notice to the Respondent is required, although the Inquiry Commission may require notice upon review of the application.

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

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

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

(6) Protective Orders. The Inquiry Commission, the Trial Commissioner, the Board, or the Court, which at the time the order is sought has the case pending before it, may, upon application of any person or entity, and for good cause shown, issue a protective order. Such an order may protect the interests of a Complainant, witness, third party, Respondent, or Bar Counsel. The order may prohibit the disclosure of specific information otherwise privileged or confidential and direct that the proceedings be conducted so as to implement the order, including requiring that the hearing be conducted in such a way as to preserve the confidentiality of the information that is the subject of the application.

(7) Notice to National Discipline Data Bank. The Disciplinary Clerk shall transmit notice of all public discipline imposed against a lawyer and reinstatements to the National Discipline Data Bank maintained by the American Bar Association.

HISTORY: Amended by Order 2017-18, eff. 1-1-2018; prior amendments eff. 2-1-08 (Order 2007-007), 1-1-99 (Order 98-2), 10-1-98 (Order 98-1), 1-1-87 (Order 86-3), 1-1-86, 10-1-82, 4-1-82, 1-1-80, 7-2-71

¹SCR 3.150(8) is amended to comply with *Doe v. Supreme Court of Florida*, 734 F.Supp. 981 (S.D. Fla. 1990).