

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

PRACTICE OF LAW

SCR 3.165 Temporary suspension by the Supreme Court

(1) On petition of the Inquiry Commission, authorized by its Chair, or the Chair's lawyer member designee, and supported by an affidavit, an attorney may be temporarily suspended from the practice of law by order of the Court provided:

(a) It appears that probable cause exists to believe that an attorney is or has been misappropriating funds the attorney holds for others to his/her own use or has been otherwise improperly dealing with said funds; or

(b) It appears that probable cause exists to believe that an attorney's conduct poses a substantial threat of harm to his clients or to the public; or

(c) An attorney has been convicted of a crime as set out in SCR 3.320 and it appears from the record of such conviction that the attorney has so acted as to put in grave issue whether he/she has the moral fitness to continue to practice law; or,

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

(2) Any such order of temporary suspension may restrict the attorney in dealing with client funds and shall, when served on any bank maintaining any account upon which said attorney may make withdrawals, serve as an injunction to prevent said bank from making further payment from such account or accounts on any obligation except in accordance with restrictions imposed by the Court, and shall direct such bank not to disclose (except to those entitled to withdraw from the account or accounts or to receive payment of such obligation, or upon the express written permission of at least one of such persons as to each such account or obligations) that such order has been received or the contents thereof. Any fees tendered to such attorney thereafter shall be deposited in a trust fund from which withdrawals may be made only in accordance with restrictions imposed by the Court. The Court may appoint a trustee to receive, transfer, or disburse any funds that are in the possession of or are under the control of the attorney if the funds came into the attorney's possession from the attorney's clients or from third parties during or as a result of the practice of law prior to suspension. The Court may require the trustee to render an accounting of said funds to the Court and to furnish a copy of the accounting to the Director.

(3) The petition of temporary suspension authorized by this rule shall be filed with the Clerk of the Court. The Chair of the Commission, or the Chair's designee, or the Commission's counsel, shall certify that a copy of the petition has been served on the Respondent or Respondent's attorney at his/her bar roster address. The Respondent shall file a response to the petition within twenty (20) days of the date the petition was filed with the Clerk. The Court may schedule an oral argument or a show cause hearing after the filing of the response or after the expiration of the time for a response to be filed.

(4) The Respondent may for good cause request dissolution or amendment of any such temporary order by petition filed with the Court, a copy of which will be served on the Director and on Bar Counsel, who shall respond on behalf of the Association. The Court may refer such petition for dissolution to a person who possesses the qualifications of a Trial Commissioner under Rule 3.230 sitting as a Special Commissioner for immediate hearing. The Special Commissioner shall hear evidence and argument upon such petition forthwith and submit his/her report and recommendations to the Court within thirty (30) days. Upon receipt of the foregoing report, the Court may refer the matter to the Character and Fitness Committee for recommendation and/or may modify its order if deemed appropriate until final disposition of all pending disciplinary charges against said attorney.

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

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

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

HISTORY: Amended by Order 2007-007, eff. 2-1-08; prior amendments eff. 10-1-98 (Order 981), 10-1-94 (Order 94-1), 11-15-91, 5-1-80; adopted eff. 1-1-78