

MAINTAINING THE INTEGRITY OF THE PROFESSION

Rule 8.1: Bar Admission and Disciplinary Matters

1. Current Kentucky Rule with Official Comments:

SCR 3.130(8.1) Bar admission and disciplinary matters

An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:

- (a) Knowingly make a false statement of material fact; or
- (b) Fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by Rule 1.6.

Supreme Court Commentary

[1] The duty imposed by this Rule extends to persons seeking admission to the bar as well as to lawyers. Hence, if a person makes a material false statement in connection with an application for admission, it may be the basis for subsequent disciplinary action if the person is admitted, and in any event may be relevant in a subsequent admission application. The duty imposed by this Rule applies to a lawyer's own admission or discipline as well as that of others. Thus, it is a separate professional offense for a lawyer to knowingly make a misrepresentation or omission in connection with a disciplinary investigation of the lawyer's own conduct. This Rule also requires affirmative clarification of any misunderstanding on the part of the admissions or disciplinary authority of which the person involved becomes aware.

[2] This Rule is subject to the provisions of the fifth amendment of the United States Constitution and corresponding provisions of state constitutions. A person relying on such a provision in response to a question, however, should do so openly and not use the right of nondisclosure as a justification for failure to comply with this Rule.

[3] A lawyer representing an applicant for admission to the bar, or representing

a lawyer who is the subject of a disciplinary inquiry or proceeding, is governed by the rules applicable to the client-lawyer relationship.

2. Proposed Kentucky Rule with Official Comments:

MAINTAINING THE INTEGRITY OF THE PROFESSION

SCR 3.130(8.1) Bar admission and disciplinary matters

An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:

(a) ~~Knowingly~~ knowingly make a false statement of material fact; or

(b) ~~Fail~~ fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by Rule 1.6.

~~Supreme Court Commentary~~ Comment

[1] The duty imposed by this Rule extends to persons seeking admission to the bar as well as to lawyers. Hence, if a person makes a material false statement in connection with an application for admission, it may be the basis for subsequent disciplinary action if the person is admitted, and in any event may be relevant in a subsequent admission application. The duty imposed by this Rule applies to a lawyer's own admission or discipline as well as that of others. Thus, it is a separate professional offense for a lawyer to knowingly make a misrepresentation or omission in connection with a disciplinary investigation of the lawyer's own conduct. ~~This Paragraph (b) of this Rule~~ also requires correction of any prior misstatement in the matter that the applicant or lawyer may have made and affirmative clarification of any misunderstanding on the part of the admissions or disciplinary authority of which the person involved becomes aware.

[2] This Rule is subject to the provisions of the fifth amendment of the United States Constitution and corresponding provisions of state constitutions. A person relying on such a provision in response to a question, however, should do so openly and not use the right of nondisclosure as a justification for failure to comply with this Rule.

[3] A lawyer representing an applicant for admission to the bar, or representing a lawyer who is the subject of a disciplinary inquiry or proceeding, is governed by the rules applicable to the client-lawyer relationship, including Rule 1.6 and, in some cases,

Rule 3.3.

3. Discussion and Explanation of Recommendation:

a. Comparison of proposed Kentucky Rule with its counterpart ABA Model Rule.

(1) The proposed KRPC 8.1 adopts the MR changes to the Comments. There were no substantive changes to MR 8.1 and the Committee recommends none. The Rule was slightly reformatted to conform to MR editing style.

(2) The ABA Reporter's Explanation of Changes expresses the Committee's view on the MR Comment changes. It is adopted by the Committee for purposes of explaining recommended changes and is quoted below.

- ABA Reporter's Explanation of Changes -- Model Rule 8.1

TEXT:

The Commission is not recommending any change in the Rule text.

COMMENT:

[1] These changes clarify that there is a duty to supplement an answer later found to be wrong. The point might already be comprehended within the black letter "correct a misapprehension known by the person to have arisen in the matter," but, to make the point clear, the new language has been added and paragraph (b) is cited as the source of the obligation. No change in substance is intended.

[3] This change reminds lawyers that bar admission and professional discipline are judicial proceedings subject to the requirements of Rules 1.6 and 3.3. Although Rule 1.6 does not require a lawyer to come forward with adverse evidence, in a limited number of cases, the requirements of Rule 3.3 may do so. No change in substance is intended.

b. Detailed discussion of reason for variance from ABA Model Rule (if any).

There is no variance in proposed KRPC 8.1 from MR 8.1.

Committee proposal adopted without change. Order 2009-05, eff 7-15-09.