

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

PRACTICE OF LAW

SCR 3.395 Appointment of special commissioner to protect clients' interests

(1) When it comes to the attention of the Director that: (a) an attorney has been temporarily suspended pursuant to SCR 3.165 and has failed to notify his/her clients of the suspension as required by Court order; or (b) an attorney has been suspended or disbarred pursuant to SCR 3.370 and has failed to notify his/her clients of his/her suspension or disbarment pursuant to SCR 3.390; or (c) an attorney has resigned pursuant to SCR 3.480 and has failed to notify his/her clients of his/her resignation as required by Court order; or (d) an attorney dies; or (e) an attorney has been declared to be incompetent; or (f) an attorney abandons his/her law practice or his/her whereabouts are unknown, and no law partner, personal representative of the deceased attorney's estate, or other responsible person capable of conducting the attorney's business affairs is known to exist, the Director may petition the Court, and the Court for good cause may authorize the Chief Justice to order the appointment of 1 or more members of the Association to serve as Special Commissioners of the Court.

The Director shall give notice to the attorney by mailing a copy of the petition to the attorney's last known address, except where the attorney is deceased. If the attorney is deceased, the notice shall be sent to the attorney's personal representative, if known. Within 20 days after the date on which the Director files the petition with the Court, the attorney may file a response to the petition with the Court. The Clerk of the Court shall mail a copy of the Court's order ruling on the petition to the attorney's last known address, to the Director and to the Chief Circuit Judge.

(2) A Special Commissioner appointed under this rule may be authorized by the Court to take possession of the files and records of an attorney described in subsection (1) above, to make an inventory of the files, to give notice to the attorney's clients of the unavailability or inability of the attorney to continue to represent the clients, to deliver to the clients all papers and other property to which the clients are entitled, to take any other action which the clients are entitled and to take any other action which the Court deems necessary to protect the interests of the clients.

(3) The Special Commissioner shall not disclose any information contained in any files which are the subject of an inventory without the consent of the client to whom such files relate, except as reasonably necessary to carry out the orders of the Court.

(4) The Special Commissioner shall file a written report within 6 months, with the Court containing a summary and explanation of the actions taken by the Special Commissioner to fulfill the duties assigned to the Special Commissioner by the Court. This time frame may be extended for good cause shown. The Special Commissioner shall mail a copy of the report to the Director and to the attorney's last known address.

(5) If the Special Commissioner takes possession of files of an attorney and the Special Commissioner is unable after a diligent effort to deliver the files to the clients or to new attorneys representing the clients, the Special Commissioner may request the Court to enter an order providing for the storage and safekeeping or destruction, as appropriate, of such files.

(6) The Special Commissioner shall be entitled to reasonable compensation with the amount to be determined by the Court and to also be reimbursed for necessary expenses actually incurred. In order to receive such compensation or reimbursement of expenses, the Special Commissioner shall file with the Court a motion containing an itemized list of the time spent on the case, the work performed, and receipts for the expenses incurred. The Special Commissioner's

compensation and expenses which are approved by the Court shall be paid by the Association, but any amounts disbursed by the Association to the Special Commissioner shall be assessed as costs against the attorney pursuant to SCR 3.450 if the appointment of the Special Commissioner arose out of, (a) disciplinary proceeding, resignation or an abandonment of the practice or, (b) if the appointment arose out of a mental illness or disease and a guardian has been appointed for the attorney, the cost shall be presented to the attorney's guardian or, (c) if the appointment arose from the death of the attorney, from the estate of the decedent by presenting the fiduciary of the estate the costs and, when possible, to file a proof of claim with the appropriate district court clerk.

HISTORY: Amended by Order 2018-10, eff. 9-1-18; prior amendment(s) eff. 1-1-2016 (2015-20), 10-1-98 (Order 98-1); adopted by Order 84-2, eff. 7-1-84