THE KBA ETHICS COMMITTEE:
A PANEL DISCUSSION

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Louisville, Kentucky
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I. PART I – THE NEW (1/1/16) SUPREME COURT RULES

A. The solicitation rule was moved from 7.09 to 4.5 and solicitation of former clients is now permitted (as it is in the Model Rules). The rule reads:

SCR 3.130(4.5) Solicitation of clients

(1) No lawyer shall directly or through another person by in person, live telephone, or real-time electronic means, solicit professional employment when a significant motive for the lawyer’s doing so is the lawyer’s pecuniary gain, unless:

(a) the person contacted is a lawyer;

(b) the person contacted has an immediate family relationship, or prior attorney-client relationship with the lawyer, or person contacted; or

(c) the lawyer is advocating a public interest issue and is not significantly motivated by the lawyer’s pecuniary gain.

This Rule shall not prohibit response to inquiries initiated by persons who may become prospective clients at the time of any other incidental contact not designed or intended by the lawyer to solicit employment.

.....

Issue 1: the last three words of 4.5(1)(b) don't make sense.

Issue 2: Should "immediate family relationship" be defined and made consistent with other rules? KRPC 1.8(c) and the Code of Judicial Conduct both define the relationship as "spouse, parent, child, grandparent, grandchild or other relative or individual with whom there is a close familial relationship."

B. In Opinion E-255 (1981), the Ethics Committee opined that a lawyer may employ a suspended or disbarred lawyer subject to conditions: 1) no client contact; 2) no office in the lawyer's facility; 3) ok to draft documents; 4) ok to do legal research; 5) ok to examine titles. The opinion states that a suspended or disbarred lawyer is not a paralegal within SCR 3.700.

In new SCR 5.7, effective January 2016, the Court adopted a rule for suspended lawyers, but the Court said nothing about disbarred lawyers.
KRCP 5.7(a) states what a suspended lawyer may not do:

(a) During a period of suspension a suspended lawyer may not perform any of the following acts:

(1) render legal consultation or legal advice to any person;

(2) appear on behalf of another person in any hearing or proceeding or before any judicial officer, arbitrator, mediator, court, public agency, referee, magistrate, commissioner, or hearing officer, unless the rules of the tribunal involved permit representation by non-lawyers and the represented person has been fully informed of the lawyer's suspension;

(3) appear as a representative of another person at a deposition or other discovery matter;

(4) negotiate or transact any matter for or on behalf of another person with third parties;

(5) receive, disburse, or otherwise handle a client's funds; or

(6) engage in activities that constitute the practice of law.

5.7(b) imposes obligations on a lawyer who hires a suspended lawyer:

(b) A lawyer shall not employ, associate professionally with or aid a person a lawyer knows or reasonable [sic] should know has been suspended to do any of the preceding described acts during a suspended lawyer's period of suspension. Further, a lawyer shall not employ or associate professionally with a member whose license to practice law has been suspended if the suspended lawyer was associated with such lawyer or law firm at the time of such member's suspension.

This raises a major issue – for the employment prohibition, the crucial time is not the date of infraction, but rather the date of suspension, which seems to allow a lawyer facing suspension to quit and be re-hired.

5.7(c) states what a suspended lawyer may do.

(c) Except as provided in paragraph (a) and (b), a suspended lawyer may perform research, draft documents, perform clerical functions, and similar activities for the use by a lawyer who assumes professional responsibility for the suspended lawyer's activities.
This is fleshed out in Comment 4:

Examples of the type of work a suspended lawyer may include (sic): (a) performing legal work of a preparatory nature for an active lawyer's review, such as legal research, gathering information, and drafting pleadings, briefs, and other similar documents: (sic) (b) communicates with a lawyer's client or third parties regarding matters such as scheduling, billing, updates on the status of a client's matters, fact gathering, and confirmation of receipt or sending of correspondence and messages; (c) accompanying an active lawyer to a deposition or other discovery proceeding for the limited purpose of providing clerical assistance to the lawyer who will appear as a client's representative. A suspended lawyer shall comply with the requirements of SCR 3.390 and take all reasonable steps to protect the interests of the lawyer's clients.

5.7(d) requires the employing lawyer to keep Bar Counsel informed.

(d) Prior to or at the time of employing a suspended lawyer, the employing lawyer shall serve upon Bar Counsel written notice of the employment of the suspended lawyer, including a description of such suspended member's current license status. The notice shall include a statement that the suspended lawyer shall not be employed to perform any of the activities prohibited by paragraph (a). Upon terminating the employment of a suspended lawyer, the employing lawyer shall promptly serve written notice of such termination upon Bar Counsel.

The reference to "current license status" presumably refers to the term of suspension.

C. False and Misleading Statements – Rule 7.10

The (b) and (c) provisions of Rule 7.15 were dropped from the rule. The rule, now moved to 7.10, is identical to ABA Model Rule 7.1, but does not include the ABA comments.

A lawyer shall not make a false, deceptive or misleading communication about the lawyer or the lawyer's service. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.

Eliminating the (b) and (c) sections of former 7.15 may encourage advertising lawyers to go where they have not yet ventured. Those
now-dropped sections defined false, deceptive and misleading statements as:

(b) likely to create an unjustified expectation of results the lawyer can achieve, or states and implies that the lawyer can achieve results by means that violate the rules of professional conduct or other law.

(c) compares the lawyer’s services with other lawyers’ services, unless the comparison can be factually substantiated.

Comment 2 to former 7.15 warned lawyers that results advertising could be deceptive.

An advertisement that truthfully reports a lawyer’s achievements on behalf of clients or former clients may be misleading if presented in a manner that may lead a reasonable person to form an unjustified expectation that the same results could be obtained for other clients in similar matters without reference to the specific factual and legal circumstances of each client's case.

The (b) and (c) provisions of former 7.15 are comments to Model Rule 7.1; the (b) and (c) sections are not even comments to the new KRPC 7.10. Whether intended or not, the omission of these sections may invite lawyers to advertise results and seek client endorsements.

D. Advertising – Rule 7.03

This is the big change. Former Rule 7.05 required lawyers to send advertisements to the Advertising Commission, paying a fee for advertisements that didn’t meet the requirements of 7.05(1)(b.) On a selective basis, the Advertising Commission reviewed advertisements (including webpages) looking for deceitful statements. That is no longer the process; Kentucky is now a complaint-driven state. An attorney may pay a fee for an advisory opinion and, if the opinion is favorable, be protected against a bar complaint. Otherwise the only review of an advertisement will result from a bar complaint (probably by a competing attorney) that the ad is deceptive.

II. COMMENTS FROM ETHICS COMMITTEE HOTLINE LAWYERS

A. Presenters

1. David Bohannon.

2. Ruth Baxter.

3. Larry Deener.
B. The Rule: SCR 3.350 is an Appendix to this Outline

1. **Hotline opinions** – in response to a **written** request from the inquiring attorney.

2. Protects lawyers from discipline. Also used to explain why the attorney acted (or didn't act) in a particular way. Examples:
   
a. To explain a matter to a client.
   
b. To resist a disqualification motion.
   
c. To defend against a Rule 11 motion.
   
d. To explain the attorney's action in litigation between client and attorney (malpractice, 11.42 motions, fee disputes, etc.).

3. Confidentiality is for the protection of the inquiring attorney and may be waived.

4. The hotline rule (SCR 3.530) in outline form.
   
a. Any attorney licensed in Kentucky or admitted under SCR 3.030(2), who is in doubt as to the ethical propriety of any professional act contemplated by that attorney may request an informal opinion.
   
b. Ordinarily, the request shall be directed to a member of the requestor's Supreme Court district.
   
c. Such request shall be in writing or by telephone followed by a request in writing.
   
d. The committee member to whom the request is directed shall attempt to furnish the requesting attorney with a prompt telephonic answer and letter opinion as to the ethical propriety of the act or course of conduct in question.
   
e. A copy of any such informal opinion shall be provided to the Director for safekeeping and statistical purposes.
f. A copy also shall be sent to the Chair of the Ethics Committee, to determine whether the informal opinion has broader application.

g. Communications between the requesting attorney and the Ethics Committee member shall be confidential.

h. However, requesting and giving of advice under this Rule does not create an attorney-client relationship.

i. In order to promote uniformity of advice, redacted copies of informal opinions may be circulated among members of the Ethics Committee, provided that such confidentiality is preserved.

j. Hotline opinions shall be advisory only; however, no attorney shall be disciplined for any professional act performed by that attorney in compliance with an informal opinion furnished by the Ethics Committee member pursuant to such attorney’s written request, provided that the written request clearly, fairly, accurately and completely states such attorney’s contemplated professional act.

C. Edited Questions Received by Hotline Lawyers

1. In representing Client A, the public defender prepared an affidavit for a witness (not at the time a public defender client) that turned out to be false. The affidavit provided a defense to the charge against Client A. The public defender’s office then was conflicted out of the case, and Client A pled guilty to the charge. The Commonwealth Attorney’s Detective wants to interview the public defender about the false affidavit. The witness is now a public defender client (Client B) on unrelated charges, but is not the client of the public defender who represented Client A.

   a. Would it violate the attorney’s duty of confidentiality to A, a former client, to talk to the detective about the affidavit?

   b. Would it violate the attorney’s duty of loyalty to B, now a present client of the office, to talk to the detective about the affidavit?

   c. Does it matter that the public defender’s present representation of B is unrelated to the affidavit, which was obtained when B was not a public defender client?

2. In preparation for closing an office, the attorney asks what to do about client files.

   a. Should the attorney attempt to give the files to the clients?
b. Before turning over files to clients, may the attorney remove work product material?

c. For clients who cannot be located, should the attorney retain the file for a minimum of five years after the file is closed?

3. Attorney A practices in family court. Attorney B is A's daughter; she is not a member of A's firm. Attorney B plans to take guardian ad litem and DNA appointments in family court. A anticipates that B will sometimes be the guardian ad litem for the child or appointed lawyer for a parent.

a. In such cases, are A and B required to disclose their relationship to their clients and obtain informed client consent to the representation?

b. Is disclosure of A and B's relationship and client consent required in cases in which A and B reasonably conclude that the parties are not in conflict?

c. Is disclosure of A and B's relationship and client consent required in cases in which A's partner represents the client and B is the guardian ad litem for the child?

4. In a personal injury case, Client discharged attorney, said he would get a new lawyer for his claim, and angrily demanded "his file." Client owes Attorney $500. Attorney is concerned that Client intends to file a bar complaint against him. The file includes pleadings, memoranda, correspondence, and "work product" that is memos reflecting Attorney's mental impressions and opinions.

a. May Attorney refuse to give the client "his file" until Client pays $500?

b. May Attorney require Client to promise not to file a bar complaint as a condition of giving file documents to Client?

c. May Attorney copy documents to be given to Client and keep the copies?

d. May Attorney require Client to pay the cost of copying documents?

e. Before giving the file to Client, may Attorney remove and retain memos reflecting the Attorney's mental impressions and opinions?

f. Is your answer about work product different if the Attorney reasonably believes that it would be needed by new counsel?
5. Client filed a bar complaint against Attorney. To respond to the complaint, Attorney needs documents under seal in family court. May Attorney tell the judge about the bar complaint to show "cause" for the unsealing of the documents?

6. Serious car accident between Car 1, driven by A, and Car 2, driven by Y. A fair assessment of fault would be 10 percent to A and 90 percent to Y. A was badly injured as were B and C, two passengers in A's car.
   a. A, B and C asked Attorney to represent them in their claims against Y. May Attorney limit his representation of B and C to the claim against Y?
   b. Must Attorney obtain the informed consent of A, B and C, confirmed in writing, to the joint representation?
   c. Assume Y's insurer paid the policy limits to Attorney to settle the claims of A, B and C. In dividing this money between the three clients must Attorney disclose to each client the way in which the money is divided?

7. In a divorce case, the family court judge appointed Attorney as guardian ad litem for the parties' infant child. The judge asked Attorney to investigate the facts and file a report with the judge. May Attorney, having been appointed guardian ad litem, investigate the facts and summarize the findings in a report to the judge?

8. The judge ordered mediation in a divorce case.
   a. The attorneys agreed on a mediator who is not a member of the Kentucky Bar. Would it be the unauthorized practice of law for the non-lawyer to serve as mediator?
   b. One of the parties to the mediation proposes to be represented by a non-lawyer (a social worker) in the mediation. Would this constitute the unauthorized practice of law?
   c. Is it the unauthorized practice of law for an Ohio attorney to represent a party to a binding arbitration held in Kentucky arising out of a Kentucky citizen's purchase of internet services from a non-Kentucky company?

9. Three Kentucky lawyers form a firm, rent office space on Main Street in a Kentucky town, and propose to operate the firm under the trade name, "Main Street Counselors." May the lawyers use this trade name?
10. Attorney A represents plaintiff on a contingent fee basis in plaintiff's claim against Drug Company. Attorney A hired Attorney B (not a member of A's firm) on an hourly basis to review, analyze and summarize discovery documents obtained from Drug Company.

a. Is the informed consent of plaintiff, confirmed in writing, required for the hiring of B?

b. A would like to treat payments to B as a cost of litigation, to be deducted from the recovery, if any. Would this be ethical?

11. Attorney A proposes to represent Client (C) in contentious litigation in which the opposing client (OC) is represented by Attorney B. A and B are not partners, but they, with ten other lawyers, share office space, office expenses and a secretary/receptionist. The secretary/receptionist has access to the files of all the lawyers in the office.

a. Do A and B have a conflict?

b. May A and B represent C and OC with the informed consent of the clients?

12. X represented by Attorney A, sued Y, represented by Attorney B, for injuries sustained in a two-car automobile accident. On behalf of Y, Attorney B offered $500,000 to X; one of the conditions of the offer is that X will not voluntarily disclose the amount of the settlement to anyone. There is no other litigation involving the accident in which A was injured. The offer exempts responses to law enforcement and disciplinary authorities.

May Attorney B condition the offer of settlement on X's agreement with the confidentiality agreement?

13. X is represented by A against Megacorp, which is represented by B. A deposed N, an employee of Megacorp. B was present during the deposition. Two days later, N told B that she had gone through her notes and discovered that she had answered a question incorrectly.

a. Is B under an obligation to correct the deposition?

b. Must B correct the deposition even if B reasonably concludes that the matter is immaterial?

14. Corporation X asked Attorney A to represent it in a potential sale to Y. X proposed a fee arrangement in which A would be paid an hourly fee plus a percentage of the sale price.

May A ethically agree to this fee arrangement?
15. X is represented by A against Y, who is represented by B. X sought a loan from Finance Company for living expenses; Finance Company agreed to loan Client X $5000 for living expenses, to be repaid from the potential settlement of X's suit against Y. As security for the loan, Finance Company required that A agree to pay Finance Company the amount of the loan plus interest, after deducting the attorney's fee and costs.

May A agree to pay Finance Company out of the settlement of X's claim?

16. Attorney A represents X in a protracted negotiation with Y company, represented by Attorney B. On his back porch, X found a paper bag containing photocopies of Y company documents; X has no idea who put the bag on his porch. X gave the documents to A who noted that they contained emails from Y's lawyer; A recognized that the documents would be helpful to X in the negotiations with Y.

Is A required to refrain from further examination of the documents, to notify Y's lawyer that he has the documents, and comply with the lawyer's instructions?

17. Attorney A represented X in a criminal case. X was convicted and A filed a notice of appeal. Y, a friend of X who was not present during the trial, posted on Facebook that A was incompetent and that X had been "railroaded by her own lawyer." A suspects that Y posted what she had been told by X. When confronted, X told A that she did not agree with the criticism and denied telling Y that she was dissatisfied with A's representation.

a. Must A withdraw from representation of X?

b. May A withdraw from representation of X, even though to do so may disadvantage X's chances of winning the appeal (since X will have to hire new counsel not familiar with the facts)?

18. X, represented by A, sued Y for $50,000 owing for X's sale of a business to Y, which failed after Y's purchase. Y, who is not represented by counsel, called A and offered $25,000 that he would take from his retirement account to settle the claim. A did not advise Y and did not tell him that the retirement account could not be attached to pay a debt. A told X of the offer and X wishes to accept it.

Acting on behalf of X, may A accept the settlement believing that the source of the funds is a retirement account exempt from attachment?
19. In DNA cases in County X, Attorney A represents parents and serves (in other cases) as guardian *ad litem* for children. Attorney A is considering accepting a position as an Assistant County Attorney in County Y.

a. If A accepts a position as an Assistant County Attorney in County Y, may he continue to represent parents in DNA cases in County X?

b. If A accepts a position as an Assistant County Attorney in County Y, may he continue to serve as guardian *ad litem* for children in DNA cases in County X?

20. A is a public defender in Regional Office 1. He represents X on a criminal charge and filed a suppression motion based on the search of X’s car. The Commonwealth will call Y as a witness to testify to the circumstances surrounding the search of the car. B, another public defender in the same Regional Office, represents Y on an unrelated charge.

a. May A represent X in the hearing on the suppression motion?

b. May B use Y’s potential testimony against X to bargain the unrelated charge against Y?

21. NoClaim Insurance Company proposed to hire Attorney A to handle claims against its insureds on liability policies. The proposed agreement between NoClaim and A requires A to send her completed files to NoClaim for review. A would like to sign the agreement.

May A agree to send files of completed cases to Insurance Company?

III. BILL FORTUNE’S INNS OF COURT QUESTIONS (FEB. 2016)

A. Attorney Bobby Brown represented Steve Smith in a personal injury case against Acme Trucking. Sheila Stevens, counsel for Acme, conducted a wide-ranging discovery deposition of Smith. She asked Smith if he had ever been in the Armed Services. Smith’s response was, "Yes, I'm proud to say I'm a Vietnam veteran." There were no follow-up questions. After the deposition, Brown and Smith had the following conversation.

Brown: I didn't know you're a Vietnam vet. I am too. Where did you serve?

Smith: Well, I didn't go to Vietnam. I joined an Air National Guard unit when I was about to get drafted, and did my service right here in Louisville. I was in about six months.
Brown: Then, you weren't really a Vietnam vet?

Smith: I was in the service during the Vietnam conflict; that makes me a Vietnam vet.

Brown: I don't know. Speaking as one who was in Vietnam, it was pretty misleading for you to say you're a Vietnam vet. But I'm not going to go back, pull out the deposition, and try to explain your answer. I only have to correct the deposition if what you said is material to the controversy – and I don't think whether you should have explained what you meant when you said you were a Vietnam vet has much to do with a traffic accident in 2015. I'm not going to correct the deposition.

1. Is Brown obligated to correct the deposition even though he reasonably believes Vietnam service (or not) is immaterial?

The case of Smith v. Acme went to trial. After Smith testified on direct to the accident and his injuries, Attorney Stevens cross-examined Smith as follows:

Stevens: When you were deposed were you telling the truth when you said – and I quote, "I'm proud to say I'm a Vietnam vet?"

Brown: OBJECT. Ask to approach the bench.

The following took place at the bench:

Brown: I object your honor. She doesn't have any basis for asking that question and it's totally irrelevant. This is outrageous. She should be sanctioned.

Judge to Stevens: Why did you ask that question?

Stevens: To cross-examine him on his credibility under Rule 608(b). If he didn't lie in his deposition, now he has an opportunity to tell what he did in Vietnam. I'm entitled to ask him about this – it's a matter of his credibility.

Judge: What's the basis for your question? Do you have military records?

Stevens: It's the way he answered my question at the deposition; in my gut I felt this guy was one of those guys who brags about serving in Vietnam and wasn't even there.

Judge to Brown: Did your client serve in Vietnam? Did he go to Vietnam?

Brown: He was in a National Guard unit.

Judge: Then I'm going to sustain the objection and instruct the jury to disregard the question.
2. Was Stevens unethical in asking Smith whether he lied about his Vietnam service?

3. Was Brown unethical in responding to the judge's question as he did?

B. Lawyer Larry was hired by Right Stuff Insurance Company to represent Client Carl in connection with a claim by Biker Bill for injuries sustained when Carl forced him off the road. Larry interviewed Carl in private. When asked what happened, Carl replied, "Well, I haven't told anybody this but I tried to teach that guy a lesson. I get so tired of bicycles on these narrow roads – hard to pass them and they ride in the middle of the road. So I gunned it and passed him as close as I could without hitting him. Didn't mean for him to get hurt that bad."

Larry recognizes a coverage defense – that Carl acted with intent, not negligence. Larry has decided to tell Right Stuff what Carl told him, after first telling Carl that he should get his own lawyer because his insurance likely won't cover this.

Without Carl's informed consent, is it ethical for Larry to tell Right Stuff what Carl said?

C. Lawyer Lou represented Client Carl in a criminal case; during the course of the trial, Carl told Larry that one of the jurors was his roommate. The juror had remained silent when the judge asked the prospective jurors if they knew any of the parties. Carl said, "No way," when Lou told Carl he might have to tell the judge about the roommate.

Must Lou tell the judge about the roommate over Carl's objection that he had told Lou about the roommate in confidence?

D. Attorney Al represented Defendant Dan who was charged with robbery of Veronica Victim. Dan told Al he didn't do it and produced Ann Alibi, his girlfriend, to testify she was with him at the time of the robbery. Dan and Ann both testified; the prosecutor impeached Ann with a felony conviction under KRE 609. In his closing argument, Al summarized the testimony of Dan and Ann, and then said, "Well they asked her about this old conviction as if it had something to do with whether she was telling the truth. Well, I've talked to her and I believe every bit of what she said is true."

Is Al's statement unethical?

E. Client Cindy was injured in a slip and fall on a lettuce leaf at MegaMart. Cindy met with Attorney Ann to talk about her fall. Cindy said she'd been reaching for green peppers in the vegetable bin when she slipped on a lettuce leaf and fell. Rather than ask questions about the fall, Ann said, "The condition of the lettuce leaf is important. If it had just fallen off the counter it's one thing; on the other hand if it had been there for a while then they should have known about it and cleaned it up. So the dirtier and
more worn the leaf the better. Also, it would be helpful if the leaf you fell on wasn't right out in the middle of the aisle where everyone would see it. If it was back kind of under the counter you wouldn't see it — and if you were reaching for something in the vegetable bin, that's where you would have been when you slipped. Now let's talk about what happened."
(1) The Ethics Committee and the Unauthorized Practice Committee are authorized to issue informal opinions, and to submit to the Board for its action formal opinions, on questions of ethics or unauthorized practice, as applicable.

(2) Any attorney licensed in Kentucky or admitted under SCR 3.030(2), who is in doubt as to the ethical propriety of any professional act contemplated by that attorney may request an informal opinion. The President shall designate members of the Ethics Committee to respond to such requests. Ordinarily, the request shall be directed to a member of the requestor’s Supreme Court district. Such request shall be in writing or by telephone followed by a request in writing. The committee member to whom the request is directed shall attempt to furnish the requesting attorney with a prompt telephonic answer and written informal letter opinion as to the ethical propriety of the act or course of conduct in question. A copy of any such informal opinion shall be provided to the Director for safekeeping and statistical purposes, and to the Chair of the Ethics Committee, to determine whether the informal opinion has broader application.

(3) Communications between the requesting attorney and the Ethics Committee member shall be confidential. However, the requesting and giving of advice under this Rule does not create an attorney-client relationship. In order to promote uniformity of advice, redacted copies of informal opinions may be circulated among members of the Ethics Committee, as applicable, provided that such confidentiality is preserved.

(4) If the Ethics Committee determines an ethical issue to be of sufficient importance, the Committee may issue and furnish to the Board of Governors a proposed opinion authorized by such Committee for approval as a formal opinion. Such approval shall require a vote of three-fourths of the voting members present at the meeting of the Board. If the Board is unable to approve of the opinion as written, then the Board may return the matter to the Committee for further review and consideration, or may modify the opinion and approve the opinion as modified by the three-fourths vote, or may direct the Committee to furnish the requesting attorney, if any, with an informal opinion in the form of a Chair’s letter opinion, with a copy to the Director.

(5) Both informal and formal opinions shall be advisory only; however, no attorney shall be disciplined for any professional act performed by that attorney in compliance with an informal opinion furnished by the Ethics Committee member pursuant to such attorney’s written request, provided that the written request clearly, fairly, accurately and completely states such attorney’s contemplated professional act.

(6) Any attorney licensed in Kentucky who is in doubt as to the propriety of any course of conduct or act of any person or entity which may constitute the unauthorized practice of law may make a request in writing, or in emergencies, by telephone, to the Chair of the Unauthorized Practice Committee, or such other members of the Unauthorized Practice Committee as are designated by the Chair, for an advisory opinion thereon. Local bar associations may also request advisory opinions. The Committee member to whom the request is directed shall bring this matter to the attention of the Committee at its next meeting. The Committee may attempt to furnish the requesting attorney with a prompt
telephonic answer and written informal letter opinion as to whether the conduct constitutes the unauthorized practice of law. A copy of such informal opinion shall be provided to the Director and the Chair of the Unauthorized Practice Committee

(7) Any attorney licensed in Kentucky or admitted under SCR 3.030(2) who is in doubt as to the ethical propriety of any professional act contemplated by that attorney with respect to the unauthorized practice of law shall be referred to the Ethics Committee district member for an informal opinion as set forth in (2) and (3). Communications about such an inquiry between the requesting attorney and the unauthorized practice committee member, and between the committee members of the two committees, shall be confidential.

(8) The requesting and giving of advice by the Unauthorized Practice Committee under this Rule does not create an attorney/client relationship.

(9) If the Unauthorized Practice Committee determines an issue regarding the unauthorized practice of law to be of sufficient importance, the Committee may issue and furnish to the Board of Governors a proposed opinion authorized by such Committee for approval as a formal opinion. Such approval shall require a vote of three-fourths of the voting members present at the meeting of the Board. If the Board is unable to approve the opinion as written, then the Board may return the matter to the Committee for further review and consideration, or may modify the opinion and approve the opinion as modified by the three-fourths vote, or may direct the Committee to furnish the requesting attorney, if any, with an informal opinion in the form of a Chair's letter opinion, with a copy to the Director.

(10) Ethics Committee and Unauthorized Practice Committee members shall be immune from suit for advice given in the performance of duties under this Rule.

(11) All formal opinions of the Board arising from either Committee shall be published in full or in synopsis form, as determined by the Director, in the edition of the KENTUCKY BENCH & BAR next issued after the adoption of the opinion.

(12) Any person or entity aggrieved or affected by a formal opinion of the Board may file with the clerk within thirty (30) days after the end of the month of publication of the KENTUCKY BENCH & BAR in which the full opinion or a synopsis thereof is published, a copy of the opinion, and, upon motion and reasonable notice in writing to the Director, obtain a review of the Board's opinion by the Court. The Court's action thereon shall be final and the Clerk shall furnish copies of the formal order to the original petitioner, if any, the movant and the Director. The movant shall file a brief in support of the review, and the Director may file a response brief thirty days thereafter.