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CAROL G. GREEN  
CLERK APPELLATE COURTS

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2004 SC 14

IN THE SUPREME COURT OF THE STATE OF KANSAS

ORDER

RULES RELATING TO DISCIPLINE OF ATTORNEYS

**Rule 211**  
FORMAL HEARINGS

Supreme Court Rule 211 is hereby amended with the addition of new subsection (g), effective the date of this order.

(g) Requirements of Probation

- (1) If the Respondent intends to request that the Respondent be placed on probation for violating the Kansas Rules of Professional Conduct or the Kansas Supreme Court Rules, the Respondent shall provide each member of the Hearing Panel and the Disciplinary Administrator with a workable, substantial, and detailed plan of probation at least ten days prior to the hearing on the Formal Complaint. The plan of probation must contain adequate safeguards that will protect the public and ensure the Respondent's full compliance with the disciplinary rules and orders of the Supreme Court.
- (2) If the Respondent provides each member of the Hearing Panel and the Disciplinary Administrator with a plan of probation, the Respondent shall immediately and prior to the hearing on the Formal Complaint put the plan of probation into effect by complying with each of the terms and conditions of the probation plan.
- (3) The Hearing Panel shall not recommend that the Respondent be placed on probation unless:
  - (i) the Respondent develops a workable, substantial, and detailed plan of probation and provides a copy of the proposed plan of probation

to the Disciplinary Administrator and each member of the Hearing Panel at least ten days prior to the hearing on the Formal Complaint;

- (ii) the Respondent puts the proposed plan of probation into effect prior to the hearing on the Formal Complaint by complying with each of the terms and conditions of the probation plan;
  - (iii) at the hearing on the Formal Complaint, the Respondent presents evidence that the case involves unique circumstances (unique circumstances are circumstances from which it could be inferred that the Respondent's misconduct was a one time response to adversity and that it would be highly unlikely that the Respondent would repeat the mistake);
  - (iv) the misconduct can be corrected by probation; and
  - (v) placing the Respondent on probation is in the best interests of the legal profession and the citizens of the State of Kansas.
- (4) If the Hearing Panel recommends that the Respondent be placed on probation, then the Hearing Panel should include specific conditions of probation in the Final Hearing Report.
- (5) Prior to the oral argument before the Supreme Court pursuant to Kan. Sup. Ct. R. 212, the Respondent shall provide an affidavit to the Disciplinary Administrator and the Clerk of the Appellate Courts that states that the Respondent is in compliance with the terms and conditions of the proposed probation plan.
- (6) If a Respondent is placed on probation by the Supreme Court, the Respondent shall comply with each condition contained in the Supreme Court's opinion.
- (7) If the Respondent complies with each condition contained in the opinion throughout the period of probation, at the end of the period of probation, the Respondent shall file a motion to be discharged from probation. Along with the motion, the Respondent shall file an

affidavit stating that he has complied with each condition of probation. Finally, the Respondent shall obtain an affidavit from the Supervising Attorney stating that the Respondent has complied with each condition contained in the opinion throughout the period of probation. After the Respondent files a motion to be discharged and supporting affidavits, the Disciplinary Administrator shall have twenty days to respond to the motion. Thereafter, the Supreme Court shall rule on the Respondent's motion without oral argument.

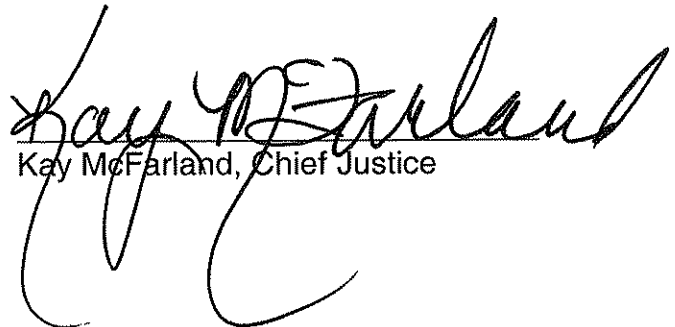
- (8) Unless and until the Supreme Court discharges the Respondent from probation, the Respondent shall remain on probation, subject to each condition of probation, regardless of whether the time period set by the Supreme Court, in its opinion, has expired.
- (9) In the event the Respondent fails to comply with one or more probation conditions, the Respondent shall immediately inform the Supervising Attorney and provide the Disciplinary Administrator with an affidavit setting forth each failure. The Supervising Attorney shall immediately provide the Disciplinary Administrator with an affidavit setting forth each violation of one or more conditions of probation. After receiving an affidavit from the Respondent and/or the Supervising Attorney stating that the Respondent has failed to comply with one or more probation conditions or upon receiving other credible evidence that the Respondent has violated one or more probation conditions, the Disciplinary Administrator may file a motion to revoke probation with the Supreme Court and the Chairman of the Kansas Board for Discipline of Attorneys. The filing of such a motion shall automatically suspend the running of probation time and continue the supervision until the motion is resolved.
- (10) Thereafter, the Chairman of the Kansas Board for Discipline of Attorneys shall immediately appoint one Board Member of the Kansas Board for Discipline of Attorneys to conduct an expedited hearing or consolidate with a pending matter to determine whether the Respondent has failed to comply with one or more probation conditions.
- (11) At the hearing on the motion to revoke probation, the Disciplinary Administrator shall have the burden to establish that the Respondent

failed to comply with one or more conditions of probation by a preponderance of the evidence. The Respondent shall have the opportunity to have counsel of his choosing, to cross-examine the witnesses presented by the Disciplinary Administrator, and to present witnesses in his own behalf. At the conclusion of the hearing, the Board Member shall issue an expedited written report addressing whether the Respondent failed to comply with one or more conditions of probation. The report of the Board Member shall immediately be filed with the Supreme Court.

- (12) After the report of the Board Member is filed with the Supreme Court, the Respondent may file a response with the Supreme Court to the Board Member's report within twenty days. Regardless of whether the Respondent files a response to the Board Member's report, thereafter, the Disciplinary Administrator shall have ten additional days to file a reply. After the Disciplinary Administrator's reply is received or after the time for filing the same has passed, the Supreme Court shall set a time for oral argument, unless waived by the Respondent and the Disciplinary Administrator. The Clerk of the Appellate Courts shall notify the Respondent and the Disciplinary Administrator by certified mail of the time and place of the argument.

By order of the Court, this 17<sup>th</sup> day of March 2004.

FOR THE COURT

  
Kay McFarland, Chief Justice