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CAROL G. GREEN  
CLERK APPELLATE COURTS RULES RELATING TO DISCIPLINE OF ATTORNEYS

**Rule 211  
FORMAL HEARINGS**

Supreme Court Rule 211 is hereby amended, effective immediately.

(a) Hearings shall be conducted by a panel of three attorneys, at least two of whom shall be members of the Board. Hearings may be held at any place in the state. The chairman of the Board shall designate the members of the panel, the presiding officer thereof, and the matters to be heard by the panel. The presiding officer shall be a member of the Board.

(b) Formal disciplinary proceedings shall be instituted by the Disciplinary Administrator by filing a formal complaint with the secretary of the Board. The complaint shall be sufficiently clear and specific to inform the respondent of the alleged misconduct. A copy of the complaint shall be served upon the respondent. The respondent shall serve an answer upon the Disciplinary Administrator within twenty days after the service of the complaint unless such time is extended by the Disciplinary Administrator or the hearing panel.

(c) At any time after the Review Committee has ordered prosecution of formal charges before a hearing panel, pursuant to Supreme Court Rule 210(c), the Disciplinary Administrator shall schedule the matter for hearing.

(d) The Disciplinary Administrator shall serve a notice of hearing upon the respondent, respondent's counsel, and the complaining parties. The notice shall state that the respondent is entitled to be represented by counsel, to cross-examine witnesses, and to present evidence. The notice shall also state the date and place of the hearing and shall be served at least fifteen days in advance of the hearing date. The hearing shall be governed by the Rules of Evidence as set forth in the Code of Civil Procedure. (K.S.A. 60-401 et seq.)

(e) All witnesses shall be sworn and all proceedings and testimony shall be recorded, either by stenographic means or by electronic recording.

(f) At the conclusion of a hearing held by a panel, a report shall be made setting forth findings and recommendations, which report shall be signed by a majority of the panel and submitted to the Disciplinary Administrator for appropriate distribution. To warrant a finding of misconduct the charges must be established by clear and convincing evidence. In recommending discipline the hearing panel may take into consideration the prior record, if any, of the respondent. Mitigating or aggravating circumstances which affect the nature or degree of discipline to be imposed or recommended in a matter shall be fully set forth in the panel report.

A unanimous panel report shall be deemed a final hearing report and shall be filed, served, and acted upon as hereinafter provided.

If the panel cannot agree unanimously on either the findings of fact, or the recommended discipline to be imposed, or both, the majority shall prepare and file a majority report. The minority member shall file a minority report. Thereupon the majority and minority reports shall be considered final reports, and both such reports, if either recommends discipline by the Supreme Court, shall be submitted to the Supreme Court for consideration and disposition pursuant to Rule 212.

A copy of the final hearing report shall be mailed or delivered by the Disciplinary Administrator to the respondent and to counsel of record.

If the final hearing report does not recommend discipline, and the Disciplinary Administrator does not appeal therefrom, the report shall be filed with the secretary of the Board and with the Disciplinary Administrator.

If the final hearing report or reports do not recommend discipline, or if the complaint is dismissed by the panel or if the panel recommends discipline other than as set forth in Rule 203(a)(1), (2), (3), or (5) an appeal may be taken by the Disciplinary Administrator to the Supreme Court for final disposition. The appellate procedure shall be as provided in Rule 212(b).

If the final hearing report recommends discipline as prescribed by Rule 203(a) (1), (2), (3), or (5) or if the Disciplinary Administrator appeals from other action taken as set forth in the preceding paragraph, the report, findings, and recommendations of the panel together with the complaint, answer, and transcript, if any, shall be filed with the Clerk of the Appellate Courts and the matter shall proceed as provided by Rule 212.

(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) ~~(iii)~~ the misconduct can be corrected by probation; and

(v) ~~(iv)~~ 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 respondent 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.

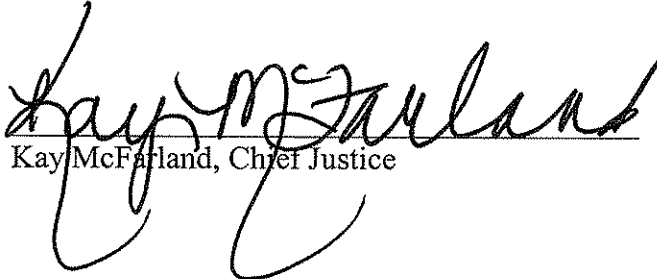
(9) In the event the respondent fails to comply with one or more probation conditions, the respondent shall immediately inform the Supervising Attorney and provide the Disciplinary Administrator with an affidavit setting forth each failure. The Supervising Attorney shall immediately provide the Disciplinary 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 respondent's choosing, to cross-examine the witnesses presented by the Disciplinary Administrator, and to present witnesses in respondent's 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 9<sup>th</sup> day of May, 2005.

  
Kay McFarland, Chief Justice