

IN THE SUPREME COURT OF THE STATE OF KANSAS

ORDER

FILED

JUN 29 2012

CAROL G. GREEN
CLERK OF APPELLATE COURTS

PROCEDURE TO BE FOLLOWED WHEN A
COMPLAINT IS FILED AGAINST THE DISCIPLINARY ADMINISTRATOR
UNDER THE RULES RELATING TO DISCIPLINE OF ATTORNEYS

- (a) **Filing.** A complaint filed against the Disciplinary Administrator under the Rules Relating to Discipline of Attorneys must be filed with the Clerk of the Appellate Courts.
- (b) **Disposition.** The Clerk of the Appellate Courts will report to the Supreme Court which may:
 - (1) dismiss the complaint *ex parte* if found to be frivolous or without merit, or
 - (2) direct the Clerk to initiate an investigation under subsection (c).
- (c) **Special Prosecutor, Investigation.** The Clerk of the Appellate Courts will designate a special prosecutor, who may be assisted by members of the bar or any state or local bar association, to conduct an investigation and consider the complaint and the response of the Disciplinary Administrator. All interviews must be conducted as sworn statements and recorded by stenographic means or by electronic recording. The special prosecutor will also prosecute formal charges before a Hearing Panel and the Supreme Court if those events occur.
- (d) **Appointment of Review Committee, Function.** The Supreme Court will appoint a three-person Review Committee composed of former or current attorney or judge members of the Commission on Judicial Qualifications or retired Supreme Court Justices. One member will be designated to serve as the presiding officer. The function of the Review Committee is to determine whether, based on the investigation conducted under subsection (c), there is probable cause to believe the Disciplinary Administrator's alleged conduct violates the Rules Relating to Discipline of Attorneys and to take appropriate action.
- (e) **Power of Review Committee.** The Review Committee will consider the complaint, the Disciplinary Administrator's response, and the investigator's report. The Review Committee may also ask for additional information or

investigation. Based on these submissions, the Review Committee may, by majority vote:

- (1) dismiss the complaint.
- (2) impose an informal admonition. The Disciplinary Administrator may by written motion request a formal hearing after imposition of an informal admonition.
- (3) recommend institution of formal charges. Formal charges will be instituted by the Review Committee filing with the Clerk of the Appellate Courts a formal complaint which is sufficiently clear and specific to inform the Disciplinary Administrator of the alleged misconduct. A copy of the complaint will be served on the Disciplinary Administrator who must serve an answer on the Clerk of the Appellate Courts within twenty days after service of the complaint.

- (f) **Notification to Complainant.** Upon Review Committee dismissal of a complaint or imposition of informal admonition, the Clerk of the Appellate Courts must notify the complainant of the action taken and is authorized to reveal such information as necessary to adequately explain the basis for decision and action of the Review Committee, notwithstanding subsection (m).
- (g) **Appointment of Hearing Panel, Function.** If formal charges are instituted, the Supreme Court will appoint a three-person Hearing Panel composed of former or current attorney or judge members of the Commission on Judicial Qualifications or retired Supreme Court Justices. One member will be designated to serve as the presiding officer. A member of the Review Committee which reviewed the complaint is not eligible to serve. The function of the Hearing Panel is to schedule the matter for hearing to determine disposition or recommendation to the Supreme Court. The hearing may be scheduled at any time after the complaint and answer have been filed and any additional investigation conducted which may be necessary to a fair hearing.
- (h) **Notice of Hearing.** The Clerk of the Appellate Courts will serve a notice of hearing on the Disciplinary Administrator, the Disciplinary Administrator's counsel, and the complaining party. The notice will state that the Disciplinary Administrator is entitled to be represented by counsel, to cross-examine witnesses, and to present evidence. The notice will also state the date and place of the hearing and must be served at least fifteen days in advance of the hearing date.

- (i) **Record of Proceeding.** Each witness must be sworn and all proceedings and testimony must be recorded by stenographic means or by electronic recording.

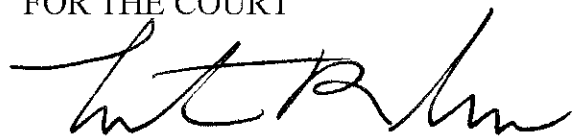
- (j) **Final Hearing Report.**
 - (1) At the conclusion of the hearing, a report signed by a majority of the panel must be made setting forth findings, conclusions, and recommendations. To warrant a finding of misconduct, the charges must be established by clear and convincing evidence. Mitigating or aggravating circumstances which affect the nature or degree of discipline to be imposed or recommended in a matter must be fully set forth in the panel report.
 - (2) A unanimous panel report will be deemed a final hearing report. If the panel cannot agree unanimously on either the findings of fact and conclusions of law or the recommended discipline to be imposed, or both, the majority will prepare and file a majority report. The minority member will file a minority report. The majority and minority reports will be considered final reports and both reports, if either recommends discipline by the Supreme Court, must be submitted to the Supreme Court for consideration and disposition.
 - (3) A copy of the final hearing report must be served on the Disciplinary Administrator and counsel of record.
 - (4) If the final hearing report or reports recommend dismissal or informal admonition, the matter will be deemed closed, unless the Disciplinary Administrator appeals to the Supreme Court.
 - (5) If the final hearing report recommends disbarment, suspension, published or unpublished censure, or any other form of discipline or conditions separate from or connected to any type of discipline, the Hearing Panel's report setting forth the findings of fact, conclusions of law, and recommendation, together with the complaint, answer, and transcript, if any, must be filed with the Supreme Court. The Disciplinary Administrator must file a response within twenty days after service of the report.
 - (6) The Supreme Court will take the matter under advisement and, in its discretion, order briefing and schedule oral argument under Supreme Court Rule 212 (2011 Kan. Ct. R. Annot. 352-353).

- (k) **Additional Rules of Procedure.**
 - (1) Except as otherwise provided, the Rules of Civil Procedure apply, including K.S.A. 60-205.
 - (2) The Clerk of the Appellate Courts or a member of the Review Committee or Hearing Panel is authorized to issue subpoenas and administer oaths.

- (3) A Review Committee or Hearing Panel appointed under this Order may refer to Rules Relating to Discipline or Internal Operating Rules of the Kansas Board for Discipline for guidance on procedural matters. See 2011 Kan. Ct. R. Annot. 275-403.
- (l) **Diversion, Probation.** The Attorney Diversion Program, which is an alternative to traditional disciplinary procedures, is unsuitable as an alternative in a proceeding against the Disciplinary Administrator and may not be used. Nor may discipline be recommended which involves a plan of probation.
- (m) **Confidentiality.**
- (1) Proceedings, reports, and records of an investigation or hearing, except as hereinafter provided, are private and must not be divulged in whole or in part to the public except by order of the Supreme Court.
 - (2) Any person violating this rule is subject to punishment for contempt of the Supreme Court.
 - (3) This rule of confidentiality shall not apply:
 - (A) to the complainant or the Disciplinary Administrator, or
 - (B) to the proceedings and record of proceedings after a finding of probable cause.
- (n) **Immunity.** Complaints, reports, or testimony in the course of disciplinary proceedings under this Order shall be deemed to be made in the course of judicial proceedings. All participants will be entitled to judicial immunity and all rights, privileges, and immunities afforded public officials and other participants in actions filed in the courts of this state.
- (o) **Payment of Expenses.** The expenses of investigation and hearing, including actual and necessary expenses of the Review Committee, Hearing Panel, and special prosecutor, will be paid by the Clerk of the Appellate Courts from the Disciplinary Fee Fund.

DATED: June 29, 2012.

FOR THE COURT



Lawton R. Nuss, Chief Justice