

STATE OF KANSAS

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ANATOMY OF A COMPLAINT

I. PURPOSE OF THE LAWYER DISCIPLINARY SYSTEM

Disciplinary proceedings are for the protection and the benefit of the public.
State v. Scott, 230 Kan. 564 (1982); State v. Callahan, 232 Kan. 136 (1982);
RULE 202.

II. WHERE COMPLAINTS COME FROM – RULE 209

A. Clients – over 60% - some of which are forwarded by a local bar association
Grievance committee – RULE 207(a) and 209.

B. Citizens – around 25% -- attorney-client relationship NOT prerequisite for
filing a complaint – State v. Freeman, 229 Kan. 639 (1981).

C. Judges or attorneys – about 15% -- duty to report – primary rule is RULE
207(c) – secondary rule is KRPC 8.3 which has not been used by the court.

III. ORAL COMPLAINTS OR INQUIRIES – RULE 209

A. Citizens phone call or in person – listen to person – resolve it then if possible
Phone call to attorney – no further action – complaint must be in writing.

B. Attorney phone question or information request – discuss and suggest
applicable rules – no written opinion – not binding – KBA Ethics Advisory
Committee, Box 1037, Topeka, Kansas 66601 – issues non binding written
ethics opinions.

IV. WRITTEN COMPLAINT OR REPORT OF MISCONDUCT

RULE 209 AND 226 AND ATTORNEY OATH OF OFFICE RULE 704(i)

A. Cognizable under Kansas Rules of Professional Conduct, case law or
oath of office –individual lawyers NOT firms – in our out of attorney-client
relationship – RULES 202, 226 and 704(i) – State v. Phelps, 226 Kan. 371
(1979); State v. Russell, 227 Kan. 897 (1980); State v. Freeman, 229 Kan.
639 (1981).

B. Informal procedure – attorney’s side obtained by letter without docketing complaint – 50% handled this way – attorney should fully respond – opportunity to work out complaint – complaint will be dismissed if determined to be frivolous or without merit after response of attorney – RULE 209.

C. All other complaints will be docketed – assigned a number – respondent lawyer(s) identified and notified – sent to local committee for full investigation attorney’s truthful written response required within 7 days In re Wood, 247 Kan. 219 (1990) – RULE 207(b).

V. INVESTIGATION OF COMPLAINT – RULES 205, 207 AND 210

A. All by Disciplinary Administrator – RULE 210 and 205(c)(2) – directly by use of in-house investigator or by supervision of any other person used an an investigator – In re Pringle, 248 Kan. 498 (1991).

B. Disciplinary Administrator can and does in every case call directly upon the responding lawyer for assistance in investigating the case – RULE 207(b) and (c) – Kansas v. Savaiano, 234 Kan. 268 (1983); KRPC 8.3; and In re Price, 241 Kan. 836 (1987); In re Pringle, 248 Kan. 498 (1991); In re Wood, 247 Kan. 219 (1990).

C. Disciplinary Administrator may use state or local bar grievance and ethics committees – all investigations under supervision of Disciplinary Administrator – RULE 210 – Barton County (20th Judicial District), Douglas County, Johnson County, Reno County, Sedgwick County, Shawnee County, Wyandotte County, KBA Ethics and Grievance Committee for rest of state – RULE 207(a) and 210(b) – over 200 lawyers are on these committees and do almost all of the investigative work.

D. Any individual member of the bar or judiciary can be called upon for Assistance – RULE 207(b) and (d) and 210(b).

E. Report of investigation received by Disciplinary Administrator and then sent to review committee with complaint, attorney’s response and recommendation of the Disciplinary Administrator – investigation time 2 to 12 months.

F. Additional investigation can be done at any time by the Disciplinary Administrator – RULE 210(e), 211(c); In re Matney, 241 Kan. 791 (1987); In re Pringle, 248 Kan. 498 (1991) – always done in preparation for hearings.

VI. MISCELLANEOUS CONCEPTS

RULES 213, 214, 203(b), 222, 203(a)(4) and (5), 217, 204, 223

A. RULE 213 – Refusal of complainant to proceed – settlement – compromise – Restitution – none abates the complaint – State v. Scott, 230 Kan. 564 (1982).

B. RULE 214 – Related civil or criminal litigation does not necessarily abate Complaint – State v. Rome, 235 Kan. 642 (1984).

C. Temporary suspension by Supreme Court – RULE 203(b) – order to show cause – generally criminal conduct – expedited proceeding – suspension during pendency of disciplinary proceeding – inherent power of court can result in Disbarment – In re Bicknell, 240 Kan. 437 (1987); In re Wilson, 251 Kan. 252 (1992).

D. Confidentiality – RULE 222 – Public record after Review Committee action of finding probable cause – confidentiality applies to all persons connected with the disciplinary process except the complainant and the respondent who are never covered by the rule of confidentiality – Jarvis v. Drake, 250 Kan. 645 (1992).

E. Informal Admonition – RULE 203(a)(4) and (5) – done by Disciplinary Administrator in person – always public information – private disciplinary Sanctions do not exist and never have under the rules – RULE 210(c) and 222(d) – majority of sanctions are informal admonitions.

1. Given on order of Review Committee after probable cause is found – appealable by the respondent to a formal hearing – RULE 210(c) and (d)
2. Given on report of hearing panel after hearing – RULE 212 – no appeal
3. Given on order of Supreme Court after hearing arguments – RULE 203(5)

F. Disbarment by Consent – RULE 217 – any attorney surrendering license during disciplinary proceeding shall be disbarred – pending disciplinary proceeding stopped – In re Sparks, 242 Kan. 11 (1987) – most disbarments occur this way.

G. Kansas Board for Discipline of Attorneys – RULE 204 – 20 lawyers appointed by the Supreme Court – decision makers within the disciplinary system by sitting on Review Committee and Hearing Panels – no action by board as a whole.

H. Immunity – deemed a judicial proceeding – all participants in disciplinary proceedings are granted judicial immunity and public official immunity – RULE 223 – Jarvis v. Drake, 250 Kan. 645 (1992).

VII. REVIEW COMMITTEE

RULE 204, 205 and 210

A. Recommendation of Disciplinary Administrator – RULE 204(e) and 210(c)

1. Dismiss
2. Informal Admonition
3. Institution of formal charges before a hearing panel

B. Review Committee – three members – two of whom must be members of Kansas Board for Discipline of Attorneys – RULE 204(e) and 210(c) – very stable – created in 1979 and two of the three members are still on the committee – major function is to determine probable cause as to each docketed complaint – RULE 210(c) – the Review Committee has the following powers:

1. Before a probable cause finding
 - (a) direct further investigation – RULE 210(c)
 - (b) delay action for outcome of related civil or criminal cases – RULE 214
2. After a probable cause finding
 - (a) Dismiss – over 75%
 - (b) Direct the imposition of informal admonition – RULE 210(c) and (d)
 - (c) Direct the institution of panel hearing procedures against the lawyer – RULE 210(c)

VIII. FORMAL HEARINGS

RULE 211, 215, 216, 223 and 224

A. Three attorneys, two of whom are members of the Kansas Board for Discipline of Attorneys and none of whom were on the Review Committee – Chair of Board chooses hearing panel members – RULE 211(a) and 203(e)

B. Disciplinary Administrator drafts Formal Complaint and serves it on the Respondent at his last registered address – RULE 215 and 208

C. Respondent's answer – 20 days – RULE 211(b)

D. Hearing date set by presiding officer of hearing panel – notice of same served on respondent by Disciplinary Administrator – RULE 211(d) – normally 60 days after date of Formal Complaint.

E. Formal evidentiary hearing – RULE 211

1. Rules of evidence and rules of civil procedure apply – RULE 211(d) and (e) and 224.
2. Disciplinary Administrator has burden of proof by clear and convincing evidence – RULE 211(f); In re Matney, 241 Kan. 789 (1987).
3. Disciplinary Administrator prosecutes case – RULE 205(c)(6).
4. RULE 202 requires that criminal convictions and civil judgments based on clear and convincing evidence shall be conclusive evidence of the commission of that crime or wrong – a diversion agreement is deemed a conviction – other civil judgments are prima facie evidence requiring respondent to disprove the findings.
5. Adjudication of attorney misconduct in another jurisdiction is binding in Kansas – only issue is discipline – RULE 202.
6. Deviation from rules or procedures are not a defense or grounds for dismissal absent actual prejudice – RULE 224(d).
7. Any suggested plan of probation should be submitted in writing to the hearing panel – In re Jantz, 243 Kan. 770 (1988).

F. Final Hearing Report – Rule 211(f).

1. Findings of fact and recommendations of discipline by way of a unanimous report or a majority and a minority report.
2. Hearing Panel may consider prior record of respondent and any other mitigating or aggravating circumstances – which must be set forth in the Final Hearing Report – RULE 211(f).
3. American Bar Association Center for Professional Responsibility published Standards for Lawyer Sanctions – 1991 Edition – extensively used by hearing panels and the Supreme Court.
4. Possible actions by Hearing Panel:
 - a. Dismissal.
 - b. Imposition of informal admonition by panel through Disciplinary Administrator.

c. Recommendation of public censure, suspension, disbarment or any other methods of disposition with or without conditions – any of which require the case to be sent to the Supreme Court – RULE 203(a)(1)(2)(3) and (5).

d. Appeal by Disciplinary Administrator – RULE 211(f).

5. Hearing Panel may assess costs on imposition of informal admonition – RULE 224(c).

IX. SUPREME COURT HEARING

RULE 212, 224 AND 203

A. Docketed – RULE 211(f) and RULE 212 – In the Matter of Respondent's Name.

B. Record of case consists of formal complaint, answer, panel report and recommendation of Disciplinary Administrator, if any, transcript of hearing, if any, and all evidence admitted by the panel – RULE 212(b).

C. Respondent must, within 20 days, waive exceptions or file exceptions to the panel report – any part of hearing report not specifically excepted to shall be deemed admitted – RULE 212(c).

D. If exceptions are waived or not filed, the case will be set for imposition of discipline hearing before the Supreme Court at which time respondent may make arguments with respect to the discipline to be imposed – RULE 212(d).

E. If respondent takes exceptions with 20 days then:

1. Transcript ordered and served by the clerk – RULE 212(e)(1).

2. Respondent's brief due 30 days after service of transcript – RULE 212(e)(2).

3. Disciplinary Administrator's brief due 30 days after respondent's brief – RULE 212(e)(3).

4. Ten days for respondent to file reply brief.

5. If respondent fails to file brief within 30 days after service of transcript the facts of the panel report are deemed to be supported by the evidence – RULE 212(e)(4).

6. The matter is then set for oral argument – RULE 212(e)(5).

F. Disposition – recommended sanction of hearing panel or Disciplinary Administrator is only a recommendation – Supreme Court can do any of the following – RULE 212 and 203:

1. Dismiss.
2. Disbarment.
3. Suspension – indefinite or definite.
4. Public Censure – published or unpublished.
5. Informal Admonition.
6. Any other sanction, discipline or condition deemed appropriate by the Supreme court – probation cases fit here; In re Jantz, 243 Kan. 770 (1988).

G. Sanction of disbarment or suspension is effective immediately upon the filing of the opinion – opinions are filed on Friday of court week following arguments – a known date.

H. Imposition of costs by Supreme Court if discipline is imposed – RULE 224(c).

I. Direct appeal by way of certiorari to U.S. Supreme Court – only remedy.

X. ACTION AFTER DISCIPLINE OF SUSPENSION OR DISBARMENT

RULE 218

A. Respondent must notify all clients in writing of suspension or disbarment and respondent must notify courts and opposing counsel in writing and withdraw as counsel of record – RULE 218 – respondent must pay costs assessed – RULE 224 and 218 – violation of any suspension order is grounds for disbarment – RULE 218(c).

B. Proof of compliance with RULE 218 is condition precedent to filing Petition of Reinstatement – RULE 218(b).

XI. REINSTATEMENT OF SUSPENDED OR DISBARRED ATTORNEYS

RULE 219

A. Petition for Reinstatement to Supreme Court after proof of compliance with RULE 218(b) – RULE 219(a).

B. Payment of \$750 and any outstanding costs before any action by court – RULE 219(b).

C. Determination by Supreme Court of whether sufficient time has elapsed considering the gravity of the acts leading to suspension or disbarment to justify reconsideration of prior order – RULE 219(c).

D. If petition not dismissed it is then referred to Disciplinary Board panel for consideration and hearing – RULE 219(c).

E. Investigation by Disciplinary Administrator – Petitioner must cooperate with the investigation – In re Pringle, 248 Kan. 498 (1991).

F. Full evidentiary hearing before hearing panel – respondent must prove his case by clear and convincing evidence – Kansas v. Russo, 230 Kan. 5 (1981) – ABA Standards for Imposing Lawyer Sanctions, 1991 Edition.

G. If hearing panel report recommends reinstatement the matter is then submitted to the Supreme Court – if hearing panel report recommends denial of reinstatement petitioner has 15 days to file written exceptions with the court.

H. Supreme Court after consideration may grant the petition with or without appropriate conditions or deny the petition – In re Elmborg, 241 Kan. 425 (1987) and RULE 219(c) – No briefs or oral argument unless ordered by court – RULE 219(d).

I. Disbarred attorney not eligible to apply for reinstatement for 5 years nor suspended attorney for 3 years – RULE 219(e).

XII. INCAPACITY OF ATTORNEY – RULE 220 – AND APPOINTMENT OF COUNSEL TO PROTECT CLIENTS' INTEREST – RULE 211 IMPAIRED LAWYERS ASSISTANCE PROGRAM – RULE 206

These three rules constitute the court's directions in assisting attorneys who have, because of mental, physical or other impairment, become incapacitated – allows district court to appoint attorney to protect the interests of clients of neglectful or incapacitated attorney – allows state and local bar association to establish and fund impaired lawyers assistance committees.

XIII. ANNUAL REGISTRATION – RULE 208

Establishes system for annual attorney registration – establishes 4 groups of attorneys – active, inactive, retired, or inactive due to physical or mental disability – only active attorneys may practice law – attorneys who are retired or inactive and not engaged in the practice of law for any reason cannot reenter the practice of law without obtaining an order of the court – no registration or practice without payment of CLE fee and compliance with CLE requirements.