Proposed Supreme Court Rules 200 through 240:
Rules Relating to Discipline of Attorneys

The Kansas Supreme Court is accepting public comment on proposed Rules 200 through 240: Rules Relating to Discipline of Attorneys.

Proposed changes to Rules Relating to Discipline of Attorneys are extensive and amount to an overhaul of the existing rules, so the changes are not marked with underlining for new text or strikeout for deleted text.

Generally, the rules are restyled and retooled to align with other Supreme Court rules. Other changes increase efficiency, clarify the disciplinary process, and codify existing practices. Many provisions of existing rules relate to varied subjects, and this proposal creates separate rules for each subject. The rules also are reordered to better reflect how a complaint moves through the disciplinary process.

New provisions in the proposed rules include:

- definitions for greater clarity;
- new deadlines for the disciplinary administrator and the respondent to promote an efficient hearing process;
- a clear process for respondents to get subpoenas to compel witnesses to testify at disciplinary hearings;
- expanded use of depositions in attorney disciplinary cases;
- a procedure for parties, by agreement, to submit a disciplinary case directly to the Supreme Court and forego a hearing before the Kansas Board for Discipline of Attorneys; and
- a provision that addresses using expert witnesses in disciplinary proceedings.

The proposed changes also move the Kansas Rules of Professional Conduct from Rule 226 to Rule 240. There are no changes to the Kansas Rules of Professional Conduct other than to move them to Rule 240, so the text is not included for public comment.

Comment may be made by email to SCRulespubliccomment@kscourts.org until noon Tuesday, November 10, 2020. The subject line must read "Rules Relating to Discipline of Attorneys."

Summary of Changes and Cross-Reference Chart
Proposed Rules 200 through 240: Rules Relating to Discipline of Attorneys

1. **Definitions.** New Rule 201 provides a comprehensive definitions section.

2. **Jurisdiction.** New Rule 202 clarifies that all individuals engaged in the practice of law in Kansas are subject to the Rules Relating to Discipline of Attorneys. For example, new Rule 202 states that, in addition to attorneys admitted to practice law in Kansas, the rules apply to out-of-state attorneys providing legal services under KRPC 5.5, attorneys admitted to practice law pro hac vice, attorneys authorized to provide pro bono or low-cost legal services under Rule 712B, etc.

3. **Attorney Registration.** Because the court recently amended new Rule 206 (current Rule 208), only minimal changes were made to this rule.

4. **Existing Practices.** Many of the new rules, including new Rules 208 (initial complaint or report of misconduct), 209 (investigation of docketed complaint), and 211 (review committee disposition), include provisions that codify existing practices.

5. **Diversion.** The court created the Attorney Diversion Program by rule in 2001. New Rule 212 retains the structure of the program, eliminates the creation language, and clarifies the process.

6. **Emergency Temporary Suspensions.** New Rule 213 provides clarity on the existing procedure.

7. **Service.** New Rule 215 allows the disciplinary administrator and the respondent to file and serve certain documents by email.

8. **Subpoenas.** New Rule 217 clarifies the process for issuing or obtaining subpoenas. The current rule includes a provision, which was never used, permitting a party to obtain a subpoena in a disciplinary case from a district court. This provision has been eliminated. The new rule provides a procedure for a respondent to obtain a subpoena from a hearing panel. Subsection (d) is a new provision that allows the Disciplinary Administrator's Office to assist a disciplinary authority in another jurisdiction with obtaining a subpoena. Currently, more than 30 jurisdictions have a reciprocal subpoena rule.

9. **Depositions.** New Rule 218 expands the use of depositions in attorney discipline cases. It provides that a deposition may be taken by agreement of the parties.

10. **Summary Submission.** New Rule 223 provides a new process that allows the parties to enter a stipulation and forgo a hearing before a hearing panel. The rule requires review and approval by the board chair. The rule would speed up the process in cases where all participants are in agreement.

11. **Expert Witness.** The existing disciplinary rules do not address the use of an expert witness. From time to time, the parties seek to present testimony from expert witnesses. New Rule 224 provides a procedure for presenting expert testimony.

12. **Disabled Status.** The rule regarding transfer to disabled status has undergone significant changes. The changes are designed to clarify the procedure for transferring to disabled status (1) automatically following a court order, (2) when an attorney disciplinary complaint is pending, and (3) when an attorney disciplinary complaint is not pending.

13. **Deadlines.** A number of the new rules provide deadlines for the disciplinary administrator and the respondent during disciplinary proceedings. Clear deadlines should promote an efficient prehearing process.

    a. New Rule 211 (review committee disposition) provides 21 days for a respondent to reject an informal admonition and request a formal hearing. Current Rule 210 does not include a deadline for rejecting an informal admonition.

    b. New Rule 213 (temporary suspension) provides 14 days for a respondent to respond to a motion for a temporary suspension. Current Rule 203(b) does not contain a provision for a response by a respondent.

    c. New Rule 215 (pleadings) requires the Disciplinary Administrator's Office to file a formal complaint at least 45 days prior to a hearing. Currently, Rule 211(b) requires that a respondent file an answer within 20 days of the filing of the formal complaint but does not provide a timing requirement for filing the formal complaint. This provision codifies existing practice.

    d. New Rule 216 (prehearing procedure) clarifies a provision of the Internal Operating Rules of the Kansas Board for Discipline of Attorneys, requiring a prehearing motion to be filed at least 14 days prior to a hearing. See Int. Op. R. D.1. New Rule 216 also provides that a response to a motion must be filed at least seven days prior to a hearing. Currently, absent a prehearing conference or scheduling order, there is no time requirement for a response to a prehearing motion.

    e. New Rule 217 (subpoena) sets forth deadlines for requesting and serving a subpoena. Additionally, New Rule 217 also provides for the timing of a motion to quash. Current Rule 216 does not contain similar requirements.

    f. New Rule 221 (discipline imposed in another jurisdiction) requires a respondent to notify the Disciplinary Administrator's Office within 14 days of the imposition of discipline in another jurisdiction. Currently, an attorney has a duty to report, but there is no time requirement associated with the duty. See KRPC 8.3(a).

    g. New Rule 224 (witnesses and exhibits) creates deadlines for providing witness lists, exhibit lists, and exhibits prior to the hearing. New Rule 224 also creates deadlines for disclosing expert witnesses. Currently, the parties are required to mark and present

exhibits to the hearing panel members in advance of the hearing, but the respondent rarely does. See Int. Op. R. D.11. Having a provision in the Rules Relating to Discipline of Attorneys, rather than in the Internal Operating Rules of the board, will provide the respondents with guidance on hearing procedure and will expedite the hearing process.

h. New Rule 227 (probation) includes a requirement that a respondent seeking probation must file an affidavit with the Court describing compliance 14 days prior to oral argument. Current Rule 211(g)(5) requires a respondent to file an affidavit, but it does not provide a deadline for doing so. New Rule 227 also shortens the time limit for the Disciplinary Administrator's Office to respond to a motion for discharge from probation from 20 days to seven days. See New Rule 227(g)(2) and Current Rule 211(g)(7).

i. New Rule 229 (costs) establishes a deadline for respondents to pay the costs of the action, when imposed. This codifies existing practice.

j. New Rule 231 (notice to clients, opposing counsel, and courts following suspension or disbarment) requires a respondent to certify that proper notice has been provided within 30 days of an order of suspension or disbarment. Current Rule 218(b) requires a respondent to make that showing prior to filing a request for reinstatement. Hopefully this change will result in more respondents complying with this provision, which will aid a respondent in the reinstatement process. New Rule 231 also establishes a time frame for the Clerk of the Appellate Courts to notify certain courts of a suspension or disbarment order. See New Rule 231(c).

k. New Rule 232 (reinstatement following suspension or disbarment) includes a provision for the Disciplinary Administrator's Office to respond to a petition for reinstatement within seven days. This codifies existing practice directed by the court.

l. New Rule 234 (transfer to disabled status) includes timing provisions for matters involving transfer to disabled status. Currently, there are no timing provisions in the rule.

m. New Rule 235 (appointment of counsel to protect client interests) creates a time frame for a district court judge to provide the Disciplinary Administrator's Office with a copy of an order appointing an attorney. While the existing practice is for a district court judge to provide the Disciplinary Administrator's Office with a copy of the order, Current Rule 221 does not contain such a provision.

No.	Name	Existing Rule
Proposed Rule 200	Prefatory Rule	Prefatory Rule
Proposed Rule 201	Definitions	None, this is a new rule – although some of the definitions appear generally in the existing rules, e.g. Rule 211
Proposed Rule 202	Applicability; Jurisdiction	Rule 201
Proposed Rule 203	General Principles	Rule 202
Proposed Rule 204	Kansas Board for Discipline of Attorneys; Review Committee; Hearing Panel	Rule 204
Proposed Rule 205	Disciplinary Administrator	Rule 205
Proposed Rule 206	Attorney Registration	Rule 208
Proposed Rule 207	Mandatory Disclosure of Professional Liability Insurance	Rule 208A
Proposed Rule 208	Initial Complaint or Report of Misconduct	Rule 209
Proposed Rule 209	Investigation of Docketed Complaint	Rule 207, Rule 209, Rule 210, and Rule 216
Proposed Rule 210	Duty to Assist; Duty to Respond; Duty to Report	Rule 207
Proposed Rule 211	Review Committee Disposition	Rule 210
Proposed Rule 212	Attorney Diversion Program	Rule 203(d)
Proposed Rule 213	Temporary Suspension	Rule 203(b)

No.	Name	Existing Rule
Proposed Rule 214	Dismissal Not Justified	Rule 213
Proposed Rule 215	Pleadings; Service	Rule 211(b) and Rule 215
Proposed Rule 216	Prehearing Procedure	Rule 216 and Internal Operating Rules
Proposed Rule 217	Subpoena	Rule 216
Proposed Rule 218	Deposition	Rule 216
Proposed Rule 219	Criminal Charge; Conviction	Rule 202, Rule 203(c), and Rule 214
Proposed Rule 220	Effect of Other Proceeding or Judgment	Rule 202 and Rule 214
Proposed Rule 221	Discipline Imposed in Another Jurisdiction	Rule 202
Proposed Rule 222	Hearings	Rule 211 and Rule 224(b)
Proposed Rule 223	Summary Submission	None, this is a new rule
Proposed Rule 224	Witnesses and Exhibits	None, this is a new rule
Proposed Rule 225	Types of Discipline	Rule 203(a)
Proposed Rule 226	Final Hearing Report	Rule 211(f)
Proposed Rule 227	Probation	Rule 211(g)
Proposed Rule 228	Procedure Before Supreme Court	Rule 212

No.	Name	Existing Rule
Proposed Rule 229	Costs	Rule 224(c)
Proposed Rule 230	Voluntary Surrender of License	Rule 217
Proposed Rule 231	Notice to Clients, Opposing Counsel, and Courts Following Suspension or Disbarment	Rule 218 and Rule 224(e)
Proposed Rule 232	Reinstatement Following Suspension or Disbarment	Rule 219
Proposed Rule 233	Lawyers Assistance Program	Rule 206
Proposed Rule 234	Transfer to Disabled Status	Rule 220
Proposed Rule 235	Appointment of Counsel to Protect Client Interests	Rule 221
Proposed Rule 236	Compliance Examination by Disciplinary Administrator	Rule 216A
Proposed Rule 237	Confidentiality and Disclosure	Rule 222
Proposed Rule 238	Absolute Immunity	Rule 223
Proposed Rule 239	Additional Rules of Procedure	Rule 224(a) and (d)
Proposed Rule 240	Kansas Rules of Professional Conduct	Rule 226
Proposed Rule 241	Rule Relating to the Lawyers' Fund for Client Protection	Rule 227

Rule 200

PREFATORY RULE

(a) **Rules Relating to Discipline of Attorneys.** The Rules Relating to Discipline of Attorneys are numbered 201 through 240 and are effective _____.

(b) **Repeal of Former Rules.** Supreme Court Rules 201 through 224, and the Prefatory Rule that were in effect immediately prior to the effective date of these rules are repealed as of _____.

(c) **Kansas Rules of Professional Conduct.** The Kansas Rules of Professional Conduct are designated as Rule 240.

(d) **Statutory References.** In these rules, a reference to a statute includes any subsequent amendment to the statute.

Rule 201

DEFINITIONS

(a) **"Attorney"** means a person described in Rule 202(a).

(b) **"Board"** means the Kansas Board for Discipline of Attorneys appointed under Rule 204.

(c) **"Board proceeding"** means a disciplinary or reinstatement matter pending before the Board.

(d) **"Case"** means a disciplinary matter pending before the Kansas Supreme Court.

(e) **"Disciplinary administrator"** means the disciplinary administrator, a member of the disciplinary administrator's staff, or a person the disciplinary administrator designates to act on the disciplinary administrator's behalf.

(f) **"Disciplinary board proceeding"** means a disciplinary matter pending before the Board.

(g) **"Docketed complaint"** means an initial complaint or a report that the disciplinary administrator dockets under Rule 208(c) for investigation under Rule 209.

(h) **"Exception"** means a formal objection to a hearing panel's finding of fact or conclusion of law.

(i) **"Final hearing report"** means the report issued by a hearing panel following a hearing on a formal complaint, petition for reinstatement, or motion to revoke probation.

(j) **"Formal complaint"** means the pleading filed by the disciplinary administrator to initiate a disciplinary board proceeding.

(k) **"Good standing"** means an attorney's license to practice law is not suspended for any reason, the attorney has not been disbarred, the attorney has not surrendered the attorney's license, the attorney has not been transferred to disabled status, and the attorney is registered as active, inactive, or retired.

(l) **"Hearing panel"** means the panel appointed under Rule 204.

(m) **"Initial complaint"** means the information submitted on a form available from the disciplinary administrator and relied on by the disciplinary administrator to initiate an investigation.

(n) **"Misconduct"** means an act or omission by an attorney, individually or with another person, that violates the Kansas Rules of Professional Conduct, the Rules Relating to Discipline of Attorneys, or the attorney's oath of office.

(o) **"Petitioner"** means an attorney who files a petition for reinstatement.

(p) **"Presiding officer"** means the hearing panel member appointed by the Board chair to preside over a hearing on a formal complaint, petition for reinstatement, or motion to revoke probation and to speak on the hearing panel's behalf.

(q) **"Reinstatement board proceeding"** means a reinstatement matter pending before the Board.

(r) **"Report"** means the information, other than an initial complaint, relied on by the disciplinary administrator to initiate an investigation.

(s) **"Respondent"** means an attorney against whom an initial complaint is submitted or a report is made.

(t) **"Review committee"** means the committee appointed by the Supreme Court under Rule 204.

(u) **"Serve" or "Service"** means to deliver a document using a method specified under K.S.A. 60-205 unless otherwise specified in these rules.

(v) **"Writing" or "Written"** means any representation of words, letters, symbols, numbers, or figures on a tangible medium or stored in an electronic format.

Rule 202

APPLICABILITY; JURISDICTION

(a) **Applicability.** Rules 201 through 241 apply to each attorney:

(1) admitted to practice law in Kansas;

(2) granted a restricted license to practice law under Rule 712;

(3) granted a temporary restricted license to practice law under Rule 712A;

(4) providing legal services under Kansas Rule of Professional Conduct 5.5;

(5) admitted to practice law pro hac vice under Rule 1.10 or Rule 116; or

(6) authorized to provide pro bono or low-cost legal services under Rule 712B.

(b) **Jurisdiction.** An attorney is subject to the jurisdiction of the Kansas Supreme Court and the Board.

(c) **Other Proceedings.** These rules must not be construed to deny a court any power necessary for the court to maintain control over its proceedings.

Rule 203

GENERAL PRINCIPLES

(a) **Professional and Personal Duties.** An attorney is required to act at all times, both professionally and personally, in conformity with the standards established by the Kansas Rules of Professional Conduct, the Rules Relating to Discipline of Attorneys, and the attorney's oath of office.

(b) **Ground for Discipline.** Misconduct is a ground for discipline, regardless of whether the act or omission occurred in the course of an attorney-client relationship.

Rule 204

KANSAS BOARD FOR DISCIPLINE OF ATTORNEYS; REVIEW COMMITTEE; HEARING PANEL

(a) **Kansas Board for Discipline of Attorneys.** The Supreme Court will appoint 20 attorneys to serve as Board members.

(1) **Term.** Each Board member is appointed for a term of four years. The Supreme Court will appoint a new member to fill a vacancy. A new member appointed to fill a vacancy serves the unexpired term of the previous member. No member may serve more than three consecutive four-year terms, except a member initially appointed to serve an unexpired term may serve three consecutive four-year terms thereafter. A Board member may return to service on the Board after a one-term break in service.

(2) **Chair and Vice-Chair.** The Supreme Court will designate one Board member as chair and one Board member as vice-chair.

(b) **Review Committee.** The Supreme Court will appoint three attorneys, at least two of whom must be Board members, as the review committee.

(1) **Purpose.** The review committee will review each docketed complaint and direct a disposition under Rule 211(a).

(2) **Prohibited Participation.** A review committee member must not participate in a hearing on a formal complaint when the committee member considered a docketed complaint under Rule 211.

(c) **Hearing Panel.** The Board chair will appoint three attorneys, at least two of whom must be Board members, to conduct a hearing on a formal complaint, petition for reinstatement, or motion to revoke probation. The chair will appoint one Board member to serve as the presiding officer. The third member must be registered under Rule 206 as an active attorney.

(d) **Recusal.** A review committee member and a hearing panel member must not participate in a board proceeding if a judge similarly situated would be required to recuse.

(e) **Compensation.** The Supreme Court will pay Board members, review committee members, and hearing panel members compensation for their service from the disciplinary fee fund.

(f) **Expenses.** The Supreme Court will reimburse Board members, review committee members, and hearing panel members their actual and necessary travel and other expenses from the disciplinary fee fund.

(g) **Other Rules.** The Board may adopt procedural rules consistent with these rules.

Rule 205

DISCIPLINARY ADMINISTRATOR

(a) **Disciplinary Administrator.** The Supreme Court will appoint a disciplinary administrator. The disciplinary administrator serves at the pleasure of the Supreme Court.

(b) **Compensation and Expenses.** The Supreme Court will determine the compensation of the disciplinary administrator and the disciplinary administrator's staff. The Supreme Court will reimburse the disciplinary administrator and the disciplinary administrator's staff their actual and necessary travel and other expenses. The Supreme Court will pay the compensation and reimburse the expenses from the disciplinary fee fund.

(c) **Financial Information.** The disciplinary administrator must submit annually to the Supreme Court a report of receipts and expenditures.

(d) **Qualification.** The disciplinary administrator must be registered as an active Kansas attorney.

(e) **Practice Restriction.** The disciplinary administrator and the disciplinary administrator's staff must not engage in the private practice of law. The disciplinary administrator may, however, set a reasonable transition period for staff after the start of employment.

(f) **Powers and Duties.** The disciplinary administrator has the following powers and duties:

(1) investigating an initial complaint or a report that appears to have merit as set forth in Rule 208(c);

(2) declining to investigate and dismissing an initial complaint or report as set forth in Rule 208(b);

(3) presenting all docketed complaints to the review committee;

(4) informing the Supreme Court when an attorney is convicted as defined in Rule 219(a)(1) of a felony crime or a crime mandating registration as an offender;

(5) prosecuting a disciplinary board proceeding before a hearing panel and a case before the Supreme Court;

(6) defending a reinstatement board proceeding before a hearing panel and a case before the Supreme Court with respect to a petition for reinstatement of a disabled, inactive, suspended, or disbarred attorney;

(7) providing investigative and prosecutorial services for the Kansas Board of Law Examiners;

(8) providing investigative services as needed for the Kansas Commission on Judicial Conduct;

(9) employing and supervising staff to perform the disciplinary administrator's duties; and

(10) performing other duties as directed by the Supreme Court.

(g) **Record Retention.**

(1) The disciplinary administrator must maintain for five years records relating to initial complaints or reports not docketed for investigation and docketed complaints terminated by dismissal.

(2) The disciplinary administrator must maintain relevant records permanently if they relate to participation in the attorney diversion program or cases in which discipline was imposed.

Rule 206

ATTORNEY REGISTRATION

(a) **Definitions.**

(1) **"Licensing Period"** means the period of one year beginning July 1 and ending June 30.

(2) **"Registration fee"** means the fee established by Supreme Court order for a status listed in subsection (b)(1).

(b) **Annual Registration.** In the year an attorney is admitted to the practice of law by the Supreme Court, the attorney must register with the Office of Judicial Administration on a form provided by the Office of Judicial Administration no later than 30 days after taking the oath of admission under Rule 720. Each year thereafter, an attorney admitted to the Kansas bar, including a justice or a judge, must register with the Office of Judicial Administration as provided in this rule.

(1) **Status.** An attorney may register as active, inactive, retired, or disabled due to mental or physical disability.

(2) **Practice of Law.** Except as otherwise provided in subsection (b)(3), Rule 1.10, Rule 116, Rule 710, and Kansas Rule of Professional Conduct 5.5, only an attorney registered as active may practice law in Kansas.

(3) **Pro Bono Exception.** An attorney registered as retired or inactive may practice law as provided in Rule 712B.

(4) **Fee.** An attorney must pay an annual registration fee in an amount established by Supreme Court order. The attorney must pay the registration fee based on the attorney's status shown in the records of the Office of Judicial Administration as of July 1. No registration fee will be charged to the following:

(A) an attorney newly admitted to the practice of law in Kansas until the first regular registration date following admission;

(B) an attorney who has retired from the practice of law, has reached the age of 66 on or before June 30, and has requested a change to retired status; or

(C) an attorney who is on disabled status due to physical or mental disability.

(5) **Exemptions.** The following attorneys are exempt from annual registration:

(A) an attorney appearing pro hac vice in any action or proceeding in Kansas solely in accordance with Supreme Court Rules 1.10 or 116;

(B) an attorney who has registered as retired or as disabled due to mental or physical disability; and

(C) an attorney who has been transferred to disabled status by the Supreme Court under Rule 234.

(6) **Continuing Legal Education Fee.** Payment of the annual continuing legal education fee and any applicable late fee under Rule 808 of the Rules Relating to Continuing Legal Education is required for an active attorney.

(7) **Reaffirmation of Attorney Oath Under Rule 720.** During annual registration, an attorney must reaffirm the oath under Rule 720 in the manner directed by the Supreme Court.

(c) **Registration Form; Statement of Registration Fee.** By June 1 of each year, the Office of Judicial Administration will mail to each registered attorney, at the attorney's preferred address on record with the Office of Judicial Administration, a registration form that states the amount of the registration fee that must be paid by June 30 of the year in which the Licensing Period begins. As a substitute for mailing under this subsection, the Office of Judicial Administration may email to each registered attorney instructions for completing an online annual registration.

(d) **Registration Deadline.** Online registration must be completed by June 30 prior to the start of the next Licensing Period that begins July 1. Failure of an attorney to receive a statement of the registration fee from the Office of Judicial Administration or instructions for online registration from the Office of Judicial Administration does not excuse payment of the fee.

(e) **Late Fee.** Completion of online registration, including payment of the registration fee, after June 30 will cause a $100 late fee to be assessed automatically.

(f) **Failure to Complete Annual Registration.** An attorney required to register annually who has not completed online registration by June 30 or who fails to pay any late fee may be administratively suspended from the practice of law under the following procedure.

(1) **Notice.** The Office of Judicial Administration will mail a notice to an attorney who has failed to register, pay the registration fee, or pay any late fee, stating that the attorney's right to practice law is subject to being summarily suspended after 30 days from the mailing of the notice if the registration form and any applicable

fees are not received by the Office of Judicial Administration within that time. The Office of Judicial Administration will mail the notice by return receipt delivery to the attorney's preferred address on record with the Office of Judicial Administration.

(2) **Certification.** The judicial administrator will certify to the Supreme Court the name of an attorney who fails to register or pay the applicable fees under subsection (f)(1) before the expiration of the period of time specified in the notice.

(3) **Administrative Suspension.** The Supreme Court will issue an order suspending from the practice of law an attorney whose name the judicial administrator certifies under subsection (f)(2). The Office of Judicial Administration will provide a list of suspended active attorneys to the clerk of the district court and the chief judge of each judicial district.

(g) **Change of Status from Inactive to Active.** An attorney may apply for a change of status from inactive to active as follows.

(1) **Inactive Less than Two Years.** An attorney who is registered as inactive for less than two years may change status to active by satisfying the following requirements:

(A) submitting a request for change of status to active to the Office of Judicial Administration;

(B) complying with any condition imposed by the Supreme Court;

(C) completing any requirement imposed by the Kansas Continuing Legal Education Board; and

(D) paying any fees imposed by the Supreme Court, including a $25 fee for change in status.

(2) **Inactive For at Least Two but Less than Ten Years.** An attorney who has been registered as inactive for at least two years but less than ten years may change status to active by satisfying the following requirements:

(A) submitting an Application for Change of Registration Status Form to the Office of Judicial Administration; and

(B) complying with the requirements in subsection (g)(1)(B)-(D).

(3) **Inactive Ten Years or More.** An attorney who has been registered as inactive for ten years or more may change status to active by satisfying the following requirements:

(A) complying with the requirements in subsection (g)(2); and

(B) if required by the Supreme Court after it reviews the application, completing a bar review course approved by the Supreme Court.

(4) **Effective Date of Change of Status.** A change of an attorney's registered status from inactive to active is not effective until approved by the Supreme Court.

(A) A request for change in status to active effective prior to July 1 requires payment of the change of status fee and the difference between the active fee and the inactive fee for the current Licensing Period. The attorney will then be responsible for paying the active fee for the next Licensing Period when it becomes due.

(B) A request for change in status to active effective July 1 requires payment of the change of status fee and the active fee by June 30.

(5) **Investigation.** The Supreme Court may order the disciplinary administrator to investigate the request for change of status.

(h) **Change of Status from Retired to Active.** An attorney may apply for a change of status from retired to active by submitting to the Office of Judicial Administration an Application for Change of Registration Status Form. The Supreme Court may take the following action:

(1) order the disciplinary administrator to investigate the request for change of status;

(2) order the attorney to appear before a hearing panel of the Kansas Board for Discipline of Attorneys to consider the application; and

(3) impose appropriate conditions, costs, and registration fees before or upon granting the change of status.

(i) **Change of Status from Active to Inactive or from Active to Retired.** An attorney who is registered as active may change status to inactive or retired. To be eligible for retired status, an attorney must have retired from the practice of law and have reached the age of 66. A change of registration status under this subsection must be received by June 30 to

be effective for the next Licensing Period. An attorney may change to inactive or retired status by satisfying the following requirements:

(1) submitting a signed, written request to the Office of Judicial Administration for change of status to either inactive or retired; and

(2) completing any requirement imposed by the Kansas Continuing Legal Education Board.

(j) **Reinstatement After Administrative Suspension.** An attorney who has been suspended under subsection (f)(3) or Rule 808 may seek an order of the Supreme Court to be reinstated to active or inactive status by satisfying the following requirements:

(1) submitting an Application for Reinstatement Form to the Office of Judicial Administration;

(2) submitting to an investigation if the Supreme Court orders the disciplinary administrator to conduct an investigation of the attorney;

(3) paying all delinquent registration fees and a $100 reinstatement fee, unless the Supreme Court for good cause waives any portion of payment;

(4) paying any additional amount ordered and complying with any additional condition imposed by the Supreme Court; and

(5) completing any requirement imposed by the Kansas Continuing Legal Education Board.

(k) **Service Fee.** The Office of Judicial Administration will charge a $30 service fee for a check that is returned unpaid. An attorney whose check is returned unpaid must pay the service fee before a change of status can be approved, annual registration can be considered complete, or reinstatement can be granted.

(l) **Registration Card.** The Office of Judicial Administration will issue an annual registration card in a form approved by the Supreme Court to each attorney registered as active.

(m) **Disciplinary Fee Fund.** The Office of Judicial Administration will deposit all registration fees in the disciplinary fee fund. Compensation and expenses of the Office of the Disciplinary Administrator and the Kansas Board for Discipline of Attorneys will be paid from the fund. Payment from the fund will be made only on receipt of a voucher

signed by a Supreme Court justice or the court's designee. Any unused balance in the fund may be applied to an appropriate use determined by the Supreme Court.

(n) **Change of Address and Contact Information.** A registered attorney must notify the Office of Judicial Administration no later than 30 days after a change of legal name, residential address, business address, email address, business telephone number, residence/personal telephone number, liability insurer, or trust account information.

(o) **Online Registration.** Online registration will be mandatory in 2021 and each year thereafter.

Rule 207

MANDATORY DISCLOSURE OF PROFESSIONAL LIABILITY INSURANCE

(a) **Certification.** An attorney registered under Rule 206 as an active attorney must certify as part of the attorney's annual registration whether the attorney is engaged in the private practice of law and, if so, whether the attorney maintains professional liability insurance coverage.

(b) **Notice of Change in Policy.** If after certification under subsection (a), the attorney's insurance policy lapses, is no longer in effect, or terminates for any reason, the attorney must provide written notification to the Office of Judicial Administration of the change no later than 30 days after the change occurs.

(c) **Public Information.** The information submitted under this rule will be made available to the public in a manner designated by the Supreme Court.

(d) **Failure to Comply; Supplying False Information.** Any attorney registered under Rule 206 as an active attorney who fails to comply with this rule may be suspended from the practice of law. An attorney who submits false information in response to this rule is subject to discipline.

Rule 208

INITIAL COMPLAINT OR REPORT OF MISCONDUCT

(a) **Submission to Disciplinary Administrator.** An initial complaint or a report of attorney misconduct must be submitted to the disciplinary administrator. An initial complaint or a report submitted to the Board, a board member, the clerk of the appellate courts, the Office of Judicial Administration, or a state or local bar association must be delivered immediately to the disciplinary administrator.

(b) **Dismissal.** The disciplinary administrator may decline to investigate and may dismiss an initial complaint or a report received under subsection (a) under the following circumstances:

(1) if the allegations in the initial complaint or report do not constitute misconduct;

(2) if the initial complaint or report is facially frivolous, lacks adequate factual detail, or is duplicitous; or

(3) if the matter is outside the Board's jurisdiction.

(c) **Investigation.** Unless the disciplinary administrator dismisses an initial complaint or a report under subsection (b), the disciplinary administrator must proceed as follows:

(1) conduct an informal inquiry to determine whether to dismiss the initial complaint or report if it appears to be frivolous or without merit or to docket the initial complaint or report for investigation under Rule 209; or

(2) promptly docket the initial complaint or report for investigation under Rule 209.

Rule 209

INVESTIGATION OF DOCKETED COMPLAINT

(a) **Assignment.** The disciplinary administrator may assign the investigation of a docketed complaint to the following:

(1) the disciplinary administrator's office;

(2) a state or local bar association's ethics and grievance committee; or

(3) an attorney.

(b) **Investigation.** The investigator assigned to investigate a docketed complaint may proceed as follows:

(1) interview the complainant, the respondent, and other witnesses;

(2) gather pertinent documents, including copies of the respondent's file, the respondent's billing records, the respondent's trust account records, court records, and other relevant records;

(3) seek a subpoena under Rule 217(a); and

(4) take a sworn statement.

(c) **Investigative Report.** Following the completion of an investigation of a docketed complaint, the investigator must prepare an investigative report that includes factual findings and conclusions regarding the alleged misconduct. The investigator must forward the investigative report to the disciplinary administrator.

(d) **Disciplinary Administrator's Summary and Recommendation.** After receiving a report under subsection (c), the disciplinary administrator must prepare a summary of the investigation and recommend to the review committee an appropriate disposition under Rule 211(a).

(e) **Dismissal with Permission.** For good cause, the disciplinary administrator may seek permission from the Board chair or the Supreme Court liaison justice to dismiss a docketed complaint any time before docketing a case in the Supreme Court under Rule 228.

Rule 210

DUTY TO ASSIST; DUTY TO RESPOND; DUTY TO REPORT

(a) **Duty to Assist.** An attorney must assist the Supreme Court, the Board, and the disciplinary administrator in the investigation and prosecution of an initial complaint or a report, a docketed complaint, and a formal complaint and in other matters relating to the discipline of attorneys.

(b) **Duty to Respond.** An attorney must timely respond to a request from the disciplinary administrator for information during an investigation and prosecution of an initial complaint or a report, a docketed complaint, and a formal complaint.

(c) **Duty to Report.** An attorney who has knowledge of any action or omission that in the attorney's opinion constitutes misconduct must report the action or omission to the disciplinary administrator.

Rule 211

REVIEW COMMITTEE DISPOSITION

(a) **Consideration by Review Committee.** The review committee will review each docketed complaint, the respondent's written response, the investigative report, any relevant attachments, and the disciplinary administrator's summary and recommendation. The review committee may defer decision or place the docketed complaint on hold until the next review committee meeting. A majority of the review committee may direct one of the following dispositions:

(1) dismissal of the docketed complaint for lack of probable cause of a violation;

(2) dismissal of the docketed complaint for lack of clear and convincing evidence of a violation, with or without a letter of caution;

(3) referral of the respondent to the attorney diversion program;

(4) informal admonition of the respondent; or

(5) a hearing on a formal complaint before a hearing panel.

(b) **Probable Cause Finding.** Before the review committee directs any of the dispositions in subsections (a)(3)-(a)(5), the review committee must find probable cause to believe that the respondent engaged in misconduct.

(c) **Notice.** The review committee will notify the disciplinary administrator in writing of the disposition of each docketed complaint. The disciplinary administrator must serve the respondent in writing with notice of the disposition.

(d) **Demand for Hearing When Informal Admonition Directed.** If the review committee directs the disciplinary administrator to impose an informal admonition, the respondent, no later than 21 days after service of notice under subsection (c) of the review committee's disposition, may serve the disciplinary administrator with a demand for a hearing on a formal complaint. The hearing will be held under Rule 222.

Rule 212

ATTORNEY DIVERSION PROGRAM

(a) **Description.** The attorney diversion program is an alternative to a traditional disciplinary board proceeding.

(b) **Eligibility.** A respondent is eligible to participate in the attorney diversion program if participation reasonably can be expected to cure, treat, educate, or alter the respondent's behavior. A respondent is ineligible to participate in the program if the misconduct involved self-dealing, dishonesty, or breach of a fiduciary duty. Unless there are unique circumstances, a respondent is also ineligible to participate in the program if the respondent has been disciplined in any jurisdiction or previously participated in an attorney diversion program.

(c) **Disciplinary Administrator's Duties.**

(1) At the time a complaint is docketed for investigation, the disciplinary administrator must inform a respondent of the following:

(A) the respondent may request to participate in the attorney diversion program;

(B) a request to be considered for the attorney diversion program is not an admission of misconduct; and

(C) to participate in the attorney diversion program the respondent must stipulate that the respondent committed misconduct.

(2) If the respondent requests to participate in the program, the disciplinary administrator must submit the respondent's request and the disciplinary administrator's recommendation to the review committee for decision.

(d) **Consideration by Review Committee.**

(1) The review committee may consider participation in the attorney diversion program only if a majority of the review committee finds there is probable cause to believe that the respondent committed misconduct.

(2) The review committee, in determining whether to approve the request, must consider whether participation in the program will prevent future misconduct and protect the public by improving the respondent's professional competency and by providing educational, remedial, and rehabilitative programs for the respondent.

(e) **Agreement.** To participate in the attorney diversion program, a respondent must enter into an attorney diversion agreement with the disciplinary administrator that contains the following:

(1) a stipulation that the respondent committed misconduct;

(2) a factual statement that supports the stipulation in subsection (e)(1); and

(3) the conditions for the respondent's participation in the program.

(f) **Failure to Reach Agreement**. If the disciplinary administrator and the respondent cannot agree under subsection (e) to the facts to include in the factual statement, any provision that was violated, or the conditions of participation in the program, the traditional disciplinary board proceeding will resume. The failure to reach an agreement cannot be considered an aggravating factor in the disciplinary board proceeding.

(g) **Fees.** A respondent approved to participate in the attorney diversion program must pay an initial fee of $250. The respondent also must pay a monitoring fee of $50 per month during the period of diversion. All fees are payable to the disciplinary fee fund. Upon written request of a respondent, the disciplinary administrator may grant a hardship waiver of the fees for good cause.

(h) **Successful Completion.**

(1) When a respondent successfully completes the conditions of an attorney diversion agreement under subsection (e), the following provisions apply:

(A) the disciplinary administrator must inform the review committee and request that the review committee dismiss the docketed complaint; and

(B) the stipulation that the respondent committed misconduct remains confidential, except as provided by subsection (h)(2) and Rule 237.

(2) In any future disciplinary board proceeding commenced against the respondent, completion of an attorney diversion agreement will be considered as an aggravating factor of prior discipline. The diversion agreement will be conclusive evidence of the facts contained in the factual statement and each violation specified in the agreement. The respondent may present evidence in mitigation.

(i) **Failure to Comply or Complete.** If the disciplinary administrator determines that a respondent failed to comply with the conditions of an attorney diversion agreement under subsection (e), the following provisions will apply.

(1) The disciplinary administrator must serve the respondent with written notice of the failure and afford the respondent a reasonable opportunity to refute the determination.

(2) If the respondent fails to refute the determination, the disciplinary administrator must inform the review committee and request that the committee terminate the respondent's participation in the attorney diversion program.

(3) If the respondent and the disciplinary administrator cannot agree on whether the respondent failed to comply with the conditions of the agreement, the disciplinary administrator must inform the review committee and the review committee must make a determination of whether to terminate the respondent's participation in the program.

(4) If the review committee terminates the respondent's participation in the program, the traditional disciplinary board proceeding will resume.

(5) At the hearing on the formal complaint, the agreement will be conclusive evidence of the facts contained in the factual statement and each violation specified in the agreement. The respondent may present evidence in mitigation.

(6) Failure to complete the agreement will be considered as an aggravating factor.

Rule 213

TEMPORARY SUSPENSION

(a) **Procedure.** On motion of the disciplinary administrator, the Supreme Court for good cause may temporarily suspend a respondent's license to practice law.

(b) **Good Cause.** Good cause under subsection (a) is shown by evidence of the following:

(1) the respondent failed to timely file an answer to the formal complaint under Rule 215(b); or

(2) the respondent poses a substantial threat of harm to clients, the public, or the administration of justice.

(c) **Response Required.** The respondent must respond to a motion under subsection (a) no later than 14 days after service of a copy of the motion.

(d) **Appearance May be Required.** Before ruling on a motion under subsection (a), the Supreme Court may order the respondent to appear before the Supreme Court or any Supreme Court justice.

(e) **Ruling.** The Supreme Court or any Supreme Court justice may rule on a motion under subsection (a).

(f) **Disciplinary Board Proceedings.** Regardless of the disposition of a motion under subsection (a), the disciplinary board proceeding continues under these rules.

Rule 214

DISMISSAL NOT JUSTIFIED

(a) **Generally.** Except as described in subsection (b), the following situations will not justify dismissal of an initial complaint or a report, a docketed complaint, or a formal complaint:

(1) the unwillingness or neglect of the complainant to cooperate in the disciplinary investigation or board proceeding;

(2) a settlement or compromise between the complainant and the respondent; or

(3) restitution by the respondent.

(b) **Exception.** Unique circumstances may justify dismissal.

Rule 215

PLEADINGS; SERVICE

(a) **Formal Complaint; Notice of Hearing.**

(1) The disciplinary administrator must file a formal complaint with the Board as follows:

(A) at 701 Southwest Jackson Street, First Floor, Topeka, Kansas 66603; or

(B) by email to kdba@kscourts.org.

(2) The disciplinary administrator must serve the respondent and each hearing panel member with a copy of the formal complaint and notice of hearing no later than 45 days before the hearing on the formal complaint.

(3) Service under subsection (a)(2) on the respondent must be made by one of the following methods:

(A) personal service;

(B) certified mail to the respondent's most recent registration address with the Office of Judicial Administration; or

(C) on respondent's counsel by personal service, first-class mail, or email.

(4) Service under subsection (a)(2) on each hearing panel member must be made by personal service, first-class mail, or email.

(b) **Answer**.

(1) The respondent must file an answer to the formal complaint with the Board as follows:

(A) at 701 Southwest Jackson Street, First Floor, Topeka, Kansas 66603; or

(B) by email to kbda@kscourts.org.

(2) The respondent must serve the disciplinary administrator and each hearing panel member with a copy of the answer. The answer must be filed and served no later than 21 days after service of the formal complaint on the respondent.

(3) Service under subsection (b)(2) must be made by personal service, first-class mail, or email.

(4) For good cause, the presiding officer may extend the time for the respondent to file and serve an answer to the formal complaint.

(5) If the respondent fails to file and serve the disciplinary administrator and each hearing panel member with a timely answer to the formal complaint, the disciplinary administrator may file a motion under Rule 213 for temporary suspension.

(c) **Motion, Response, and Other Filing.**

(1) The disciplinary administrator and respondent must file any other pleading, motion, response, reply, notice, or other filing with the Board as follows:

(A) at 701 Southwest Jackson Street, First Floor, Topeka, Kansas 66603; or

(B) by email to kdba@kscourts.org.

(2) The disciplinary administrator must serve a copy of any other pleading, motion, response, reply, notice, or other filing as follows:

(A) on the respondent by personal service, certified mail, first-class mail, or email to the respondent's most recent registration address or email address; and

(B) on each member of the hearing panel by personal service, first-class mail, or email.

(3) The respondent must serve the disciplinary administrator and each member of the panel with a copy of any other pleading, motion, response, reply, notice, or other filing by personal service, first-class mail, or email.

(d) **Complete When Mailed.** Service under this rule by certified mail or first-class mail is deemed complete on mailing, regardless of whether the mail is actually received.

Rule 216

PREHEARING PROCEDURE

(a) **Prehearing Investigation.** When the review committee directs or when the respondent demands a hearing on the formal complaint, the disciplinary administrator may conduct additional investigation necessary for a hearing.

(b) **Prehearing Scheduling Order.** A hearing panel may issue a prehearing scheduling order.

(c) **Motions.** Unless there are unique circumstances or a prehearing scheduling order specifies otherwise, all prehearing motions must be filed no later than 14 days before a hearing on a formal complaint or petition for reinstatement. The opposing party may serve the moving party with a copy of a response to the motion no later than seven days after service of the motion. The moving party may not reply to the response. The panel may schedule a hearing on the motion.

(d) **Prehearing Conference.** If the circumstances warrant, a hearing panel may schedule a prehearing conference to consider any pending motion, obtain admissions, or otherwise narrow the issues presented by the pleadings. The presiding officer may designate a panel member to conduct the conference. The panel may issue a prehearing conference order. The panel may modify the order.

Rule 217

SUBPOENA

(a) **Investigation.** During an investigation conducted under these rules or a compliance examination conducted under Rule 236, the disciplinary administrator may issue a subpoena to compel the attendance of a witness or the production of pertinent books, papers, documents, and electronically stored information before the disciplinary administrator or an investigator.

(b) **Formal Hearing.**

(1) **Disciplinary Administrator's Evidence.** The disciplinary administrator may compel the attendance of a witness or the production of pertinent books, papers, documents, and electronically stored information at a formal hearing by issuing a subpoena and serving it no later than 21 days before the hearing.

(2) **Respondent's Evidence**. A respondent may compel the attendance of a witness or the production of pertinent books, papers, documents, and electronically stored information at a formal hearing by obtaining a subpoena from the presiding officer. The respondent must request the subpoena in writing at least 30 days before the hearing. The respondent must serve the subpoena no later than 21 days before the hearing.

(3) **Service, Fees, and Mileage**.

(A) **Location**. Service of a subpoena may be made anywhere within Kansas.

(B) **Attendance Fee and Mileage**. If the subpoena requires attendance of a witness, the subpoena must be accompanied by the mileage allowed by law, unless waived by the witness.

(C) **Payment of Actual and Necessary Expenses**.

(i) The disciplinary administrator must pay from the disciplinary fee fund the expenses for actual and necessary travel, meals, and lodging of a witness called by the disciplinary administrator.

(ii) The respondent must pay the expenses for actual and necessary travel, meals, and lodging of a witness called by the respondent.

(4) **Quashing or Modifying Subpoena**.

(A) **When Required**. On motion filed no later than 14 days after service of a subpoena, the hearing panel will quash or modify the subpoena under the following circumstances:

(i) if it fails to allow a reasonable time for compliance;

(ii) if it requires disclosure of privileged or other protected matter and no exception or waiver applies; or

(iii) if it subjects a person to undue burden.

(B) **When Permitted**. On motion filed no later than 14 days after service of a subpoena, the hearing panel may quash or modify the subpoena if it requires disclosure of the following:

(i) a trade secret or other confidential research development or commercial information; or

(ii) an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party.

(C) **Appearance by Telephone or Video**. On motion filed no later than 14 days after service of a subpoena on a witness, the hearing panel may permit the witness to appear by telephone or video.

(c) **Enforcement of Subpoena.** In accordance with K.S.A. 20-1204, the Supreme Court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena.

(d) **Reciprocal Subpoena.** When a subpoena is sought in Kansas by a disciplinary authority of another jurisdiction for use in an attorney disciplinary investigation or proceeding and counsel for the disciplinary authority certifies that issuance of the subpoena has been approved under the law of the other jurisdiction, the Board chair, on petition for good cause, may issue a subpoena to compel the attendance of a witness or the production of pertinent books, papers, documents, and electronically stored information in the county where the witness or custodian resides or is employed, or elsewhere as agreed to by the witness or custodian. The person or entity seeking the subpoena must pay the witness' mileage expenses allowed by Kansas law and must pay the witness' actual and necessary expenses for travel, meals, and lodging.

Rule 218

DEPOSITION

(a) **When Permitted.** Either party in a disciplinary board proceeding may request in writing to take the deposition of a witness. The presiding officer may grant the request if the following applies:

(1) the witness is not subject to service of a subpoena;

(2) the witness is unable to attend or testify at the hearing because of age, illness, or other infirmity; or

(3) the parties agree to the deposition.

(b) **Notice.** The party requesting a deposition must give reasonable written notice to the other party. The notice must state the time and place of the deposition and the deponent's name.

(c) **Method of Recording.** A deposition must be taken under oath or affirmation and recorded by stenographic means.

(d) **Persons Attending Deposition.** Unless otherwise stipulated by the parties or ordered by the presiding officer, no person may attend a deposition except the court reporter, the parties, and the deponent.

(e) **Remote Means.** The parties may stipulate or for good cause the presiding officer may order that a deposition be taken by telephone or other remote means. The deposition takes place where the deponent answers the questions.

(f) **Original; Copy.** The party requesting a deposition must file with the Board the original transcript of the deposition and serve the opposing party with a copy.

(g) **Costs.** The party requesting a deposition must pay any costs.

Rule 219

CRIMINAL CHARGE; CONVICTION

(a) **Definitions.**

(1) "Conviction" means the following:

(A) a finding based on a plea or trial that a person is guilty of a felony or misdemeanor; or

(B) entry by a person into a diversion agreement or other comparable disposition for a felony or misdemeanor charge.

(2) "Felony crime or a crime mandating registration as an offender" means the following:

(A) a crime classified as a felony;

(B) a crime mandating registration by the defendant as an offender under the Kansas Offender Registration Act (KORA), K.S.A. 22-4901 et seq.; or

(C) a comparable offense in any jurisdiction that if committed in Kansas would constitute a felony or mandate registration under KORA.

(3) "Reportable crime" means the following:

(A) a felony crime or a crime mandating registration as an offender; or

(B) a class A or B misdemeanor or an offense of comparable classification.

(b) **Deferral.** If a criminal action is pending based on substantially similar allegations as a disciplinary matter, the following provisions will apply.

(1) The investigation of an initial complaint or a report will not be deferred unless the disciplinary administrator authorizes deferral.

(2) The investigation of a docketed complaint and prosecution of a formal complaint will not be deferred unless the review committee, hearing panel, or Supreme Court authorizes deferral.

(c) **Attorney's Duty When Charged with Reportable Crime.** An attorney who has been charged with a reportable crime must notify the disciplinary administrator in writing of the charge and court of jurisdiction no later than 14 days after the charge is filed.

(d) **Attorney's Duty Upon Conviction.** An attorney who has been convicted of a reportable crime must notify the disciplinary administrator in writing of the conviction and court of jurisdiction no later than 14 days after the conviction. The pendency of sentencing or the filing of a notice of appeal, a motion for new trial, or a motion for other relief does not stay the reporting requirement.

(e) **Duty of Clerk of Court.** The clerk of any Kansas court in which an attorney is convicted of a reportable crime must notify the disciplinary administrator in writing of the conviction no later than 14 days after the conviction.

(f) **Conviction is Conclusive Evidence**. A certified copy of a judgment of conviction of a respondent for a reportable crime is conclusive evidence of the commission of that crime. The respondent may not present evidence that the respondent is not guilty of the crime.

(g) **Automatic Temporary Suspension.**

(1) **Disciplinary Administrator's Duties.** When the disciplinary administrator receives notice that an attorney has been convicted of a felony crime or a crime mandating registration as an offender, the disciplinary administrator must commence a disciplinary board proceeding and file with the Supreme Court an ex parte motion for temporary suspension of the attorney's license to practice law. The disciplinary administrator must attach evidence of the conviction to the motion.

(2) **Supreme Court Order.** After the filing of a motion under subsection (g)(1), the Supreme Court will issue an order temporarily suspending the respondent from the practice of law until final disposition of the disciplinary board proceeding. The filing of a notice of appeal, a motion for new trial, or a motion for other relief does not stay a temporary order of suspension.

(3) **Notice to Respondent.** The clerk of the appellate courts will provide the respondent with a copy of the Supreme Court's order.

(4) **Respondent's Duties.** After receipt of the order, the respondent must comply with Rule 231.

(h) **Temporary Suspension Following Conviction of Other Crime.** This rule does not preclude the disciplinary administrator from seeking the temporary suspension under Rule 213 of a respondent for the conviction of a reportable crime.

(i) **Motion to Vacate Order of Temporary Suspension.**

(1) A respondent may file with the Supreme Court a motion to vacate an order of temporary suspension for good cause or because a court reversed the conviction that was the basis of the temporary suspension. The respondent must attach a certified copy of the judgment reversing the conviction.

(2) The respondent must serve the disciplinary administrator with a copy of the motion.

(3) A Supreme Court order vacating a temporary order of suspension does not terminate the disciplinary board proceedings.

(k) **Disciplinary Board Proceeding.** A disciplinary board proceeding arising out of a conviction for a crime will proceed the same as any other matter under these rules.

Rule 220

EFFECT OF OTHER PROCEEDING OR JUDGMENT

(a) **Deferral.** If a civil action, administrative agency action, or other proceeding is pending against a respondent based on substantially similar allegations as a disciplinary matter, the following provisions will apply:

(1) the investigation of an initial complaint or a report will not be deferred unless specifically authorized by the disciplinary administrator; and

(2) the investigation of a docketed complaint and prosecution of a formal complaint will not be deferred unless specifically authorized by the review committee, the hearing panel, or the Supreme Court.

(b) **Judgment or Ruling.** Except as otherwise provided in subsection (c), a certified copy of a judgment or ruling in any action involving substantially similar allegations as a disciplinary matter is prima facie evidence of the commission of the conduct that formed the basis of the judgment or ruling, regardless of whether the respondent is a party in the action. The respondent has the burden to disprove the findings made in the judgment or ruling.

(c) **Judgment or Ruling Based on Clear and Convincing Evidence.** For the purpose of a disciplinary board proceeding, a certified copy of a judgment or ruling described in subsection (b) that is based on clear and convincing evidence is conclusive evidence of the commission of the conduct that formed the basis of the judgment or ruling. The respondent may not present evidence that the respondent did not commit the conduct that formed the basis of the judgment or ruling.

Rule 221

DISCIPLINE IMPOSED IN ANOTHER JURISDICTION

(a) **Deferral.** If a disciplinary action is pending against a respondent in another jurisdiction based on substantially similar allegations as a disciplinary matter in Kansas, the following provisions will apply:

(1) the investigation of an initial complaint or a report will not be deferred unless specifically authorized by the disciplinary administrator; and

(2) the investigation of a docketed complaint and prosecution of a formal complaint will not be deferred unless specifically authorized by the review committee, the hearing panel, or the Supreme Court.

(b) **Duty to Report Discipline**. When the licensing authority of another jurisdiction disciplines an attorney for a violation of the rules governing the legal profession in that jurisdiction or refers an attorney to the attorney diversion program or comparable program in that jurisdiction, the attorney must notify the disciplinary administrator in writing of the discipline or referral no later than 14 days after the discipline is imposed or the referral is made.

(c) **Reciprocal Discipline.** When the licensing authority of another jurisdiction disciplines an attorney for a violation of the rules governing the legal profession in that jurisdiction, for the purpose of a disciplinary board proceeding under these rules, the following provisions apply.

(1) If the determination of the violation was based on clear and convincing evidence, the determination is conclusive evidence of the misconduct constituting the violation of the rules.

(2) If the determination of the violation was based on less than clear and convincing evidence, the determination is prima facie evidence of the commission of the conduct that formed the basis of the violation and raises a rebuttable presumption of the validity of the finding of misconduct. The respondent has the burden to disprove the finding in a disciplinary proceeding.

(d) **Supreme Court's Discretion.** This rule does not limit the Supreme Court's power to impose different discipline for misconduct than the discipline imposed in another jurisdiction.

Rule 222

HEARINGS

(a) **Hearing Open to Public.** A disciplinary or reinstatement hearing is open to the public and the media in the same manner as a district court hearing. A hearing may be closed only in accordance with *Kansas City Star Co. v. Fossey*, 230 Kan. 240, 630 P.2d 1176 (1981). Under Rules 1001 and 1002, the hearing panel may limit or prohibit the use of an electronic device during the hearing.

(b) **Location.** A hearing will be conducted in Topeka, Kansas. For good cause, the presiding officer may order that a hearing be conducted at another location in Kansas.

(c) **Notice of Hearing**. The hearing panel will set the date for the hearing. The notice must state the following:

(1) the date, time, and location of the hearing;

(2) the name and business address of each panel member; and

(3) that the respondent is entitled to be represented by counsel, to cross-examine witnesses, and to present evidence.

(d) **Rules of Civil Procedure.** Except as otherwise provided in subsection (e), the Rules of Civil Procedure do not apply in a board proceeding.

(e) **Hearing Procedure.**

(1) **Rules of Evidence.** A hearing is governed by the Rules of Evidence, K.S.A. 60-401 et seq.

(2) **Witness Placed Under Oath.** A witness called to testify during a hearing must be placed under oath.

(3) **Record of Board Proceeding.** A hearing must be recorded by stenographic means.

(4) **Witness Sequestration.** The complaining witness may remain in the hearing room during presentation of all matters. All other witnesses may remain in the hearing room unless, before the start of the hearing, the respondent or the disciplinary administrator requests that the witnesses be excluded from the hearing room except while testifying.

Rule 223

SUMMARY SUBMISSION

(a) **Definition.** "Summary submission" is submission by agreement of an attorney disciplinary case to the Supreme Court on a written record.

(b) **Agreement.** An agreement between the disciplinary administrator and the respondent to proceed by summary submission must be in writing and contain the following:

(1) an admission that the respondent engaged in the misconduct;

(2) a stipulation as to the contents of the record, findings of fact, and conclusions of law—including each violation of the Kansas Rules of Professional Conduct, the Rules Relating to Discipline of Attorneys, or the attorney's oath of office;

(3) a recommendation for discipline;

(4) a waiver of the hearing on the formal complaint; and

(5) a statement by the parties that no exceptions to the findings of fact or conclusions of law will be taken.

(c) **Timing.** The disciplinary administrator and the respondent may enter into the agreement at any time after the review committee directs a hearing on a formal complaint.

(d) **Notice to Complainant.** After the disciplinary administrator and the respondent enter into an agreement to proceed by summary submission, the disciplinary administrator will provide a copy of the agreement to the complainant. The complainant has 21 days to provide the disciplinary administrator with the complainant's position regarding the agreement.

(e) **Procedure.**

(1) **Board Chair.** After the disciplinary administrator and the respondent enter into an agreement to proceed by summary submission, the disciplinary administrator will forward a copy of the agreement and the complainant's position to the Board chair for consideration of the summary submission.

(2) **Approved.** If the chair approves the summary submission, a hearing on the formal complaint is cancelled and the case proceeds according to Rule 228.

(3) **Rejected.** If the chair rejects the summary submission, the case proceeds according to Rule 222.

(f) **Supreme Court's Discretion.** An agreement to proceed by summary submission is advisory only and does not prevent the Supreme Court from making its own conclusions regarding rule violations or imposing discipline greater or lesser than the parties' recommendation.

Rule 224

WITNESSES AND EXHIBITS

(a) **Disciplinary Administrator's Witness List and Exhibits.** No later than 14 days after service of a formal complaint, the disciplinary administrator must file a witness and exhibit list and the original exhibits, marked numerically. The disciplinary administrator must serve the respondent and each hearing panel member with a copy of the list and a copy of each exhibit.

(b) **Respondent's Witness List and Exhibits.** No later than 14 days after the answer to a formal complaint is due, the respondent must file a witness and exhibit list and the original exhibits, marked alphabetically. The respondent must serve the disciplinary administrator and each hearing panel member with a copy of the list and a copy of each exhibit.

(c) **Procedures for Calling an Expert Witness.**

(1) No later than 21 days after service of a formal complaint, a party planning to call an expert witness must file notice of intent to call an expert witness.

(A) Written notice and any expert witness' report must be served on each hearing panel member and the opposing party.

(B) If the expert witness has not issued a report, the notice must include a proffer of the subject matter on which the expert is expected to testify and the substance of the facts and opinions to which the expert is expected to testify.

(2) If the opposing party plans to call a rebuttal expert witness, the opposing party must file notice of intent to call a rebuttal expert witness no later than 21 days after service of a notice under subsection (c)(1).

(A) Written notice of intent to call a rebuttal expert witness and any rebuttal expert witness' report must be served on each hearing panel member and the other party.

(B) If the rebuttal expert witness has not issued a report, the notice must include a proffer of the subject matter on which the rebuttal expert is expected to testify and the substance of the facts and opinions to which the rebuttal expert is expected to testify.

(d) **Scope of Testimony.** An expert witness may not testify unless the following apply:

(1) the witness is qualified as an expert by knowledge, skill, experience, training, or education;

(2) the testimony will help the hearing panel understand the evidence;

(3) the testimony is based on sufficient facts or data;

(4) the testimony is the product of reliable principles and methods; and

(5) the witness has reliably applied the principles and methods to the facts of the formal complaint.

(e) **Additional Witnesses and Exhibits; Time Limits.** For good cause, the hearing panel may allow a party to endorse an additional witness or offer an additional exhibit at any time, including at the hearing on the formal complaint.

Rule 225

TYPES OF DISCIPLINE

(a) **Discipline.** An attorney who commits misconduct may be disciplined by any of the following:

(1) disbarment by the Supreme Court;

(2) suspension by the Supreme Court for an indefinite period of time;

(3) suspension by the Supreme Court for a definite period of time;

(4) probation by the Supreme Court for a definite period of time under Rule 227;

(5) censure by the Supreme Court, which the Supreme Court may order to be published in the Kansas Reports;

(6) informal admonition, which is not published and is the least serious form of public discipline and which may be imposed by a hearing panel or by the disciplinary administrator at the direction of the review committee; or

(7) any other discipline or condition the Supreme Court determines is appropriate.

(b) **Disciplinary History.** All types of discipline become a permanent part of an attorney's reportable disciplinary history.

Rule 226

FINAL HEARING REPORT

(a) **Final Hearing Report.**

(1) **Contents.** Following a hearing on a formal complaint, the hearing panel will issue a final hearing report setting forth findings of fact, conclusions of law, aggravating and mitigating factors, and a recommendation of discipline or that no discipline be imposed.

(A) **Findings of Fact.** Each finding of fact must be established by clear and convincing evidence.

(B) **Conclusions of Law.** Each conclusion of law must be set forth separately.

(C) **Aggravating and Mitigating Factors.**

(i) Aggravating factors are any considerations that may justify an increase in the discipline to be imposed.

(ii) Mitigating factors are any considerations that may justify a reduction in the discipline to be imposed.

(D) **Recommendation Regarding Discipline.** The recommendation by the hearing panel regarding discipline is advisory only and does not prevent the Supreme Court from imposing discipline greater or lesser than the panel's recommendation.

(2) **Concurring or Dissenting Opinion.** If a member of the hearing panel cannot agree on a finding of fact, conclusion of law, aggravating or mitigating factor, or the recommendation regarding discipline, the panel member's concurring or dissenting opinion will be included in the final hearing report.

(3) **Distribution.** After the hearing panel issues the final hearing report, the panel will file the report and serve the disciplinary administrator and the respondent with a copy of the report.

(b) **Case Docketed in Supreme Court.** If a majority of a hearing panel finds misconduct and recommends discipline under Rule 225(a)(1), (2), (3), (4), (5), or (7) or if a written objection is filed under subsection (c) or (d) of this rule, the disciplinary administrator must docket a case in the Supreme Court under Rule 228.

(c) **Informal Admonition.** If the hearing panel imposes an informal admonition under Rule 225(a)(6), the disciplinary administrator will not docket a case in the Supreme Court unless the disciplinary administrator or the respondent files a written objection with the

hearing panel no later than 21 days after service of the final hearing report. If the disciplinary administrator or the respondent timely files a written objection, the case will be docketed in the Supreme Court and will proceed under Rule 228.

(d) **Dismissal.** If the hearing panel dismisses a disciplinary board proceeding or recommends that no discipline be imposed, the disciplinary administrator will not docket a case in the Supreme Court unless the disciplinary administrator files a written objection with the hearing panel no later than 21 days after service of the final hearing report. If the disciplinary administrator timely files a written objection, the case will be docketed in the Supreme Court and will proceed under Rule 228.

Rule 227

PROBATION

(a) **Proposed Probation Plan.** If a respondent seeks to be placed on probation for committing misconduct, the respondent must file and serve each hearing panel member and the disciplinary administrator with a copy of a probation plan at least 14 days before the hearing on the formal complaint.

(b) **Plan Contents.** A probation plan under this rule must meet the following requirements:

(1) be workable, substantial, and detailed;

(2) contain adequate safeguards that address the professional misconduct committed, protect the public, and ensure the respondent's compliance with the Kansas Rules of Professional Conduct, the Rules Relating to Discipline of Attorneys, and the attorney's oath of office;

(3) include the name of a practice supervisor if practice supervision is proposed; and

(4) include a provision that the respondent will not commit misconduct.

(c) **Compliance with Plan.** At the hearing on the formal complaint, the respondent must establish that the respondent has been complying with each condition in the probation plan for at least 14 days prior to the hearing.

(d) **Restrictions on Recommendation of Probation.** A hearing panel may not recommend that the respondent be placed on probation unless the following requirements are met:

(1) the respondent complies with subsections (a) and (c) and the proposed probation plan satisfies the requirements in subsection (b);

(2) the misconduct can be corrected by probation; and

(3) placing the respondent on probation is in the best interests of the legal profession and the public.

(e) **Inclusion of Specific Conditions.** If a hearing panel recommends to the Supreme Court that the respondent be placed on probation, the panel will include specific conditions of probation in the final hearing report.

(f) **Procedure Following Hearing on Formal Complaint.** Regardless of whether the hearing panel recommends probation, the following provisions apply to a respondent who seeks to be placed on probation.

(1) The respondent must comply with each condition of the respondent's proposed probation plan.

(2) At least 14 days before oral argument before the Supreme Court, the respondent must complete the following:

(A) file with the Supreme Court and serve the disciplinary administrator with a copy of an affidavit describing the respondent's compliance with each condition of the respondent's proposed probation plan; and

(B) serve the disciplinary administrator with a copy of all relevant reports from any medical, mental health, and drug and alcohol treatment provider, supervising attorney, and monitoring attorney, if applicable, that verify the statements in the affidavit.

(g) **Successful Completion.**

(1) **Respondent's Motion for Discharge.** If a respondent placed on probation by the Supreme Court complies with each condition of probation contained in the Supreme Court's opinion, the respondent, at the end of the probation period, may file with the Supreme Court and serve the disciplinary administrator with a motion to be discharged from probation. The motion must include the following as an attachment:

(A) an affidavit describing the respondent's compliance with each condition of probation; and

(B) an affidavit from the supervising attorney, if applicable, describing the respondent's compliance with the conditions of probation.

(2) **Disciplinary Administrator's Duties.** When a respondent files a motion that complies with subsection (g)(1), the disciplinary administrator no later than seven days after service of the motion must file and serve the respondent with a response to the motion that addresses the respondent's compliance and eligibility for discharge from probation.

(3) **Court Action.** The Supreme Court may rule on the respondent's motion without oral argument.

(h) **Remains on Probation.** The respondent remains on probation, subject to each condition of probation, until the Supreme Court discharges the respondent from probation, regardless of whether the ordered term of probation has expired.

(i) **Procedure When a Violation Is Alleged.**

(1) **Respondent's Duty.** If a respondent fails to comply with a condition of probation, the respondent must immediately inform the disciplinary administrator and the supervising attorney, if applicable, of the failure.

(2) **Supervising Attorney's Duty.** The supervising attorney must immediately inform the disciplinary administrator when the supervising attorney knows or reasonably believes that the respondent has failed to comply with a condition of probation.

(3) **Disciplinary Administrator's Duty.** After receiving information that the respondent failed to comply with a condition of probation, the disciplinary administrator must determine whether to file a motion to revoke probation with the Board. The filing of a motion automatically suspends the running of the period of probation and continues the probation until the motion is resolved.

(4) **Chair's Duty.** When the disciplinary administrator files a motion under subsection (i)(3) to revoke probation, the Board chair will do one of the following:

(A) appoint one Board member to conduct an expedited hearing to determine whether the respondent failed to comply with a condition of probation; or

(B) if another disciplinary matter concerning the respondent is pending, decide whether to consolidate the motion with the pending matter for hearing under Rule 222.

(5) **Expedited Hearing Procedure.**

(A) At an expedited hearing on a motion to revoke probation, the disciplinary administrator has the burden to establish by clear and convincing evidence that the respondent failed to comply with a condition of probation.

(B) The respondent is entitled to be represented by counsel, to cross-examine witnesses, and to present evidence.

(6) **Probation Violation; Final Hearing Report**.

(A) **Contents.** Following a hearing on a motion to revoke probation, the Board member or panel conducting the hearing will issue a final hearing report setting forth findings of fact and conclusions of law, including a conclusion regarding whether the respondent failed to comply with a condition of probation. If the respondent failed to comply with a condition of probation, the Board member or panel will include a recommendation regarding revocation and discipline.

(i) **Findings of Fact.** Each finding of fact must be established by clear and convincing evidence.

(ii) **Conclusions of Law.** Each conclusion of law must be set forth separately.

(iii) **Recommendation.** Any recommendation regarding revocation and discipline by the Board member or panel is advisory only. The Supreme Court is not prevented from allowing a respondent to remain on probation or from imposing discipline greater or lesser than the Board member's or the panel's recommendation.

(B) **Separate Final Hearing Reports.** If under subsection (i)(4) the chair consolidates a motion to revoke probation with a pending matter for hearing, the hearing panel will issue the following:

(i) a final hearing report concerning the motion to revoke probation; and

(ii) a separate final hearing report concerning the pending matter for hearing.

(C) **Distribution.** The Board member or panel will serve the disciplinary administrator and the respondent with a copy of the final hearing report.

(7) **Finding of No Violation**. If the Board member or panel concludes that the respondent did not violate a condition of probation, the following provisions will apply:

(A) the Board member or panel will deny the motion to revoke probation;

(B) the disciplinary administrator will not seek revocation of probation with the Supreme Court; and

(C) the respondent will remain on probation until discharged by the Supreme Court under subsection (h).

(8) **Finding of a Violation.** If the Board member or panel concludes that the respondent violated a condition of probation, the following provisions will apply.

(A) The disciplinary administrator must file the motion to revoke in the pending case before the Supreme Court.

(B) No later than 21 days after the disciplinary administrator files the motion in the pending case, the respondent may file with the Supreme Court an

exception to any finding of fact or conclusion of law in the final hearing report. If the respondent files an exception, the respondent must serve the disciplinary administrator with a copy of the exception. Upon the filing of an exception or the expiration of the time to file an exception, the matter will be submitted for the Supreme Court's consideration. Neither briefs nor oral arguments are permitted unless requested by the Supreme Court.

Rule 228

PROCEDURE BEFORE SUPREME COURT

(a) **Case Caption.** A case in the Supreme Court under these rules must be captioned as follows:

In the Matter of No. _____

_____

(Respondent) or (Petitioner).

(b) **Docketing.** To docket a case in the Supreme Court, the disciplinary administrator must complete the following:

(1) file any formal complaint, answer, and final hearing report; and

(2) submit the record and table of contents as directed by the clerk of the appellate courts.

(c) **Record.** The record must include the following:

(1) each filing by the disciplinary administrator and respondent, any order issued by the hearing panel, the final hearing report issued by the panel, and any agreement regarding a summary submission entered into by the disciplinary administrator and respondent;

(2) a transcript of any hearing and deposition;

(3) the disciplinary administrator's exhibits offered for admission into evidence; and

(4) the respondent's exhibits offered for admission into evidence.

(d) **Notice of Docketing.** After the disciplinary administrator dockets a case, the clerk of the appellate courts will notify the respondent by certified mail that the case has been docketed.

(e) **When Exception Required.** No later than 21 days after providing the notice under subsection (d), the disciplinary administrator and the respondent must file one of the following:

(1) an exception to a finding of fact or conclusion of law in the final hearing report to preserve the issue for review by the Supreme Court; or

(2) a statement that the party will not file an exception to the findings of fact or conclusions of law in the final hearing report.

(f) **When Exception Not Required or Allowed.**

(1) The disciplinary administrator and the respondent may contest the recommendation of discipline made by a hearing panel without filing an exception.

(2) Neither party may file an exception in a case submitted to the Supreme Court by summary submission under Rule 223.

(g) **No Exception.**

(1) **By Respondent.** If the respondent files a statement under subsection (e)(2) that the respondent will not file an exception or if the respondent fails to timely file an exception, the findings of fact and conclusions of law in the final hearing report will be deemed admitted by the respondent.

(2) **By Disciplinary Administrator.** If the disciplinary administrator files a statement under subsection (e)(2) that the disciplinary administrator will not file an exception or if the disciplinary administrator fails to timely file an exception, the findings of fact and conclusions of law in the final hearing report will be deemed admitted by the disciplinary administrator.

(h) **Exception.** When the disciplinary administrator or the respondent timely files an exception under subsection (e)(1) to a finding of fact or conclusion of law, the following provisions apply.

(1) **Transcript.** The clerk of the appellate courts will order a copy of the transcript of the hearing on the formal complaint. The clerk will provide the copy to the respondent.

(2) **Briefs.**

(A) The party filing the exception must file an opening brief no later than 30 days after the clerk provides the transcript to the respondent. If both parties file an exception, the disciplinary administrator must file an opening brief no later than 30 days after the clerk provides the transcript to the respondent.

(B) The party responding to the opening brief must file a response brief no later than 30 days after service of the opening brief.

(C) The party filing the opening brief may file a reply brief no later than 14 days after service of the response brief.

(D) The parties must file and serve the briefs as directed by the clerk of the appellate courts, and the briefs must be in the format provided by Rule 6.02 et seq.

(E) If either party fails to file a brief, that party will be deemed to have admitted the findings of fact and conclusions of law in the final hearing report.

(i) **Oral Argument.** The clerk of the appellate courts will set the case for oral argument before the Supreme Court. The clerk will notify the respondent and the disciplinary administrator of the date, time, and location or manner of the oral argument. The respondent and the disciplinary administrator must appear at the oral argument. This subsection applies even if the case is submitted under Rule 223 or if the respondent or the disciplinary administrator fails to file an exception or a brief.

(j) **Discipline Effective Immediately.** Any discipline ordered by the Supreme Court is effective immediately on the filing of the order or opinion with the clerk of the appellate courts, unless otherwise ordered by the court.

(k) **Motion for Rehearing; Motion for Modification.** No later than 21 days after the filing of an order or opinion of the Supreme Court imposing discipline, the respondent may file a motion for rehearing or a motion for modification under Rule 7.06. The filing of the motion does not stay the effect of an order of discipline, unless otherwise ordered by the court.

Rule 229

COSTS

(a) **Assessment.** The Supreme Court may assess costs against a respondent.

(b) **Certification.** If the Supreme Court assesses costs against the respondent, the disciplinary administrator must certify to the Supreme Court the costs incurred for the following:

(1) an investigation under Rule 209;

(2) a hearing under Rule 222 on the formal complaint; or

(3) a hearing under Rule 227(i) on a motion to revoke probation.

(c) **Service.** The disciplinary administrator must serve the respondent with a copy of the certificate of costs under subsection (b).

(d) **Payment of Costs.** Costs assessed against a respondent must be paid to the clerk of the appellate courts no later than 30 days after service of a copy of the certificate of costs or as otherwise ordered by the Supreme Court. Costs received will be deposited in the disciplinary fee fund.

(e) **Effect of Failure to Pay Costs.** If a respondent fails to pay any costs assessed, the disciplinary administrator may seek the temporary suspension of the attorney's license to practice law under Rule 213.

Rule 230

VOLUNTARY SURRENDER OF LICENSE

(a) **Voluntary Surrender Procedure.** An attorney may voluntarily surrender the attorney's license to practice law. The attorney must complete the following requirements:

(1) file a request to surrender the attorney's license with the Supreme Court on a form provided by the disciplinary administrator or the Office of Judicial Administration;

(2) serve the disciplinary administrator with a copy of the request; and

(3) return to the Office of Judicial Administration the attorney's certificate of admission to the bar and the attorney's current bar registration card or, if either document is unavailable, explain why the document cannot be returned.

(b) **Voluntary Surrender of License by Respondent or Suspended Attorney.**

(1) **Effect of Voluntary Surrender.** If a respondent or suspended attorney voluntarily surrenders the respondent's or attorney's license to practice law under subsection (a), the following provisions apply:

(A) the Supreme Court will issue an order disbarring the attorney;

(B) the Office of Judicial Administration will strike the attorney's name from the roll of attorneys; and

(C) any pending board proceeding or case terminates, but the disciplinary administrator may direct an investigator to complete a pending investigation to preserve evidence.

(2) **Reinstatement.** An attorney who voluntarily surrendered the attorney's license to practice law under subsection (b)(1) may seek reinstatement under Rule 232.

(c) **Voluntary Surrender of License by Attorney in Good Standing.**

(1) **Voluntary Surrender.**

(A) The following provisions apply if an attorney voluntarily surrenders the attorney's license to practice law when the attorney is in good standing and is not a respondent:

(i) the attorney must provide an affidavit to the Supreme Court that establishes the attorney is not counsel of record in any matter

pending before a court or tribunal in Kansas and the attorney is not providing legal services to any client in Kansas;

(ii) the Supreme Court will issue an order accepting the attorney's surrender; and

(iii) the Office of Judicial Administration will strike the attorney's name from the roll of attorneys.

(B) If an attorney is not in good standing due to an administrative suspension, the attorney must comply with the requirements of the suspension order and obtain reinstatement before voluntarily surrendering the license.

(C) After the Supreme Court issues an order accepting an attorney's voluntary surrender, the attorney is no longer authorized to practice law.

(2) **Reinstatement.** An attorney who voluntarily surrendered the attorney's license to practice law under subsection (c)(1) may seek reinstatement.

(A) The attorney must complete the following requirements:

(i) file with the Supreme Court a petition for reinstatement;

(ii) pay the current active attorney registration fee and the active attorney registration fee required for each year since the voluntary surrender;

(iii) pay the current continuing legal education fee and the continuing legal education fee required for each year since the voluntary surrender; and

(iv) complete the continuing legal education hours required for each year since the voluntary surrender.

(B) The Supreme Court may require the attorney to do the following:

(i) appear before a Board hearing panel for a reinstatement hearing under Rule 232; and

(ii) demonstrate compliance with other conditions for reinstatement.

(3) **Misconduct.** An attorney remains subject to disciplinary proceedings for misconduct that occurred prior to the voluntary surrender of the attorney's license to practice law.

Rule 231

NOTICE TO CLIENTS, OPPOSING COUNSEL, AND COURTS FOLLOWING SUSPENSION OR DISBARMENT

(a) **Attorney's Duty.**

(1) **Notice.** No later than 14 days after the Supreme Court issues an order suspending an attorney's license to practice law or disbarring an attorney, the attorney must complete the following requirements.

(A) **Client Notice.** The attorney must notify in writing each client that the client should obtain new counsel because the attorney is suspended or disbarred and is no longer authorized to practice law in Kansas.

(B) **Withdrawal.** The attorney must file in each proceeding in which the attorney is counsel of record a notice of withdrawal stating that the attorney is suspended or disbarred and is no longer authorized to practice law in Kansas.

(C) **Opposing Counsel and Court.** The attorney must notify the following individuals and jurisdictions in writing that the attorney is suspended or disbarred and is no longer authorized to practice law in Kansas:

(i) all opposing counsel;

(ii) the clerk of the district court and the chief judge of each judicial district where the attorney is counsel of record; and

(iii) each United States jurisdiction and each foreign jurisdiction where the attorney is or has been authorized to practice law.

(2) **Certification.** No later than 30 days after the Supreme Court issues an order suspending an attorney's license to practice law or disbarring an attorney, the attorney must provide an affidavit to the Supreme Court certifying that the attorney complied with subsection (a)(1).

(b) **Continued Practice.** It is the unauthorized practice of law and a violation of Kansas Rule of Professional Conduct 5.5 for an attorney to continue to practice law in Kansas after the Supreme Court issues an order suspending or disbarring the attorney.

(c) **Notice by Clerk.** No later than 14 days after the Supreme Court issues an order suspending or disbarring an attorney, the clerk of the appellate courts will provide notice that the attorney is suspended or disbarred to the chief judge of the district in which the attorney resides and the clerk of the supreme court of any other state and any federal court in which the attorney is licensed to practice law.

Rule 232

REINSTATEMENT FOLLOWING SUSPENSION OR DISBARMENT

(a) **Eligibility.**

(1) **Definite Suspension.** A respondent suspended by the Supreme Court for a definite period of time is eligible to petition for reinstatement after the stated period of suspension has passed.

(2) **Indefinite Suspension.** A respondent indefinitely suspended by the Supreme Court is eligible to petition for reinstatement three years after the date of suspension.

(3) **Disbarment.** A respondent disbarred by the Supreme Court is eligible to petition for reinstatement five years after the date of disbarment.

(b) **Petition for Reinstatement.**

(1) A respondent seeking reinstatement must file with the Supreme Court a verified petition for reinstatement that sets forth facts establishing the following:

(A) the respondent is eligible to petition for reinstatement under subsection (a);

(B) the respondent has complied with Rule 231 and the Supreme Court's orders;

(C) the respondent has paid any costs assessed under Rule 229; and

(D) the respondent should be reinstated to the practice of law.

(2) At the time the petition is filed, the petitioner must complete the following requirements:

(A) pay a reinstatement filing fee of $1,250 to the clerk of the appellate courts to be deposited in the disciplinary fee fund, unless the attorney's license was transferred to disabled status under Rule 234; and

(B) serve the disciplinary administrator with a copy of the petition.

(c) **Disciplinary Administrator's Response.** No later than seven days after service of the petition for reinstatement, the disciplinary administrator must file a response to the petition with the Supreme Court and serve the respondent with a copy. In the response, the disciplinary administrator must certify the following:

(1) whether the petitioner complied fully with the provisions in subsection (b)(1)(A)-(D); and

(2) considering the gravity of the misconduct leading to disbarment or suspension, whether the disciplinary administrator believes that sufficient time has elapsed since the date of disbarment or suspension to justify the Supreme Court's reconsideration of its order.

(d) **Reinstatement Hearing Not Specified.** If the Supreme Court suspends a respondent for a definite period of time and does not specify in the suspension order that the respondent is required to undergo a reinstatement hearing, the following provisions will apply:

(1) the Supreme Court will reinstate the petitioner without a hearing if the petitioner establishes and the disciplinary administrator certifies in the response that the petitioner complied fully with subsection (b); or

(2) if the disciplinary administrator certifies in the response to the petition that the petitioner has not complied fully with subsection (b), the disciplinary administrator must file a motion for a reinstatement hearing.

(e) **Reinstatement Hearing Required or Specified.** When the Supreme Court disbars or indefinitely suspends a respondent or when the Supreme Court suspends a respondent for a definite period of time and specifies in the suspension order that the respondent must undergo a reinstatement hearing, the following rules apply.

(1) **Supreme Court's Determination.** After the disciplinary administrator files a response to the petition for reinstatement under subsection (c), the Supreme Court will determine whether sufficient time has elapsed since the date of disbarment or suspension to justify reconsideration of its order. The court will consider the gravity of the misconduct leading to the discipline.

(A) If the Supreme Court determines that sufficient time has not elapsed to justify reconsideration of its order, the court will dismiss the petition.

(B) If the Supreme Court determines that sufficient time has elapsed to justify reconsideration of its order, the court will direct the disciplinary administrator to conduct an investigation of the facts alleged in the petition and the petitioner's conduct since the court imposed discipline.

(2) **Hearing Panel.** After the disciplinary administrator's investigation, the Board chair will appoint a hearing panel to conduct a hearing on the petition. The panel will schedule the reinstatement hearing.

(3) **Burden of Proof.** The petitioner has the burden of proof to establish that the petitioner is fit to practice law and that the factors in subsection (e)(4) weigh in favor of reinstatement.

(4) **Reinstatement Factors.** At the reinstatement hearing, the petitioner must present evidence that establishes the following:

(A) the petitioner's current moral fitness;

(B) the petitioner's consciousness of the wrongful nature of the petitioner's misconduct and the disrepute the misconduct brought the profession;

(C) the seriousness of the misconduct leading to disbarment or suspension does not preclude reinstatement;

(D) the petitioner's conduct since the Supreme Court imposed discipline;

(E) the petitioner's present ability to practice law;

(F) the petitioner's compliance with the Supreme Court's orders;

(G) the petitioner has not engaged in the unauthorized practice of law;

(H) the petitioner has received adequate treatment or rehabilitation for any substance abuse, infirmity, or problem; and

(I) the petitioner has resolved or attempted to resolve any other initial complaint, report, or docketed complaint against the petitioner.

(f) **Reinstatement Final Hearing Report.**

(1) **Contents.** Following a hearing on a petition for reinstatement, the hearing panel will issue a reinstatement final hearing report which includes findings of fact, conclusions of law, a discussion of the reinstatement factors under subsection (e)(4), and a recommendation regarding reinstatement.

(A) **Findings of Fact.** Each finding of fact must be established by clear and convincing evidence.

(B) **Conclusions of Law.** Each conclusion of law must be set forth separately.

(C) **Reinstatement Factors.** The hearing panel must consider each factor in subsection (e)(4).

(D) **Recommendation Regarding Reinstatement.** The hearing panel's recommendation regarding reinstatement is advisory only.

(2) **Concurring or Dissenting Opinion.** If a member of the hearing panel cannot agree on a finding of fact, conclusion of law, reinstatement factor, or the

recommendation regarding reinstatement, the panel member's concurring or dissenting opinion will be included in the reinstatement final hearing report.

(3) **Distribution.** After the hearing panel issues the reinstatement final hearing report, the panel will serve the disciplinary administrator and the petitioner with a copy of the report.

(g) **Procedure Following Distribution.**

(1) **Submission to Supreme Court.** On service under subsection (f)(3) of the reinstatement final hearing report, the disciplinary administrator must complete the following:

(A) file the reinstatement final hearing report with the Supreme Court; and

(B) submit the record and a table of contents as directed by the clerk of the appellate courts.

(2) **Record.** The record in a reinstatement case must include the following:

(A) the petition for reinstatement, each filing by the petitioner and the disciplinary administrator in the reinstatement action, any order issued by the hearing panel, and the reinstatement final hearing report issued by the panel;

(B) the transcript of the reinstatement hearing and any deposition;

(C) the petitioner's exhibits offered for admission into evidence; and

(D) the disciplinary administrator's exhibits offered for admission into evidence.

(3) **Reinstatement Recommended.** If the hearing panel recommends granting the petition for reinstatement, the matter will be submitted for the Supreme Court's consideration.

(4) **Reinstatement Not Recommended.**

(A) If the hearing panel recommends denying the petition for reinstatement, the petitioner may file with the Supreme Court an exception to a finding of fact or conclusion of law no later than 21 days after service of a copy of the reinstatement final hearing report.

(B) If the petitioner files an exception, the petitioner must serve the disciplinary administrator with a copy of the exception.

(C) On filing of an exception or the expiration of the time to file an exception, the matter will be submitted for the Supreme Court's consideration.

(D) Neither briefs nor oral arguments will be permitted unless requested by the Supreme Court.

(h) **Conditions for Reinstatement; Limitations on Practice.** If the Supreme Court grants a petition for reinstatement, it may order the attorney to comply with any condition or limitation on the attorney's practice. The court may also order that the attorney's practice be supervised for a period of time.

Rule 233

LAWYERS ASSISTANCE PROGRAM

[Current Rule 206 will be moved to Rule 233. The Supreme Court is separately considering Rule 233 and may submit proposed amendments for public comment at a later date.]

Rule 234

TRANSFER TO DISABLED STATUS

(a) **Definition.** In this rule, "disabled" means unable to continue the practice of law due to a mental or physical limitation.

(b) **Automatic Transfer.**

(1) **District Court Clerk's Duty.** When a court has entered an order declaring an attorney to be incapacitated or subject to involuntary civil commitment, the clerk of the district court must send a certified copy of the order to the disciplinary administrator.

(2) **Disciplinary Administrator's Duty.** When the disciplinary administrator receives a certified copy of an order declaring an attorney to be incapacitated or subject to involuntary civil commitment, the disciplinary administrator must notify the Supreme Court that the attorney should be transferred to disabled status.

(3) **Supreme Court Action.** The Supreme Court will automatically transfer the attorney to disabled status without a hearing when the court receives notification from the disciplinary administrator under subsection (b)(2).

(c) **When Docketed Complaint Not Pending.** When no docketed complaint is pending against an attorney and the attorney serves the disciplinary administrator with a copy of evidence that establishes the attorney is disabled, the attorney may register as a disabled attorney under Rule 206(b)(1).

(d) **When Docketed Complaint Pending.**

(1) **Voluntary Transfer.** When an investigation of a docketed complaint is pending, the respondent may request transfer to disabled status. The following rules apply.

(A) **Respondent's Duties.** The respondent must cease practicing law and serve the disciplinary administrator with a copy of evidence that establishes the respondent is disabled.

(B) **Disciplinary Administrator's Duty.** If the respondent serves the disciplinary administrator with a copy of evidence that establishes the respondent is disabled, the disciplinary administrator must petition the Supreme Court to transfer the respondent to disabled status.

(2) **Involuntary Transfer.** When an investigation of a docketed complaint is pending, the Supreme Court may involuntarily transfer the respondent to disabled status. The following rules apply.

(A) **Motion.** The disciplinary administrator may file with the Supreme Court a motion to transfer the respondent to disabled status.

(B) **Burden of Proof.** The disciplinary administrator must establish by clear and convincing evidence that the respondent is disabled.

(C) **Appointment of Counsel.** The Supreme Court may appoint counsel to represent the respondent. The costs of appointed counsel may be paid from the disciplinary fee fund and charged as costs of the action.

(D) **Examination.** The disciplinary administrator may file with the Supreme Court a motion for an order requiring the respondent to submit to examination by a physician, psychologist, or other treatment professional.

(i) **Consent.** By registering as an active attorney under Rule 206, an attorney consents to submit to examination by a physician, psychologist, or other treatment professional when ordered to do so by the Supreme Court and to waive all objections to the admissibility of the examination report.

(ii) **Submission.** If the Supreme Court grants the motion, the attorney must submit to examination by a physician, psychologist, or other treatment professional designated by the court to determine whether the attorney is disabled.

(iii) **Costs of Examination.** The costs of examination may be paid from the disciplinary fee fund and charged as costs of the action.

(iv) **Refusal to Submit to Examination.** If the attorney refuses to submit to examination when required under subsection (d)(2)(D)(ii) or fails to appear for a scheduled appointment for an examination, the Supreme Court will issue an order temporarily suspending the attorney's license to practice law.

(v) **Reinstatement.** If the Supreme Court temporarily suspends the attorney's license to practice law under subsection (d)(2)(D)(iv), the attorney may petition for reinstatement under Rule 232. The petition for reinstatement must show the following:

(I) the attorney has completed examination by the physician, psychologist, or other treatment professional; and

(II) the attorney is no longer disabled and is eligible for reinstatement to the practice of law.

(E) **Report of Examination and Other Evidence.**

(i) The disciplinary administrator must file with the Supreme Court and serve the attorney with the report of any examination under subsection (d)(2)(D)(ii) and any other evidence regarding whether the attorney is disabled.

(ii) No later than 30 days after the disciplinary administrator files the report and any other evidence, the attorney may file with the Supreme Court and serve the disciplinary administrator with additional evidence regarding whether the attorney is disabled.

(F) **Transfer.** If the Supreme Court determines based on the record that the attorney is disabled, the court will issue an order transferring the attorney to disabled status.

(e) **Service.** When the Supreme Court transfers an attorney to disabled status, the clerk of the appellate courts will serve a copy of the order on the following individuals:

(1) the attorney;

(2) the director of any institution where the attorney is committed as described in subsection (b)(1);

(3) the disciplinary administrator; and

(4) the administrative judge in the judicial district where the attorney's office is located, according to the attorney's most recent registration address with the Office of Judicial Administration.

(f) **Practice of Law.** An attorney transferred to disabled status may not engage in the practice of law until the Supreme Court reinstates the attorney to active status.

(g) **Reinstatement.** An attorney on disabled status may file a petition for reinstatement with the Supreme Court when the attorney is no longer disabled. The following rules apply regardless of whether the attorney registered as disabled under Rule 206(b)(1) or whether the attorney's status changed through an automatic, a voluntary, or an involuntary transfer under this rule.

(1) **Waiver of Privilege.** By filing a petition for reinstatement, the attorney waives any privilege applicable to treatment received while the attorney was on disabled status.

(2) **No Fee Required**. The attorney is not required to pay the reinstatement fee required by Rule 232(b)(2)(A).

(3) **Evidence.** The attorney must attach to the petition evidence that the attorney is no longer disabled.

(4) **Investigation.** If the Supreme Court determines from the petition and the evidence that there is probable cause to believe the attorney is no longer disabled, the Supreme Court will direct the disciplinary administrator to investigate the attorney's petition.

(A) **Examination.** During the investigation of the petition, the disciplinary administrator may direct the attorney to submit to examination by a physician, psychologist, or other treatment professional. The costs of examination may be paid from the disciplinary fee fund and charged as costs of the action.

(B) **Attorney's Duties.** The attorney must cooperate in the following ways with the disciplinary administrator's investigation:

(i) timely respond to requests for information;

(ii) submit to examination by a physician, psychologist, or other treatment professional on direction of the disciplinary administrator;

(iii) disclose the name of every physician, psychologist, treatment professional, institution, hospital, or facility that examined the attorney or provided treatment to the attorney while the attorney was on disabled status;

(iv) consent in writing to allow the disciplinary administrator to obtain information and records regarding any examination or treatment of the attorney while the attorney was on disabled status; and

(v) comply with other requests made by the disciplinary administrator.

(5) **Disciplinary Administrator's Recommendation.** When the investigation is complete, the disciplinary administrator must determine whether the attorney has established by clear and convincing evidence that the attorney is no longer disabled.

(A) If the disciplinary administrator determines the attorney is no longer disabled, the disciplinary administrator will recommend that the Supreme Court grant the petition for reinstatement.

(B) If the disciplinary administrator determines the attorney has not established that the attorney is no longer disabled, the disciplinary

administrator will recommend to the Supreme Court that the petition be set for hearing before a hearing panel.

(6) **Supreme Court.**

(A) If the disciplinary administrator recommends that the Supreme Court grant the petition, the court will reinstate the attorney without further proceedings, subject to any conditions or limitations imposed under subsection (g)(10).

(B) If the disciplinary administrator recommends that the petition be set for hearing before a hearing panel, the Supreme Court may do one of the following:

(i) reinstate the attorney without further proceedings, subject to any conditions or limitations imposed under subsection (g)(10); or

(ii) direct the Board chair to appoint a hearing panel to conduct a hearing on the petition.

(7) **Hearing Procedure.**

(A) **Hearing.** The hearing panel will schedule the reinstatement hearing.

(B) **Burden of Proof.** To be reinstated to the active practice of law, an attorney must establish by clear and convincing evidence that the attorney is no longer disabled.

(8) **Reinstatement Final Hearing Report.**

(A) **Contents.** Following a hearing on the petition, the hearing panel will issue a reinstatement final hearing report setting forth findings of fact, conclusions of law, and a recommendation regarding whether the attorney should be reinstated to the active practice of law.

(i) **Findings of Fact.** Each finding of fact must be established by clear and convincing evidence.

(ii) **Conclusions of Law.** Each conclusion of law must be set forth separately.

(iii) **Recommendation Regarding Reinstatement.** The hearing panel's recommendation regarding reinstatement is advisory only.

(B) **Concurring or Dissenting Opinion.** If a member of the hearing panel cannot agree on a finding of fact, conclusion of law, or the

recommendation regarding reinstatement, the panel member's concurring or dissenting opinion will be included in the reinstatement final hearing report.

(C) **Distribution.** After the hearing panel issues the reinstatement final hearing report, the panel will serve the disciplinary administrator and the attorney with a copy of the report.

(9) **Procedure Following Distribution.**

(A) **Case Docketed with Supreme Court.** On service of the reinstatement final hearing report, the disciplinary administrator must complete the following:

(i) file the petition for reinstatement, response, and reinstatement final hearing report with the Supreme Court; and

(ii) submit the record and table of contents as directed by the clerk of the appellate courts.

(B) **Record.** The record in a reinstatement case must be filed under seal and include the following:

(i) the petition for reinstatement, each filing by the attorney and the disciplinary administrator in the reinstatement action, any order issued by the hearing panel, and the reinstatement final hearing report issued by the panel;

(ii) the transcript of the reinstatement hearing and any deposition;

(iii) the attorney's exhibits offered for admission into evidence; and

(iv) the disciplinary administrator's exhibits offered for admission into evidence.

(C) **Reinstatement Recommended.** If the hearing panel recommends granting the petition for reinstatement, the matter is submitted for the Supreme Court's consideration.

(D) **Reinstatement Not Recommended.**

(i) If the hearing panel recommends denying the petition for reinstatement, the attorney may file with the Supreme Court an exception to a finding of fact or conclusion of law no later than 21 days after service of a copy of the reinstatement final hearing report.

(ii) If the attorney files an exception, the attorney must serve the disciplinary administrator with a copy of the exception.

(iii) On filing of an exception or the expiration of the time to file an exception, the matter will be submitted for the Supreme Court's consideration.

(iv) Briefs and oral arguments are not permitted unless requested by the Supreme Court.

(10) **Conditions for Reinstatement; Limitations on Practice.** If the Supreme Court grants the petition for reinstatement, the court may order the attorney to comply with any condition or limitation on the attorney's practice. The court may also order that the attorney's practice be supervised for a period of time.

(11) **Reinstatement Denied.** If the Supreme Court denies the petition for reinstatement, the attorney may not file another petition for reinstatement until one year after the date of the order denying the petition or as otherwise directed by the court.

(h) **Board Proceedings.**

(1) When the Supreme Court transfers an attorney to disabled status or temporarily suspends an attorney's license to practice law under subsection (d)(2)(D)(iv), a pending disciplinary board proceeding against the attorney will be stayed. But the disciplinary administrator may direct the investigator to complete a pending investigation to preserve evidence.

(2) When the Supreme Court reinstates an attorney from disabled status, a disciplinary board proceeding that was pending at the time of the transfer will resume.

Rule 235

APPOINTMENT OF COUNSEL TO PROTECT CLIENT INTERESTS

(a) **Appointment of Counsel.**

(1) **Circumstances.** The chief judge of a judicial district may appoint counsel to protect the interests of an attorney's clients under the following circumstances:

(A) the Supreme Court has transferred the attorney to disabled status under Rule 234;

(B) the attorney has disappeared or died;

(C) the Supreme Court has suspended or disbarred the attorney and the attorney has not complied with Rule 231; or

(D) the attorney has neglected client affairs.

(2) **Action.** The chief judge may authorize counsel appointed under subsection (a)(1) to do the following:

(A) review and inventory the attorney's client files;

(B) access the attorney's trust account; and

(C) take any other action necessary to protect the interests of the attorney and the attorney's clients.

(b) **Confidentiality.** Counsel appointed under subsection (a) to review and inventory client files or to access the attorney's trust account must not disclose any information unless necessary to carry out the chief judge's order.

(c) **Chief Judge's Duty.** No later than seven days after issuing an order under this rule, the chief judge must provide a copy of the order to the disciplinary administrator.

Rule 236

COMPLIANCE EXAMINATION BY DISCIPLINARY ADMINISTRATOR

(a) **Authority.** The disciplinary administrator may conduct a compliance examination of any trust account or other fiduciary account held by an attorney or the attorney's law firm.

(b) **Disciplinary Administrator's Duties.** In conducting a compliance examination, the disciplinary administrator has the following duties.

(1) The disciplinary administrator must determine whether the attorney's or law firm's records and accounts are being maintained in accordance with applicable rules.

(2) The disciplinary administrator must employ sampling techniques to examine selected accounts, unless a discrepancy is found that indicates a need for a more detailed examination. Selected accounts may include the following:

(A) money, securities, and other trust assets held by an attorney or law firm;

(B) a safe deposit box or similar device;

(C) deposit records;

(D) canceled checks and their equivalent; and

(E) any other record that pertains to a trust account transaction affecting an attorney's or a law firm's practice of law.

(c) **Cooperation.** The attorney or law firm must cooperate in a compliance examination by providing records and answering questions. Failure to cooperate in the examination is a violation of Rule 210 and Kansas Rule of Professional Conduct 8.1.

(d) **Investigative Subpoena.** The disciplinary administrator may issue an investigative subpoena to compel the production of pertinent books, papers, documents, records, and electronically stored data and information that relate to the account. The subpoena must state that it was issued under this rule.

(e) **Report.** At the conclusion of the compliance examination, the disciplinary administrator must prepare a written report containing the disciplinary administrator's findings. The disciplinary administrator must serve a copy of the report on the attorney or law firm.

(f) **Deficiencies.** If a compliance examination report specifies a deficiency in the attorney's or law firm's records or procedures, the following provisions apply.

(1) No later than 14 days after service of the report, the attorney or law firm must serve the disciplinary administrator with evidence that the alleged deficiency either is incorrect or has been corrected.

(2) If corrective action requires additional time, the attorney or law firm must apply for an extension of time to correct the deficiency.

(g) **Confidential.** Except as otherwise provided in subsection (h) and Rule 237, all records produced for a compliance examination are confidential.

(h) **Disclosure of Records.** The disciplinary administrator may disclose a record produced for a compliance examination as follows:

(1) to a court if disclosure is necessary to complete the examination;

(2) in a board proceeding; or

(3) as directed by the Supreme Court.

Rule 237

CONFIDENTIALITY AND DISCLOSURE

(a) **Confidentiality.** Except as otherwise provided in this rule or by order of the Supreme Court, the following documents are confidential and must not be divulged:

(1) an initial complaint or a report, a docketed complaint, and an investigative report; and

(2) notes, correspondence, and work product of the disciplinary administrator, an investigator, the review committee, a hearing panel, and the Board.

(b) **Complaint and Response.** The disciplinary administrator must provide the initial complaint or report to the respondent. If the respondent files a response to the initial complaint or report, the disciplinary administrator may provide the response to the complainant.

(c) **Disclosure by Complainant or Respondent.** This rule does not prohibit a complainant or respondent from disclosing the existence of an initial complaint or a report, a docketed complaint, or any document or correspondence filed by, served on, or provided to that person.

(d) **Disclosure to Respondent.** On request, the disciplinary administrator must disclose to the respondent all evidence in the disciplinary administrator's possession. Except as otherwise provided in Rule 218, no other discovery is permitted. The disciplinary administrator is not required to disclose any work product, including a summary and recommendation prepared under Rule 209(d).

(e) **Disclosure to Third Person.** The following provisions apply to disclosure by the disciplinary administrator to a third person.

(1) If the review committee directs the disciplinary administrator to impose an informal admonition, the disciplinary administrator may disclose, and must disclose upon request, the nature and disposition of the case.

(2) If a review committee directs a hearing on a formal complaint, the disciplinary administrator may disclose, and must disclose upon request, the pleadings filed under Rule 215; the exhibits admitted during the hearing on the formal complaint, subject to any seal order; and the disposition of the board proceeding.

(3) If a respondent voluntarily surrenders the respondent's license to practice law, the disciplinary administrator may disclose the nature and disposition of the complaint; the disciplinary administrator must disclose a copy of an order of disbarment upon request.

(4) The disciplinary administrator and anyone appointed to assist the disciplinary administrator in conducting an investigation may disclose information reasonably necessary to complete the investigation.

(5) The disciplinary administrator may disclose relevant information and submit all or part of a disciplinary file to the following:

(A) the Kansas Lawyers Assistance Program or other lawyer assistance program;

(B) a government official, commission, committee, or body for use in evaluating an applicant or prospective appointee or nominee for a judicial appointment;

(C) the Supreme Court for use in evaluating an applicant or prospective appointee or nominee for service on a commission, committee, or board; or

(D) a law enforcement agency, licensing authority, or other disciplinary authority.

(f) **Disclosure to Complainant.** On dismissal under Rules 208, 209, or 211 or on imposition of an informal admonition, the disciplinary administrator must notify the complainant of the action taken and may reveal to the complainant information necessary to adequately explain the basis for the decision and the action taken.

Rule 238

ABSOLUTE IMMUNITY

(a) **Complainant or Witness**. A person is absolutely immune from liability for making an initial complaint or a report or giving testimony in an investigation or board proceeding under these rules.

(b) **Protected Individuals and Entities.** The following individuals and entities are absolutely immune from liability for an act within the scope of their duties under these rules:

(1) the Supreme Court;

(2) the Board;

(3) the disciplinary administrator;

(4) a Board member;

(5) a review committee member;

(6) a hearing panel member;

(7) an attorney assigned to investigate a docketed complaint under Rule 209;

(8) an attorney supervising a respondent on diversion under Rule 212 or on probation under Rule 227;

(9) counsel appointed to protect client interests under Rule 235; and

(10) any staff member or other person acting on behalf of an individual or entity listed in this subsection.

Rule 239

ADDITIONAL RULES OF PROCEDURE

(a) **Time Limitation.** Except as otherwise provided in these rules, a time limitation is directory and not jurisdictional.

(b) **Deviation from Rules.** A deviation from these rules may not be asserted as a defense or be a ground for dismissal unless it causes prejudice to the respondent.

Rule 240

KANSAS RULES OF PROFESSIONAL CONDUCT

[The Kansas Rules of Professional Conduct will be moved to Rule 240. Because there are no changes to the Kansas Rules of Professional Conduct other than moving them to Rule 240, the text of the rules is not included for public comment.]