

IN THE SUPREME COURT OF THE STATE OF KANSAS

FILED

ORDER

NOV 15 2012

CAROL G. GREEN
CLERK OF APPELLATE COURTS

RULES RELATING TO DISCIPLINE OF ATTORNEYS

RULES 217, 218, and 219

The attached Supreme Court Rules 217, 218, and 219 are hereby amended,
effective December 1, 2012.

By order of the Court, this 15th day of November 2012.

FOR THE COURT

A handwritten signature in black ink, appearing to read 'Lawton R. Nuss', is written over a horizontal line.

Lawton R. Nuss
Chief Justice

Attachments

Rule 217
DISBARMENT BY CONSENT OF ATTORNEY
UNDER DISCIPLINARY INVESTIGATION

VOLUNTARY SURRENDER OF LICENSE

~~An attorney who, pending investigation of misconduct or while charges of misconduct against him are pending, or anticipated, voluntarily surrenders his license to practice law in this state or elsewhere shall be disbarred, the attorney's name shall be stricken from the roll of attorneys, and any pending disciplinary proceedings shall terminate.~~

(a) **Voluntary Surrender Procedure.** An attorney may voluntarily surrender the attorney's license to practice law. In order to surrender the attorney's license to practice law, the attorney must:

- (1) provide a written request to surrender the attorney's license to the clerk of the appellate courts, on a form provided by the disciplinary administrator or the clerk of the appellate courts;
- (2) provide a copy of the written request to surrender the attorney's license to the disciplinary administrator; and
- (3) return the attorney's certificate of admission to the bar and the attorney's current bar registration card to the clerk of the appellate courts or, if unavailable, explain why the documents cannot be produced.

(b) **Voluntary Surrender of License When Attorney is Under Investigation for Attorney Misconduct or When Investigation is Anticipated.**

- (1) **Voluntary Surrender.** If an attorney voluntarily surrenders the attorney's license to practice law when the attorney is under investigation for attorney misconduct or if an investigation is anticipated for attorney misconduct:
 - (A) the Supreme Court will enter an order disbarring the attorney;
 - (B) the clerk of the appellate courts will strike the attorney's name from the roll of attorneys; and

- (C) pending disciplinary proceedings will terminate, although the disciplinary administrator may direct the investigator to complete the investigation in order to preserve evidence.
 - (2) **Reinstatement.** If an attorney who has voluntarily surrendered the attorney's license to practice law under paragraph (1) seeks reinstatement, the attorney must demonstrate compliance with Rules 218 and 219.
- (c) **Voluntary Surrender of License When Attorney is Not Under Investigation for Misconduct and Investigation is Not Anticipated.**
- (1) **Voluntary Surrender.** If an attorney voluntarily surrenders the attorney's license to practice law when the attorney is not under investigation for attorney misconduct and an investigation is not anticipated, the attorney's name is stricken from the roll of attorneys. The attorney must be in good standing at the time of surrender.
 - (2) **Reinstatement.** If an attorney who has voluntarily surrendered the attorney's license to practice law under paragraph (1) seeks reinstatement:
 - (A) The attorney must:
 - (i) demonstrate compliance with Rule 218;
 - (ii) file a written request for reinstatement and pay the active attorney registration fee for each year since the voluntary surrender; and
 - (iii) pay the current continuing legal education fee and complete the continuing legal education hours for each year since the voluntary surrender.
 - (B) The Supreme Court may:
 - (i) require the attorney to appear before a hearing panel of the board for a reinstatement hearing under Rule 219; and/or
 - (ii) require the attorney to demonstrate compliance with other terms and conditions for reinstatement.

- (3) **Subsequent Discovery of Attorney Misconduct.** If an attorney voluntarily surrenders the attorney's license to practice law under paragraph (1), but is later the subject of an investigation for attorney misconduct which occurred while the attorney was licensed to practice law, the disciplinary administrator, the board, and the Supreme Court retain jurisdiction to investigate, prosecute, and hear the attorney disciplinary case. The voluntary surrender under paragraph (1) does not limit the Supreme Court's jurisdiction to impose discipline under Rule 203.

Rule 218
DISBARRED OR SUSPENDED ATTORNEYS

**NOTICE TO CLIENTS, OPPOSING COUNSEL, AND COURTS OF
RECORD FOLLOWING SUSPENSION, DISBARMENT, OR VOLUNTARY
SURRENDER OF LICENSE**

- (a) ~~In the event any attorney licensed to practice law in Kansas shall hereafter be disbarred or suspended from the practice of law pursuant to these Rules, or shall voluntarily surrender his or her license, such attorney shall forthwith notify in writing each client or person represented by him or her in pending matters, of his or her inability to undertake further representation of such client after the effective date of such order, and shall also notify in writing such client to obtain other counsel in each such matter. As to clients involved in pending litigation or administrative proceedings, such attorney shall also notify in writing the appropriate court or administrative body, along with opposing counsel, of such inability to further proceed, and shall file an appropriate motion to withdraw as counsel of record.~~
- (b) ~~Proof of compliance with this rule must be furnished to the Clerk of the Appellate Courts as a condition precedent to the filing of any Petition for Reinstatement pursuant to Rule 219.~~
- (c) ~~Violation of any suspension order shall constitute grounds for disbarment.~~
- (a) **Attorney's Duty.** When the Supreme Court issues an order or opinion suspending or disbaring an attorney or striking the attorney's name from the roll of attorneys, the attorney must, within 14 days of the order or opinion:

- (1) notify each client, in writing, that the attorney is suspended, disbarred, or is no longer authorized to practice law and the client should obtain new counsel;
 - (2) notify all opposing counsel, in writing, that the attorney is suspended, disbarred, or is no longer authorized to practice law;
 - (3) notify all courts where the attorney is counsel of record and the chief judge of the district in which the attorney resides, in writing, that the attorney is suspended, disbarred, or is no longer authorized to practice law;
 - (4) file a motion to withdraw in each case in which the attorney is counsel of record; and
 - (5) notify each jurisdiction, in writing, where the attorney is or has been authorized to practice law that the attorney is suspended, disbarred, or is no longer authorized to practice law.
- (b) **Proof of Compliance.** Prior to filing a request for reinstatement under Rule 217(c)(2) or a petition for reinstatement under Rule 219(b), the attorney must provide the disciplinary administrator and the clerk of the appellate courts with an affidavit establishing that the attorney has provided notice as required by this rule.
- (c) **Continued Practice.** It is the unauthorized practice of law and a violation of KRPC 5.5 for:
- (1) a suspended or disbarred attorney to practice law after the Supreme Court enters an order suspending or disbarring the attorney; or
 - (2) a former attorney to practice law after the attorney, under Rule 217(c), voluntarily surrenders the attorney's license to practice law.
- (d) **Notice to District Courts, Other State Supreme Courts and Federal Courts.** When the Supreme Court suspends or disbars an attorney or when an attorney, under Rule 217(c), voluntarily surrenders the attorney's license to practice law, the clerk of the appellate courts will notify the chief judge of the district in which the attorney resides, the clerk of the supreme court of any other state, and the clerk of any federal court in which the attorney is licensed to practice law that the attorney is suspended, disbarred, or no longer authorized to practice law in Kansas.

Rule 219
REINSTATEMENT

- (a) ~~After complying with Rule 218(b), a suspended or disbarred attorney may file a petition for reinstatement by filing an original and eight copies of the verified petition with the Clerk of the Appellate Courts. Prior to filing the petition for reinstatement, the suspended or disbarred attorney must have paid any and all costs associated with all disciplinary cases and must have paid \$1,250 to the Clerk for costs of the reinstatement proceeding. Such funds shall be deposited by the Clerk in the disciplinary fee fund. The petition shall bear the case number and caption appearing in the opinion ordering the suspension or disbarment.~~
- (b) ~~The petition must set forth facts establishing that the attorney has been rehabilitated or is entitled to have the order of discipline vacated, terminated, or modified.~~
- (c) ~~On receipt of such petition, the Clerk shall immediately forward copies to the Supreme Court. The Court shall determine if sufficient time has elapsed since the date of suspension or disbarment, considering the gravity of the misconduct leading to suspension or disbarment, to justify reconsideration of its prior order of suspension or disbarment of the petitioner. If the Court finds that sufficient time has not elapsed, the petition for reinstatement shall be dismissed. If the Court finds that the petition for reinstatement should be heard, then the Clerk shall immediately forward a copy to the Disciplinary Administrator, and a panel of the Disciplinary Board shall thereafter promptly consider the same and report to the Supreme Court in duplicate its findings, conclusions, and recommendations. The proceeding shall be governed by the applicable provisions of the rules governing hearings in disciplinary proceedings. The Clerk, on receipt of such report, shall mail a copy thereof to the respondent. The Disciplinary Administrator shall conduct a thorough investigation of the facts alleged in the petition for reinstatement and of petitioner's conduct since the discipline was imposed by the Court.~~
- (d) ~~If the petitioner was disbarred or suspended for an indefinite period of time, the petitioner shall appear before a hearing panel of the Kansas Board for Discipline of Attorneys for a reinstatement hearing governed by the applicable provisions of the rules governing hearings in disciplinary proceedings. If the petitioner was suspended for a definite period of time, the petitioner shall appear before a hearing panel for a reinstatement hearing only if ordered to do so by the Court.~~

- (e) ~~If the petitioner was suspended for a definite period of time and the Court imposed conditions on reinstatement, the petitioner shall provide the Disciplinary Administrator with an affidavit and any other appropriate evidence that the petitioner has fully complied with the conditions. If the Disciplinary Administrator determines that the petitioner has fully complied with the conditions imposed by the Court, the Disciplinary Administrator shall certify the same to the Court. If the Disciplinary Administrator determines that the petitioner has not fully complied with the conditions, the Disciplinary Administrator shall file a motion with the Court for a reinstatement hearing before a hearing panel of the Kansas Board for Discipline of Attorneys.~~
- (f) ~~Following the reinstatement hearing, the hearing panel of the Kansas Board for Discipline of Attorneys shall recommend to the Court that the petitioner be reinstated only if the petitioner establishes by clear and convincing evidence each of the following factors as applicable to the facts:~~
 - (1) ~~that the petitioner is currently morally fit;~~
 - (2) ~~that the petitioner has demonstrated consciousness of the wrongful conduct and the disrepute that the conduct has brought the profession;~~
 - (3) ~~that the petitioner has been rehabilitated;~~
 - (4) ~~that the seriousness of the misconduct leading to suspension or disbarment does not preclude reinstatement;~~
 - (5) ~~that the petitioner's conduct since the discipline was imposed by the Court favors reinstatement;~~
 - (6) ~~that sufficient time has elapsed since the original discipline;~~
 - (7) ~~that the petitioner presently possesses the necessary legal skills;~~
 - (8) ~~that the petitioner has fully complied with the prior orders of the Court;~~
 - (9) ~~that the petitioner has not engaged in the unauthorized practice of law;~~
 - (10) ~~that the petitioner has received adequate treatment and/or rehabilitation in regard to any substance abuse, infirmities, or problems; and~~

- (11) ~~that the petitioner has resolved or attempted to resolve any other complaints against him or her.~~
- (g) ~~The hearing panel shall provide the Court with an original Final Hearing Report detailing its findings of fact, conclusions of law, and recommendation. The Clerk shall forward a copy of the Final Hearing Report to the petitioner.~~
- (h) ~~If the hearing panel recommends reinstatement, the matter shall stand submitted for the Court's consideration. If the hearing panel recommends denial of the petition for reinstatement, the petitioner shall have twenty days from the date of mailing of the Final Hearing Report to file exceptions with the Clerk. After the receipt of exceptions, the matter shall stand submitted for the Court's consideration. Neither briefs nor oral argument shall be permitted unless requested by the Court. The Court may impose appropriate conditions for reinstatement.~~
- (i) ~~Any attorney who is disbarred shall not be eligible to apply for reinstatement for five years from the date of disbarment. Any attorney who is indefinitely suspended shall not be eligible for reinstatement for three years from the date of suspension unless the order of disbarment or suspension states otherwise. Passage of such time periods shall be considered a minimum.~~
- (a) **Eligibility.**
 - (1) **Disbarment.** An attorney disbarred by the Supreme Court is not eligible to petition for reinstatement for a minimum of 5 years from the date of disbarment.
 - (2) **Indefinite Suspension.** An attorney indefinitely suspended by the Supreme Court is not eligible to petition for reinstatement for a minimum of 3 years from the date of suspension.
 - (3) **Definite Suspension.** An attorney suspended by the Supreme Court for a definite period of time is not eligible to petition for reinstatement until the defined period of suspension has passed.
- (b) **Verified Petition for Reinstatement.** After providing an affidavit to the disciplinary administrator and the clerk of the appellate courts that the attorney has provided the notice required by Rule 218(b) and after the period of time

designated in subsection (a) has passed, an attorney seeking reinstatement must file a verified petition for reinstatement.

- (1) The attorney must file an original and eight copies of the verified petition with the clerk of the appellate courts, with the case number and caption appearing in the Supreme Court's order.
- (2) The attorney must pay a reinstatement filing fee of \$1,250 to the clerk of the appellate courts at the time the verified petition for reinstatement is filed. The funds will be deposited by the clerk in the bar disciplinary fee fund.
- (3) The petition must set forth facts establishing that the attorney is entitled to be reinstated to the practice of law.
- (4) The attorney must provide the disciplinary administrator with an affidavit and any other appropriate evidence that the attorney has fully complied with the orders and conditions for reinstatement in the Supreme Court's order or opinion including payment of any court-ordered costs.

(c) **Reinstatement Hearing Not Specified.**

- (1) **Reinstatement.** If the Supreme Court suspends an attorney for a definite period of time and does not specify that the attorney is required to undergo a reinstatement hearing, the Supreme Court will reinstate the attorney if:
 - (A) the attorney has fully complied with subsection (b); and
 - (B) the disciplinary administrator certifies that the attorney has fully complied with all orders and conditions in the Supreme Court's order of suspension.
- (2) **Hearing.** If the Supreme Court suspends an attorney for a definite period of time and does not specify that the attorney is required to undergo a reinstatement hearing and the disciplinary administrator determines that the attorney has not fully complied with the orders and conditions for reinstatement in the Supreme Court's order of suspension, the disciplinary administrator will file a motion for a reinstatement hearing.

(d) **Reinstatement Hearing Required.**

- (1) **Supreme Court's Duty.** When the Supreme Court disbars an attorney, indefinitely suspends an attorney, or suspends an attorney and specifies that the attorney is required to undergo a reinstatement hearing, the Supreme Court will determine if sufficient time has elapsed since the date of suspension or disbarment – considering the gravity of the misconduct leading to suspension or disbarment – to justify reconsideration of its prior order of suspension or disbarment.
 - (A) **Insufficient Time.** If the Supreme Court finds that sufficient time has not elapsed to justify reconsideration of its prior order of suspension or disbarment, the Supreme Court will dismiss the petition for reinstatement.
 - (B) **Sufficient Time.** If the Supreme Court finds that sufficient time has elapsed to justify reconsideration of its prior order of suspension or disbarment, the Supreme Court will issue an order directing the disciplinary administrator to conduct an investigation of the facts alleged in the petition for reinstatement and of the attorney's conduct since the discipline was imposed by the Supreme Court.
- (2) **Disciplinary Administrator's Duty.** The disciplinary administrator will conduct an investigation of the attorney's conduct since the order of disbarment or suspension if:
 - (A) **the Supreme Court determines that sufficient time has elapsed to reconsider its prior order of suspension or disbarment; or**
 - (B) **the disciplinary administrator determines that the attorney has not fully complied with the orders and conditions for reinstatement in the Supreme Court's order of suspension and the Supreme Court orders the attorney to undergo a reinstatement hearing.**
- (3) **Hearing Panel.** After the disciplinary administrator's investigation, the chairman of the Kansas Board for Discipline of Attorneys will appoint a hearing panel to conduct a hearing on the attorney's verified petition for reinstatement. The hearing panel will schedule the reinstatement hearing.

(4) **Factors to Consider.** At the reinstatement hearing, the attorney must establish, by clear and convincing evidence, the following factors:

- (A) the attorney is currently morally fit;
- (B) the attorney has demonstrated consciousness of the wrongful conduct and the disrepute that the conduct has brought the profession;
- (C) the attorney has been rehabilitated;
- (D) the seriousness of the misconduct leading to suspension or disbarment does not preclude reinstatement;
- (E) the attorney's conduct since the discipline was imposed by the Supreme Court favors reinstatement;
- (F) sufficient time has elapsed since the original discipline;
- (G) the attorney presently possesses the necessary legal skills;
- (H) the attorney has fully complied with the prior orders of the Supreme Court;
- (I) the attorney has not engaged in the unauthorized practice of law;
- (J) the attorney has received adequate treatment and/or rehabilitation for any substance abuse, infirmity, or problem; and
- (K) the attorney has resolved or attempted to resolve any other complaints against the attorney.

(e) **Procedure After Entry of a Final Hearing Report.**

- (1) **Hearing Panel's Duty.** After the hearing on the attorney's verified petition for reinstatement, the hearing panel must weigh the evidence presented by the parties and determine whether the attorney has established, by clear and convincing evidence, that the attorney is entitled to reinstatement of the attorney's license to practice law. The hearing panel will prepare a final

hearing report setting forth the findings of fact, conclusions of law, and a recommendation to the Supreme Court concerning reinstatement. After a hearing panel has entered a final hearing report, the hearing panel will provide the original final hearing report to the disciplinary administrator.

- (2) **Disciplinary Administrator's Duties.** After receiving the final hearing report, the Disciplinary Administrator will:
 - (A) provide a copy of the report to the attorney or the attorney's counsel;
 - (B) prepare the record for the Supreme Court;
 - (C) prepare a table of contents to the record; and
 - (D) file 15 copies of the final hearing report and the original record with the Supreme Court.
- (3) **Reinstatement Recommended.** If the hearing panel recommends that the attorney's verified petition for reinstatement be granted, the matter will stand submitted for the Supreme Court's consideration.
- (4) **Reinstatement Not Recommended.** If the hearing panel recommends that the attorney's verified petition for reinstatement be denied, the attorney will have 21 days from the date of mailing of the final hearing report to file exceptions with the clerk of the appellate courts. After the clerk of the appellate courts receives the exceptions, the matter will stand submitted for the Supreme Court's consideration. Neither briefs nor oral argument will be permitted unless requested by the Supreme Court.
- (f) **Conditions for Reinstatement or Limitations on Practice.** The Supreme Court may impose appropriate conditions for reinstatement or limitations on the attorney's practice upon reinstatement. Additionally, the Supreme Court may order that the attorney's practice be supervised for a period of time.
- (g) **Costs.** The disciplinary administrator will certify to the Supreme Court the costs incurred in connection with the reinstatement investigation and proceedings. The hearing panel may recommend and the Supreme Court may assess the costs against the attorney. All assessed costs must be paid to the clerk of the appellate courts for deposit in the bar disciplinary fee fund.