

**INTERNAL OPERATING RULES OF THE KANSAS BOARD
FOR DISCIPLINE OF ATTORNEYS**

OUTLINE

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- C. Appointment of Hearing Panels
- D. Pre-Hearing and Formal Hearing Procedures
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A. GENERAL RULES

(Rules 202, 203, 204)

- A.1. These rules are adopted by the Kansas Board for Discipline of Attorneys (hereinafter Board) pursuant to Rule 204(f).
- A.2. The Board shall meet at the call of the Chairperson of the Board (hereinafter Chair).
- A.3. The Chair and the Disciplinary Administrator shall prepare an agenda for Board meetings.
- A.4. Necessary expenses incurred by Board members and other persons in performing Board work will be reimbursed from the Disciplinary Fee fund through the Disciplinary Administrator's office.
- A.5. Board members, family members of board members, partners, associates, and employees of a Board member shall not represent a respondent after the case has been scheduled for a hearing before a hearing panel or appear before any hearing panel as a special prosecutor.
- A.6. The Board should periodically review the operation of the disciplinary system in Kansas and if warranted propose rules of procedure for lawyer disciplinary and disability proceedings for promulgation by the Court.

B. THE REVIEW COMMITTEE

(Rules 204, 211)

- B.1. The Review Committee of the Board shall be appointed by the Supreme Court and shall consist of the Chair, one other Board member, and one practicing lawyer. The Chair may appoint a temporary member to the Review Committee for a particular

case if a Review Committee member has a conflict or for a period of time if a Review Committee member is unable to act.

- B.2. The primary function of the Review Committee is to determine if there is probable cause to believe a Respondent's conduct violates the Court's rules and to take appropriate action under Rule 211.
- B.3. After investigation the Disciplinary Administrator shall submit to each Review Committee member a copy of the docketed complaint together with investigative materials and a recommendation.
- B.4. Each Review Committee member shall review the written material and make a recommendation as to the complaint's resolution to the Chair. The Chair shall record the individual recommendations of the Review Committee members. If the recommendations of the Review Committee members are unanimous and in agreement with the Disciplinary Administrator's recommendation then that shall constitute the action of the Review Committee. If any Review Committee members disagree with any other member or with the Disciplinary Administrator, then that complaint shall be resolved by a majority vote of the Review Committee at the next Review Committee meeting.
- B.5. The Review Committee shall meet at the call of the Chair who shall designate the time, date, and place of the meeting. Meetings may be conducted by telephone conference. Complaints not acted upon pursuant to B.4. above shall be presented to the Review Committee at its meeting for discussion and resolution.
- B.6. At the Review Committee meeting and after oral presentations by the Disciplinary Administrator and deliberation by the Review Committee the Review Committee shall act on each docketed complaint pursuant to Rule 211.
- B.7. A record reflecting each action of the Review Committee shall be prepared by the Chair and distributed to the Review Committee members and the Disciplinary Administrator.
- B.8. The Review Committee, upon a proper showing, may reconsider any decision. After reconsidering an order, the Review Committee may direct any action pursuant to Rule 211.

C. APPOINTMENT OF HEARING PANELS

(Rule 204)

- C.1. The Chair shall appoint all Hearing Panel members and designate one of the Board members as the chair, hereafter called the Presiding Officer. A person may not sit on a disciplinary Hearing Panel that involves a complaint presented to the Review Committee while that person was a member of the Review Committee. Review Committee members may sit as a Hearing Panel member in a reinstatement hearing.
- C.2. The non-Board member of all Hearing Panels shall be appointed from lawyers licensed, registered as active, and in good standing in Kansas. The Chair shall ensure that as many lawyers as possible participate in the disciplinary process as a Hearing Panel member.
- C.3. The Chair shall notify the Disciplinary Administrator and the Hearing Panel members of their appointment to a Hearing Panel. The Hearing Panel will schedule the hearing and the Disciplinary Administrator will notify the Respondent and the Respondent's counsel of the hearing date. The Disciplinary Administrator shall provide the Respondent with the name and address of each Hearing Panel member.
- C.4. For good cause shown the Chair may replace a Hearing Panel member.
- C.5. In unusual circumstances, if the Disciplinary Administrator and the Respondent agree, the Hearing Panel may consist of two members.

D. PRE-HEARING AND FORMAL HEARING PROCEDURES

(Rules 215, 216, 218, 222, 232, 237)

- D.1. The Presiding Officer, after consultation with the other Hearing Panel members, shall rule on the prehearing motions presented and notify the parties of the Hearing Panel's decision.
- D.2. Continuance of a scheduled hearing is disfavored except on valid showing of extreme circumstances requiring the hearing to be continued.
- D.3. The Presiding Officer of the Hearing Panel shall rule on all motions and objections presented during the hearing.

- D.4. Except as provided by Rule 218, no discovery shall be permitted. See also Rule 237(d).
- D.5. Any Hearing Panel member may question any witness or counsel at any time during the hearing.
- D.6. The hearing is a formal proceeding which shall be conducted in a judicious manner pursuant to Rule 161. All parts of the hearing shall be on the record.
- D.7. The investigator shall be allowed to remain in the hearing room during presentation of all matters if requested by the Disciplinary Administrator and if approved by the Presiding Officer.
- D.8. The Respondent when called as a witness by himself or herself may testify in either question-and-answer form or by a narrative statement. In either event, the Respondent shall be subject to cross-examination and interrogation.
- D.9. Briefs and suggested findings of fact and conclusions of law are not normally allowed or required but may be requested by the Hearing Panel in very unusual circumstances.
- D.10. Copies of any document, pleading, or exhibit presented to a Hearing Panel shall be presented to each Hearing Panel member, opposing counsel, counsel for the Hearing Panel, and the court reporter.
- D.11. Respondents and their attorneys shall acquaint themselves with these Rules and the Rules of the Supreme Court relating to disciplinary matters. All parties are expected to present their case in an expeditious manner.

E. THE PANEL REPORT
(Rules 226, 228)

- E.1. The Hearing Panel shall strive to complete the Final Hearing Report as soon as possible after the record has been closed. The writing and filing of the Final Hearing Report is the responsibility of the Presiding Officer. After the Presiding Officer prepares the Final Hearing Report, the Presiding Officer shall submit the report to the other Hearing Panel members for approval. In the event the Presiding Officer failed to write the Final Hearing Report and submit it to the other Hearing Panel members, the Chair shall direct the other Board member of the Hearing Panel to write and submit the Final Hearing Report.

- E.2. The Final Hearing Report shall set forth the appearances, jurisdictional matters, findings of fact, conclusions of law, and the recommendation of discipline of the Disciplinary Administrator, the Respondent, and the Hearing Panel. If mitigating or aggravating circumstances affect the nature or degree of discipline to be imposed or recommended it must be fully set forth in the Final Hearing Report.
- E.3. The A.B.A. Standards for Imposing Lawyer Sanctions may be applied in determining the proper disposition and/or discipline recommended by a Hearing Panel. The Standards may be referenced and discussed in the Final Hearing Report.
- E.4. The original Final Hearing Report shall be forwarded to the Disciplinary Administrator to be filed with the Kansas Supreme Court, as required by Rule 228. The Disciplinary Administrator shall distribute copies to the Respondent, Respondent's counsel, Complainant, and all other members of the Board.
- E.5. Consistency and uniformity in application of the rules of discipline to the individual matters before a Hearing Panel should be considered by the Hearing Panel throughout the disciplinary process.
- E.6. All exhibits admitted into evidence shall be retained under the control of the Disciplinary Administrator who shall file them with the Court when required to do so by the disciplinary rules.

F. REINSTATEMENT

(Rules 222, 232)

- F.1. After receiving notice from the Court directing that a petition for reinstatement be processed, the Disciplinary Administrator shall conduct an investigation into the petition and the petitioner's character and fitness to practice law.
- F.2. After receipt of the Court's notice the Chair shall appoint a hearing panel as directed in Section C. above to hear the reinstatement petition.
- F.3. After the Disciplinary Administrator completes the investigation of petitioner, the matter shall be scheduled for hearing by notice of hearing from the Disciplinary Administrator. The procedures and rules stated in Rule 222 and above in Sections D. and E. apply to reinstatement hearings, unless modified by Rule 232.

F.4. The Hearing Panel shall consider the reinstatement factors in Rule 232(e)(4).