

Supreme Court of Kansas Rules Relating to Discipline of Attorneys

Adopted January 1, 2021

Notes: The rules adopted on January 1, 2021 reflect efforts to place the rules in an order which directly correlates to how an attorney disciplinary complaint proceeds. As a result, many rules were moved and renumbered. Many of the previous rules included provisions that related to varied subject matters. In the new rules, each subject is separated into a separate rule, i.e., temporary suspension, diversion, probation, etc.

NEW Rule #	Name	Previous Rule # Notes
Rule 200	Prefatory Rule	Prefatory Rule
Rule 201	Definitions	<p>None, this is a new rule</p> <p>The new Rule 201 includes an expanded definitions section. Although some of the definitions appeared generally in the existing rules, i.e. Rule 211. The definition section was designed to further clarify the changes.</p>
Rule 202	Applicability; Jurisdiction	<p>Previous Rule 201 for reference only</p> <p>The new Rule 202 makes it clear that all individuals engaged in the practice of law in Kansas are subject to the Rules Relating to Discipline of Attorneys. For example, Rule 202 states that, in addition to attorneys admitted to practice law in Kansas, the rules apply to:</p> <ul style="list-style-type: none"> • Out-of-state attorneys providing legal services under KRPC 5.5. • Attorneys admitted to practice law Pro Hac Vice; Rule 1.10 or Rule 116. • Attorneys authorized to provide pro bono or low-cost legal services under Rule 712B, etc.
Rule 203	General Principles	<p>Previous Rule 202 for reference only</p> <ul style="list-style-type: none"> • Professional and Personal duty to be professional. • Misconduct is a ground for discipline, regardless of whether in the course of an attorney-client relationship.

NEW Rule #	Name	Previous Rule # Notes
Rule 204	Kansas Board for Discipline of Attorneys; Review Committee; Hearing Panel	<p>Previous Rule 204 for reference only</p> <ul style="list-style-type: none"> • Defines and describes Ks. Bd. For Discipline, Review Committee (RC), and Hearing Panel (HP).
Rule 205	Disciplinary Administrator	<p>Previous Rule 205 for reference only</p> <ul style="list-style-type: none"> • Defines and describes powers, duties, and responsibilities of Disciplinary Administrator.
Rule 206	Attorney Registration	<p>Previous Rule 208 for reference only</p> <p>The new Rule 206 (attorney registration) was recently amended, only minimal changes were made to this rule.</p> <ul style="list-style-type: none"> • Definitions, registration, fees, status types, and change in status requirements.
Rule 207	Mandatory Disclosure of Professional Liability Insurance	<p>Previous Rule 208A for reference only</p> <ul style="list-style-type: none"> • Disclosure requirements, public information, and failure to comply / false information.
Rule 208	Initial Complaint or Report of Misconduct	<p>Previous Rule 209 for reference only</p> <p>The new Rule 208 includes provisions that codify existing practices.</p> <ul style="list-style-type: none"> • Submission of complaint, dismissal, and investigation.
Rule 209	Investigation of Docketed Complaint	<p>Previous Rule 207, Rule 209, Rule 210, and Rule 216 for reference only</p> <p>The new Rule 209 includes provisions that codify existing practices.</p> <ul style="list-style-type: none"> • Investigation, process, report, and dismissal with permission.
Rule 210	Duty to Assist; Duty to Respond; Duty to Report	<p>Previous Rule 207 for reference only</p> <ul style="list-style-type: none"> • 3 core duties: assist, respond, and report.

NEW Rule #	Name	Previous Rule # Notes
Rule 211	Review Committee Disposition	<p>Previous Rule 210 for reference only</p> <p>The new Rule 211 includes provisions that codify existing practices. It also adds a deadline of 21 days for respondent to reject informal admonition (IA) and request formal hearing. The former rule did not include a deadline for rejecting an informal admonition.</p> <ul style="list-style-type: none"> Review Committee (RC) duties and disposition.
Rule 212	Attorney Diversion Program	<p>Previous Rule 203(d) for reference only</p> <p>The Supreme Court created the Attorney Diversion Program, by rule, in 2001. The new Rule 212 retains the structure of the program, eliminates the creation language, and clarifies the process.</p>
Rule 213	Temporary Suspension	<p>Previous Rule 203(b) for reference only</p> <p>The new Rule 213 provides clarity on the existing procedure for seeking the temporary suspension of an attorney on an emergency basis. Additionally, it provides a 14-day deadline for respondent to respond to motion for temporary suspension. The former rule did not contain a provision for a response by respondent.</p> <ul style="list-style-type: none"> Good Cause for Temporary Suspension includes: (1) failed to timely file an answer to the formal complaint and (2) poses a substantial threat of harm to clients, the public, or the administration of justice.
Rule 214	Dismissal Not Justified	<p>Previous Rule 213 for reference only</p> <ul style="list-style-type: none"> Following situations WILL NOT justify dismissal: (1) uncooperative complainant, (2) settlement between complainant and respondent, or (3) restitution by the respondent (may be mitigation factor).

NEW Rule #	Name	Previous Rule # Notes
Rule 215	Pleadings; Service	<p>Previous Rule 211(b) and Rule 215 for reference only</p> <p>The new Rule 215 allows the disciplinary administrator and the respondent to file and serve certain documents by mail.</p> <ul style="list-style-type: none"> • The pleadings – the formal complaint and the answer – <u>may not be served exclusively</u> by email. • Requires ODA to file the formal complaint (FC) at least 45 days prior to a hearing, which codifies existing practice. • Requirements for respondent’s answer.
Rule 216	Prehearing Procedure	<p>Previous Rule 216 and Internal Operating Rules for reference only</p> <p>The new Rule 216 creates deadlines for motions and replies.</p> <ul style="list-style-type: none"> • The new rule incorporates and clarifies a provision of the Internal Operating Rules of the Kansas Board for Discipline of Attorneys, requiring prehearing motions to be filed at least 14 days prior to a hearing. <i>See Int. Op. R. D.1.</i> • New Rule 216 also provides that responses to motions must be filed at least seven days prior to a hearing. Previously, there is no time requirement for responses to prehearing motions.
Rule 217	Subpoena	<p>Previous Rule 216 for reference only</p> <p>The new Rule 217 clarifies how and when the parties may issue or obtain subpoenas.</p> <ul style="list-style-type: none"> • The former rule included a provision, which to our knowledge was never used, where a party could seek to obtain a subpoena in a disciplinary case from a district court. • The new/amended rule provides a procedure for respondents to obtain subpoenas from hearing panels.

NEW Rule #	Name	Previous Rule # Notes
		<ul style="list-style-type: none"> • Additionally, new Rule 217 provides for the timing of motions to quash. The former rule did not contain similar requirements. • Also, subsection (d) is a provision which would allow the disciplinary administrator's office to assist disciplinary authorities in other jurisdictions with obtaining a subpoena. Currently, more than 30 jurisdictions have a reciprocal subpoena rule.
Rule 218	Deposition	<p>Previous Rule 216 for reference only</p> <p>The new Rule 218 expands the use of depositions in attorney disciplinary cases.</p> <ul style="list-style-type: none"> • It provides that a deposition may be taken by agreement of the parties. • There are some cases, cases which involve Kansas attorneys located in other states, where this provision may prove to be particularly helpful and cost saving.
Rule 219	Criminal Charge; Conviction	<p>Previous Rule 202, Rule 203(c), and Rule 214 for reference only</p> <ul style="list-style-type: none"> • Reportable crime includes felony, A or B misdemeanor; expands reportable crime from old rule. • Duty to report when charged and convicted of reportable crime. • Automatic Temporary Suspension when convicted of felony or other crime mandating registration as an offender.
Rule 220	Effect of Other Proceeding or Judgment	<p>Previous Rule 202 and Rule 214 for reference only</p> <ul style="list-style-type: none"> • Other pending action will not cause the investigation to be deferred unless specifically authorized. • Judgment or ruling is prima facie evidence of the conduct; respondent has the burden to disprove the findings.

NEW Rule #	Name	Previous Rule # Notes
Rule 221	Discipline Imposed in Another Jurisdiction	<p>Previous Rule 202 for reference only</p> <p>The new Rule 221 requires a respondent to notify ODA within 14 days of the imposition of discipline in another jurisdiction.</p> <ul style="list-style-type: none"> • Previously, attorneys had a duty to report, but there was no time requirement associated with the duty. <i>See</i> KRPC 8.3(a).
Rule 222	Hearings	<p>Previous Rule 211 and Rule 224(b) for reference only</p> <ul style="list-style-type: none"> • Open to the public and hearing procedure.
Rule 223	Summary Submission	<p>None, this is a new rule</p> <p>The new Rule 223 would allow the parties to agree to the record to present to the Court and forego a hearing before a hearing panel of the board.</p> <ul style="list-style-type: none"> • The rule does require review and approval by the chair of the board. • This rule would be a great tool to speed up the process in cases where all participants agree to the contents of the record, the findings of fact, the conclusions of law, and the recommendation for discipline.
Rule 224	Witnesses and Exhibits	<p>None, this is a new rule</p> <p>The new Rule 224 creates deadlines for providing witness lists, exhibits lists, and exhibits, prior to hearing.</p> <ul style="list-style-type: none"> • Provides direction on how exhibits should be marked. • Previously, the parties were required to mark and present exhibits to the hearing panel members in advance of the hearing, but the respondents rarely did. <i>See</i> Int. Op. R. D.11. • Additionally, the new rule creates deadlines for disclosing expert witnesses. • The former disciplinary rules do not address the use of expert witnesses. From time to time, the parties seek to present testimony from expert witnesses. Rule 224 includes

NEW Rule #	Name	Previous Rule # Notes
		<p>procedures to follow when a party seeks to present expert testimony.</p> <ul style="list-style-type: none"> We hope that this rule will provide a consistent approach for the use of expert witnesses in disciplinary cases.
Rule 225	Types of Discipline	<p>Previous Rule 203(a) for reference only</p> <ul style="list-style-type: none"> All the same types of discipline: disbarment, suspension, probation, and censure. Informal Admonition (IA) which is public but not published – codifies existing practice. Diversion is not listed because it is considered an alternative to discipline. Yes, diversion is available if applicable. However, diversion may be used in subsequent discipline as aggravating factor; see Rule 212(h)(2).
Rule 226	Final Hearing Report	<p>Previous Rule 211(f) for reference only</p> <ul style="list-style-type: none"> Define, describe, process, and procedure for Final Hearing Report (FHR).
Rule 227	Probation	<p>Previous Rule 211(g) for reference only</p> <ul style="list-style-type: none"> Process, procedure, probation plan contents. Deadline to file probation plan 14 days before the hearing. New requirement: Prior to hearing before the Supreme Court, a respondent seeking probation must file an affidavit with the Court describing compliance 14 days prior to oral argument. The former rule required a respondent to file an affidavit, but it did not provide a deadline for doing so. It shortens time limit for ODA to respond to a motion for discharge from probation from 20 days to seven days.

NEW Rule #	Name	Previous Rule # Notes
Rule 228	Procedure Before Supreme Court	Previous Rule 212 for reference only <ul style="list-style-type: none"> • Process, procedure, requirements, and deadlines; • Exceptions to Final Hearing Report (FHR).
Rule 229	Costs	Previous Rule 224(c) for reference only <ul style="list-style-type: none"> • The new Rule 229 establishes a deadline for respondents to pay the costs of the action, when imposed. • The former rule did not include a time limit.
Rule 230	Voluntary Surrender of License	Previous Rule 217 for reference only <ul style="list-style-type: none"> • Process, procedure, and reinstatement.
Rule 231	Notice to Clients, Opposing Counsel, and Courts Following Suspension or Disbarment	Previous Rule 219 for reference only <ul style="list-style-type: none"> • The new Rule 231 requires respondents to certify that proper notice has been provided within 30 days of an order of suspension or disbarment. • The former rule required a respondent to make that showing prior to filing a request for reinstatement. • We are hopeful that this change will result in more respondents complying with the requirement. • Also, the new rule establishes a time frame for the clerk of the appellate courts to notify certain courts of suspension and disbarment orders.
Rule 232	Reinstatement following Suspension or Disbarment	Previous Rule 219 for reference only <p>The new Rule 232 includes a provision for the disciplinary administrator's office to respond to a petition for reinstatement within seven days.</p> <ul style="list-style-type: none"> • This codifies existing practice.

NEW Rule #	Name	Previous Rule # Notes
Rule 233	Kansas Lawyers Assistance Program (KLAP)	<p>Previous Rule 206 for reference only</p> <ul style="list-style-type: none"> • Recently, proposed changes have been submitted related to KLAP. The deadline to submit comments on the proposed changes to the KLAP rule was February 15, 2021. • Generally, the proposed changes being considered are restyling and retooling to align with other Supreme Court Rules. • Additional amendments clarify processes and reflect existing practices not presently in the rule. • Two changes that have been highlighted in KLAP are (1) creation of the KLAP foundation and (2) clarify that confidentiality is paramount and in a crisis situation you can call 911 or the suicide hot line.
Rule 234	Transfer to Disabled Status	<p>Previous Rule 220 for reference only</p> <p>The new Rule 234 regarding transfer to disabled status has undergone significant changes.</p> <ul style="list-style-type: none"> • The changes are designed to clarify the procedures necessary to transfer 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.
Rule 235	Appointment of Counsel to Protect Client Interests	<p>Previous Rule 221 for reference only</p> <p>The new Rule 235 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.</p> <ul style="list-style-type: none"> • The former practice was for district court judges to provide the notice but did not include a time frame.
Rule 236	Compliance Examination by Disciplinary Administrator	<p>Previous Rule 216A for reference only</p> <ul style="list-style-type: none"> • Provide duty, clarity, process, and procedure.

NEW Rule #	Name	Previous Rule # Notes
Rule 237	Confidentiality and Disclosure	Previous Rule 222 for reference only <ul style="list-style-type: none"> • Define confidentiality, nature and extent of authorized disclosure.
Rule 238	Absolute Immunity	Previous Rule 223 for reference only <ul style="list-style-type: none"> • Provides absolute immunity for complainant or witness who makes a report or provides testimony. • Defines protected individuals and entities.
Rule 239	Additional Rules of Procedure	Previous Rule 224(a) and (d) for reference only <ul style="list-style-type: none"> • A time limitation is directory and not jurisdictional. • Deviation from rules may not be asserted as a defense or ground for dismissal unless it causes prejudice.
Rule 240	Kansas Rules of Professional Conduct	Previous Rule 226 for reference only <ul style="list-style-type: none"> • Prefatory rule for KRPC; • Preamble; • Scope, terminology.
Rule 241	Rule Relating to the Lawyers' Fund for Client Protection	Previous Rule 227 for reference only <ul style="list-style-type: none"> • Fund for client protection: process and procedure.