Ethical Issues in Conspiracy Cases

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ETHICS AND DISCIPLINE

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I. INTRODUCTION

The Court decided these cases between March 8, 2013, and March 1, 2014. Table 1 indicates the number of cases in which an attorney violated either a Kansas Rule of Professional Conduct (KRPC) or a Kansas Supreme Court Rule (SCR). Table 2 shows the disciplinary disposition imposed due to the violations.

Table 1

Rule	Total Violations
KRPC 1.1	2
KRPC 1.3	4
KRPC 1.4	4
KRPC 1.16	4
KRPC 3.2	1
KRPC 3.3	5
KRPC 3.4	2
KRPC 5.1	1
KRPC 5.5	2
KRPC 8.1	4
KRPC 8.4(b)	1
KRPC 8.4(c)	5
KRPC 8.4(d)	5
KRPC 8.4(g)	2
SCR 207	3
SCR 208	2
SCR 211	3

Table 2

Disposition	**Times Ordered**
Published Censure	0
Probation	1
Definite Suspension	4
Indefinite Suspension	2
Disbarment	3
Surrender of License/Disbarment	4
Discharge from Probation	
Reinstatement	4

DISBARMENT

In the Matter of David Druten

297 Kan. 432, 301 P.3d 319 (2013)
May 24, 2013
Disbarment

Rules violated: 1.1 (2012 Kan. Ct. R. Annot. 436) (competence); 1.3 (2012 Kan. Ct. R. Annot. 454) (diligence); 1.4(a) (2012 Kan. Ct. R. Annot. 473) (communication); 3.3(a)(1) (2021 Kan. Ct. R. Annot. 582) (candor toward the tribunal); 3.4 (2012 Kan. Ct. R. Annot. 589) (fairness to opposing party and counsel); 8.1(2012 Kan. Ct. R. Annot. 634) (knowing false statement; failure to respond to lawful demand for information from disciplinary authority); 8.4(c) (2012 Kan. Ct. R. Annot. 643) (engaging in conduct involving misrepresentation) and Kansas Supreme Court Rule 211(b) (2012 Kan. Ct. R. Annot. 350) (failure to file timely answer in disciplinary

proceeding).

Respondent did not appear.

Respondent was licensed in both Kansas and Missouri.

In July 2011, respondent changed his status in Kansas from "active" to "retired."

In 2008, Respondent was assigned by his firm to a case involving an individual who was severely injured when a building collapsed on him.

Three days before the statute of limitations ran, respondent filed a petition. The petition was two pages long.

Respondent had not investigated the facts surrounding the building collapse.

The injured party was deposed. Under oath the injured man admitted he had lied about whether there had been testing done on the concrete that was the reason for the collapse. The injured man testified that he had spoken with respondent about the circumstances surrounding the concrete testing.

Respondent was present during the deposition and had taken no steps to correct the false statement.

Respondent failed to respond to discovery requests. Attorney fees were assessed against respondent.

Over the next year, the court held four hearings regarding the defense's discovery requests.

The court finally set an absolute deadline for discovery and designation of experts. Respondent told the court that he would comply.

Respondent failed to comply with the deadline. Respondent provided unsworn answers and did not designate an expert with regards to causation.

The suit was ultimately dismissed because of respondent's failure to comply with the court's orders. The court also questioned respondent's "forthrightness."

Respondent filed a motion for reconsideration. The motion did not contain any citations to authorities or statutes. The court denied the motion and noted that all of the problems relating to discovery had not been corrected.

During the hearing on the motion, respondent told the court he had never had a malpractice claim. The court found this comment to be odd, so the court researched respondent's name and found a disciplinary case that included information relating to a malpractice claim made by a client against respondent's insurance carrier. The claim was settled for $100,000. The disciplinary case involved respondent overtly and repeatedly lying to a client.

Respondent filed a notice of appeal, but did not docket an appeal. The appeal was dismissed. Respondent told the client that the suit had been dismissed, but that he was refilling the suit. Respondent never refiled the suit.

Approximately three months later, respondent told the client he did not refile the suit. Respondent told the client that when he went to refile, the judge told him that if he filed suit, the judge would file felony perjury charges against the client because of his false testimony during the deposition.

Respondent provided false statements in his response to the disciplinary complaint.

Respondent did not appear for the Disciplinary Hearing.

The Deputy Disciplinary Administrator recommended respondent be disbarred. The Hearing Panel recommended Respondent be

disbarred.

Druten was disbarred.

In the Matter of Michael Schnittker

298 Kan. 89, 310 P.3d 399 (2013)
October 11, 2013
Disbarment

Rules violated: 8.4(b) (2012 Kan. Ct. R. Annot. 643) (commission of a criminal act reflecting adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer) and 8.4(c) (2012 Kan. Ct. R. Annot. 643) (engaging in conduct involving misrepresentation).

Respondent was represented by counsel.

Respondent was licensed in both Kansas and Missouri.

Respondent formed a partnership with Sullivan in late 2003 or early 2004.

The partnership agreement required all earned fees be deposited in the operating account. Firm expenses were paid from the operating account. After the expenses were paid, the money was divided based on the percentage of fees.

Respondent began experiencing financial difficulties in 2008. In April 2009, he deposited earned attorney fees into his personal account, not the operating account. This practice continued for three years.

Sullivan noticed that the operating account was not as flush as it had once been.

Sullivan audited respondent's files and determined that respondent had deposited more than $150,000.00 in his personal account. The funds should have been deposited into the firm operating account.

When confronted, respondent admitted he had taken the funds. It was agreed he pay Sullivan $77,000.00.

Respondent paid the full amount and also paid the fees charged by the forensic accountant.

At the hearing, respondent admitted his conduct amounted to felony theft. He was never criminally charged.

Sullivan has forgiven respondent and they continue to work from the same office. Sullivan has removed respondent as a partner.

Respondent asked to be publically censured.

The Deputy Disciplinary Administrator recognized that disbarment was the appropriate sanction. However, the Deputy Disciplinary recommended indefinite suspension because respondent admitted to the theft, repaid money and Sullivan forgave him.

The Hearing Panel agreed with the recommendation of the Deputy Disciplinary Administrator and recommended indefinite suspension.

The Kansas Supreme Court is not bound by the recommendations of either the Disciplinary Administrator or the Hearing Panel. The Court noted: "Further, by relying on his law partner's forgiveness, the respondent seems to imply that a benevolent crime victim's wishes should somehow supersede the imposition of a sanction typically imposed and warranted by such serious, flagrant misconduct." The Court held there was no reason to impose a less severe level of discipline than what is typically imposed for such "serious, felonious misconduct."

A majority of the Court ordered disbarment. A minority of the Court agreed indefinite suspension was the appropriate punishment.

Schnittker was disbarred.

In the Matter of Daniel R. Beck

___ Kan. ___, ___ P.3d ___ (2014)
February 7, 2014
Disbarment

Rules violated: 1.1 (2013 Kan. Ct. R. Annot. 446) (competence); 1.4 (2013 Kan. Ct. R. Annot. 484) (communication); 5.5 (2013 Kan. Ct. R. Annot. 630) (unauthorized practice of law) and Kansas Supreme Court Rule 208 (2013 Kan. Ct. R. Annot. 349) (giving notice following suspension).

A couple established a Revocable Family Trust and designated themselves as trustee. In the event of death or incapacity all their rights vested in their only child, a son. Following the death of the surviving grantor, the son was to receive 100% of the assets of the trust. In the event the son predeceased the grantor, the remainder of the trust property was to go to his son, T.H.

Following the death of her husband, L.H. served as trustee until 2008. Thereafter, the son assumed the duties of as the trustee.

In 2010, L.H. turned 90 years old and she was in a nursing home.

In February 2010, the respondent met with the son (who was a longstanding client) about the son's estate plan. During the meeting they discussed L.H's estate. The son told respondent his mother's health was not good.

Respondent recommended that L.H.'s estate plan be updated. Respondent did not contact L.H. regarding the proposed changes.

The respondent drafted a revised trust document, an updated general durable power of attorney, an updated living will, an updated last will and testament, an updated healthcare power of attorney, an updated assignment of personal property to the son and an updated authorization to release health care information. The documents had certifications that the grantor and trustee had read the documents and had places for witnesses and a notary stamp with a certification.

Respondent billed $2,800.00 for the changes.

At the hearing, the respondent initially testified that he made no substantive changes. Upon further questioning, respondent admitted that he the trust document substantially changed who would receive the trust corpus in the event the son predeceased his parents.

The respondent testified he planned to meet with L.H. and her son at her nursing home. The night before, respondent's secretary (and notary) packed his briefcase with the documents and her notary stamp.

The respondent and respondent's wife drove to the nursing home. His secretary did not feel well, so she did not attend the meeting. The respondent testified he planned on finding a notary at the nursing home.

At the time respondent arrived, L.H. was asleep. She remained asleep the entire time respondent was at the nursing home.

Respondent met with the son. He told the son to sign his mother's name to the documents. The respondent and his wife signed as witnesses. Then respondent affixed his secretary's notary stamp to the documents and signed her name.

Respondent did not tell his secretary that he had used her stamp and signed her name.

The son paid the $2,800 bill out of trust as the trustee of the estate.

L.H. died on July 24, 2010. At no time prior to her death did respondent speak with her, show her the revised documents, explain the revisions or obtain consent to change the documents. After his mother's death, the son retained another lawyer to assist with the sale of real

estate. The son told the lawyer about the revised documents and circumstances surrounding the execution of the documents. That lawyer reported respondent after discussing his obligation to report the conduct with his client and seeking immunity on his client's behalf from the local prosecutor.

In 2006, respondent was administratively suspended from the practice of law. The respondent received the Order of Suspension. The respondent did not notify his current clients, opposing counsel or the courts of his suspension.

In November 2006, respondent called the CLE Commission and asked what he needed to do to become reinstated. He did nothing more that year to become reinstated.

In August 2007, respondent again called the CLE Commission and asked what he needed to do to become reinstated. He did nothing more to become reinstated

In November 2009, respondent finally provided proof of compliance. He applied for reinstatement. On November 23, 2009, the Court issued an Order of Reinstatement.

The Respondent engaged in the active practice of law throughout his suspension.

The Deputy Disciplinary Administrator recommended nothing less than indefinite suspension. The respondent requested a censure and probation.

The Panel rejected the respondent's request for probation, finding there was nothing in the plan that would prevent the misconduct from repeating and dishonest misconduct cannot be cured by probation.

The Hearing Panel was persuaded by the mitigation evidence presented: that depression contributed to the misconduct, Respondent fully cooperated, he had a good reputation in the community and the Panel found he exhibited "some" evidence of remorse. The Panel recommended a 2-year suspension.

The Kansas Supreme Court held that respondent wholly failed to provide competent representation, engaged in significant dishonest conduct, failed to document CLE hours and practiced while his license was suspended for 3 years. The Court determined that the documents prepared by respondent for L.H. did not "parallel" the prior documents in that the replacement document only required one physician to determine if L.H. was in a terminal vegetative state before life support could be removed, as opposed to the requirement that two doctors were required to provide an opinion in the original document.

The Court initially questioned whether suspension was even appropriate because respondent had practiced law for 3 years while administratively suspended. The Court ultimately concluded respondent's "grave misconduct violated some of the most basic tenets of our professional and merits his disbarment."

Beck was disbarred.

SURRENDER OF LICENSE RESULTING IN DISBARMENT

In the Matter of Kevin K. Stephenson
297 Kan. 129, 298 P.3d 354 (2012)
April 12, 2013
Disbarment

Kevin Stephenson voluntarily surrendered his license pursuant to Kanas Supreme Court Rule 217 on April 12, 2013. Respondent had been temporarily suspended on April 2, 2013, after being convicted of two counts of felony theft and sentenced to prison.

In the Matter of Jon M. King
297 Kan. 208, 300 P.3d 643 (2013)
May 3, 2013

Disbarment

Jon M. King voluntarily surrendered his license pursuant to Kanas Supreme Court Rule 217 on May 3, 2013. At the time respondent surrendered his license, a complaint had been docketed by the Disciplinary Administrator's Office in accordance with Supreme Court Rule 211 (2012 Kan. Ct. R. Annot. 350). The complaint alleged that respondent violated Supreme Court Rule 207 (2011 Kan. Ct. R. Annot. 314); and Rules 1.5(unreasonable fees) (2012 Kan. Ct. R. Annot. 492); 1.7(conflict of interest) (2012 Kan. Ct. R. Annot. 506); 1.13 (organization as a client) (2012 Kan. Ct. R. Annot. 536); 1.15 (trust account and record keeping) (2012 Kan. Ct. R. Annot. 541) (bar admission and disciplinary matters) and 8.4 (misconduct) (2012 Kan. Ct. R. Annot. 643).

In the Matter of Quentin Boone

297 Kan. 1192, 310 P.3d 345 (2013)
September 20, 2013
Disbarment

Quentin Boone voluntarily surrendered his license pursuant to Supreme Court Rule 217 on September 3, 2013. At the time respondent surrendered his license, complaints had been docketed by the Office of the Disciplinary Administrator in accordance with Supreme Court Rule 211 (2012 Kan. Ct. R. Annot. 350). The complaints alleged that respondent violated Kansas Rules of Professional Conduct 1.3 (diligence) (2012 Kan. Ct. R. Annot. 454); 1.4 (communication) (2012 Kan. Ct. R. Annot. 473); 1.5 (fees) (2012 Kan. Ct. R. Annot. 492) and 8.4(g) (misconduct) (2012 Kan. Ct. R. Annot. 643).

In the Matter of Stephen Freed

298 Kan. 346, 312 P.3d 364 (2013)
November 14, 2013
Disbarment

Stephen Freed voluntarily surrendered his license pursuant to Supreme Court Rule 217 on November 5, 2013. Respondent had been suspended by the Kansas Supreme Court for six months on June 29, 2012. At the time respondent surrendered his license, a new complaint had been docketed by the Disciplinary Administrator's Office in accordance with Supreme Court Rule 211 (2012 Kan. Ct. R. Annot. 350) and a panel hearing was pending. The complaint alleged that respondent violated Kansas Rules of Professional Conduct 1.3 (diligence) (2012 Kan. Ct. R. Annot. 454); 1.4 (communication) (2012 Kan. Ct. R. Annot. 473) ; 1.16 (declining or terminating representation) (2012 Kan. Ct. R. Annot. 558); 3.4(c) (disobedience of court orders) (2012 Kan. Ct. R. Annot. 589) (duties to former client); and 8.1(b) (failure to cooperate with the disciplinary process; Supreme Court Rule 207(b) (failure to respond to docketing of the complaint) (2012 Kan. Ct. R. Annot. 329); Supreme Court Rule 211(b) (failure to file answer to the formal complaint) (2012 Kan. Ct. R. Annot. 350); and Supreme Court Rule 218 (disbarred or suspended attorneys) (2012 Kan. Ct. R. Annot. 397, amended December 1, 2012).

INDEFINITE SUSPENSION

In the Matter of Phill Kline

298 Kan. 96, 311 P.3d 321 (2013)
October 18, 2013
Indefinite suspension

Rules violated: 3.3(a)(1) (2012 Kan. Ct. R. Annot. 582) (making a false statement to a tribunal/failing to correct a false statement); 3.3(a)(3) (2012 Kan. Ct. R. Annot. 582) (offer evidence a lawyer knows is false); 5.1(c) (2012 Kan. Ct. R. Annot. 612) (responsibilities of partners, managers and supervisory lawyers); 8.1(b) (2012 Kan. Ct. R. Annot. 634) (failure to disclose a fact necessary to correct a misapprehension); 8.4(c) (2012 Kan. Ct. R. Annot. 643) (engage in conduct involving dishonesty, fraud, deceit or misrepresentation); 8.4(d) (2012 Kan. Ct. R. Annot. 643) (engaging in conduct that is prejudicial to the administration of justice); and 8.4(g) (2012

Kan. Ct. R. Annot. 644) (engage in any other conduct that adversely reflects on the lawyer's fitness to practice law).

The formal disciplinary process against respondent began with a complaint filed on January 14, 2010. Those proceedings culminated in 12 days of evidentiary hearings in February, March, and July 2011 by a three-member panel of attorneys appointed by the Kansas Board for Discipline of Attorneys. That panel released a 185-page report on October 12, 2011, finding multiple incidents of misconduct by respondent and recommending indefinite suspension of respondent's license to practice law in Kansas. On December 22, 2011, respondent filed a 175-page objection to the hearing panel's report, which triggered Supreme Court review.

In an order effective May 18, 2012, five members of the Kansas Supreme Court recused from hearing the disciplinary action against respondent; Chief Justice Lawton Nuss, and Justices Marla Luckert, Carol Beier, Eric Rosen and Lee Johnson. On June 4, 2012, Presiding Justice Dan Biles appointed two Kansas Court of Appeals judges: Henry W. Green and Karen M. Arnold-Burger; and three district court judges: Edward Bouker, Bruce T. Gatterman, and Michael J. Malone. Justice Nancy Moritz also heard the case.

In a unanimous decision, the Kansas Supreme Court ordered respondent, former Kansas Attorney General and former Johnson County District Attorney, indefinitely suspended from the practice of law in the State of Kansas. The court's 154-page decision found clear and convincing evidence to conclude respondent committed 11 violations of the Kansas Rules of Professional Conduct during the time he held those public offices.

In determining the appropriate discipline, the Supreme Court said it considered the facts and circumstances of each violation; the ethical duties violated by respondent to the general public, the legal system and the legal profession; the knowing nature of his misconduct; the injury resulting from that misconduct; the aggravating and mitigating factors argues; and the American Bar Association's advisory standards for imposing discipline. The Disciplinary Administrator's Office argued for respondent's disbarment.

The court found respondent committed professional misconduct as Attorney General when he ordered staff members to attach sealed documents to a publicly filed brief in violation of a Supreme Court protective order, and later directed his staff to file a pleading with the court containing misleading information. The court also found that while respondent was Johnson County District Attorney, he gave false testimony to a district court judge investigating his office's possession of patient medical records obtained in a criminal investigation of abortion providers and made false and misleading statements to the Supreme Court regarding his handling of those records. It also determined respondent failed to properly advise a grand jury about the applicable law in its investigation into statutorily mandated reporting by abortion providers for suspected sexual abuse of minors, and filed unauthorized motions to enforce the grand jury's subpoena to an abortion provider against the grand jury's express direction and wishes. Finally, the court held that respondent failed to correct a misstatement he made in a letter to the Disciplinary Administrator's Office regarding the storage of patient medical files subject to a court protective order.

In making those findings of misconduct, the Supreme Court rejected additional claims that respondent violated other professional rules of conduct, including allegations that he misled a state agency about his criminal investigation of abortion providers, falsely testified that he was not seeking the identities of adult abortion patients, and made statements inappropriate for a criminal prosecutor during a November 2006 televised interview on "The O 'Riley Factor."

Respondent must wait at least three years to apply for reinstatement of his license to practice law in Kansas. Any application for reinstatement will require respondent to undergo a reinstatement hearing pursuant to Kansas Supreme Court Rule 219 (2013 Kan. Ct. R. Annot. 407).

In the Matter of Robert A. Mintz

___ Kan. ___, ___ P.3d ___ (2014)
February 7, 2014
Indefinite suspension

Rules violated: KRPC 8.4(c) (21013 Kan. Ct. R. Annot. 655) (conduct involving dishonesty, fraud, deceit, or misrepresentation) and KRPC 8.4(d) (2013 Kan. Ct. R. Annot.) (conduct that is prejudicial to the administration of justice).

The Hearing Panel found no misconduct and ordered the case be dismissed.

The Deputy Disciplinary Administrator appealed. [The last time the Disciplinary Administrator appealed a dismissal was 1994. *In re Blase*, 260 Kan. 351, 920 P.2d 931 (1996)].

Respondent worked for a firm beginning in 1990. In 2005, a female associate, J.A., joined the firm. In 2007, respondent and J.A. began an intimate relationship. At the time, respondent and J.A. were married to other people.

J.A. suffered from depression and chronic alcohol abuse.

She participated in outpatient treatment.

She was separated from the firm in 2011.

Respondent and J.A. continued their relationship after she left the firm.
J.A.'s chronic alcohol abuse continued. Her family enrolled her in an inpatient treatment program. She was discharged on January 20, 2012. Respondent picked her up from the program.

On January 26, 2012, J.A. relapsed and started drinking.
On January 27, 2012, respondent and J.A. had dinner together. They shared a bottle of wine.

On January 28, 2012, respondent and J.A. consumed alcohol while watching a sporting event on television.

Then, they went to an AA meeting.

On January 29, 2012, respondent and J.A. had lunch and drank champagne and sampled flavored tequilas. They walked around and smoked cigars and then drove to a restaurant with a bar in J.A.'s neighborhood in their separate cars.

They ordered dinner. They consumed vodka martinis, three or four shots of other alcohol and a big glass of Port.

The respondent drove J.A. home in his car. He carried her up her steps and set her down inside her apartment. He then drove home.

The next morning J.A. did not answer her phone or reply to texts. Respondent arrived at her apartment at approximately 8:40 a.m.

J.A. was lying on her side on the floor. Her face was blue. She was dead. The coroner's report indicated her blood alcohol level was over .4. She died from a cervical spine fracture from falling down stairs.

Respondent knew that J.A.'s family would be angry and hold him accountable. Instead of calling 911 or J.A.'s family, the respondent gathered J.A.'s car keys and cell phone and walked back to the restaurant where J.A.'s car was parked. It took approximately 20 minutes to walk to the restaurant. While he was walking he deleted entire threads of text messages between himself and J.A. off her

phone. At some point, he also deleted the texts off his phone. He drove her car back to her apartment and parked it. He then got into his own car and drove around for a while. He called a lawyer friend and asked what the right thing to do was. The lawyer told him to return to J.A.'s apartment and call 911. Instead, the respondent went to his own home to change his clothes because he had gotten urine on his pants from either J.A. or her dog.

He then returned to J.A.'s apartment and called 911 at 11:21 a.m. The police and J.A.'s family arrived at approximately the same time.

The respondent and J.A's mother were placed in a police car. Respondent told the police that he last saw J.A. the day before and they had not consumed alcohol.

The next day, the respondent contacted a criminal defense attorney and requested the attorney set up an appointment with the detectives because he had not been honest with the detectives. Respondent and the attorney met with detectives February 1, 2012.

During that meeting the detectives told respondent it was good that he had come in to meet with them because the situation had a "hink" in it and the "ink was written all over it." Respondent then told the detectives what had actually taken place.

The respondent stipulated and admitted to 326 of the 327 allegations in the Formal Complaint. These admissions included lying to law enforcement, deleting the text messages, moving her car, altering the scene of an unattended death and engaging in all the conduct to "cover my ass."

The Hearing Panel concluded that respondent's reaction was a "completely natural reaction to an emotionally charged situation" and therefore, did not rise to a violation of the KRPC.

The Kansas Supreme Court found that respondent admitted he engaged in conduct involving dishonesty fraud, deceit or misrepresentation and the conduct did violate KRPC 8.4(c).
The Kansas Supreme Court found that respondent's actions violated KRPC 8.4(d). A violation of KRPC 8.4(d) occurs when a lawyer "makes a false statement, which in any way, has a bearing on the legal process." *In re Johnson*, 240 Kan. 334, 342, 729 P.2d 1175 (1986).

The Kanas Supreme Court then applied the aggravating and mitigating factors found in the ABA Standards and determined that indefinite suspension was appropriate. The respondent will have to undergo a reinstatement hearing should he apply for readmission.

SUSPENSION FOR A DEFINITE PERIOD OF TIME

In the Matter of Susan Bowman
298 Kan. 231, 310 P.3d 1054 (2013)
October 18, 2013
One-year suspension, can be reinstated after 6 months but will be on probation for 24 months after reinstatement.

Rules violated: 1.3 (2012 Kan. Ct. R. Annot. 454) (diligence); 1.16(d) (2012 Kan. Ct. R. Annot. 558) (termination of representation); 3.3(a)(1) (2012 Kan. Ct. R. Annot. 582) (candor toward tribunal); 8.1(b) (2012 Kan. Ct. R. Annot. 634) (failure to respond to lawful demand for information from disciplinary authority); 8.4(c) (2012 Kan. Ct. R. Annot. 643) (engaging in conduct involving misrepresentation); 8.4(d) (2012 Kan. Ct. R. Annot. 643)(engaging in conduct prejudicial to the administration of justice) and Kansas Supreme Court Rule 207(b)(2012 Kan. Ct. R. Annot. 329)(failure to cooperate in disciplinary investigation).

A 22 year-old man died in a car accident in 2008. He was survived by a minor daughter and his mother and his father.

The estate consisted of the car, the insurance claim that related to the accident and a $30,000 life insurance policy through his employer.

The mother and father were separated. Counsel for father filed a petition for letters of administration in Nemaha County and sought appointment as administrator. The mother filed an answer to the petition and sought transfer to Shawnee County. She also requested appointment as administrator.

In January 2009, respondent was appointed as guardian *ad litem* for the minor child. Respondent never filed a claim on behalf of the child for the life insurance.

On February 18, 2009, father filed proof of claim for attorney fees incurred by the son in criminal matters, a revenue matter and a paternity action. The same day, respondent was appointed as administrator.

In March 2009, the funeral home and the father filed a petition for allowance for funeral expenses, the grave marker and also attorney fees. In May, the court held a hearing and authorized respondent to make the payments and sell the car.

The father repeatedly called respondent to check on the status of the estate. Respondent did not routinely take the calls nor did she return calls.

In May 2011, the court held a hearing. The respondent had been ordered to provide an accounting. The accounting reported distributions to the funeral home and attorney fees. Respondent was allowed to withdraw after she made the father's claim and filed a final accounting. A successor administrator was appointed.

Between May 2011 and December 2011, the successor administrator repeatedly attempted to obtain the file. Respondent repeatedly promised she would deliver the file.

In February 2012, the successor administrator filed a motion requesting the appointment order be rescinded because the administrator could not obtain the file. The court set the matter for May 10, 2012.

Respondent did not appear at the hearing despite the court sending notice. During the hearing, the court called respondent at home. Respondent said she did not recall seeing a notice. The court asked if she had fulfilled the court order requiring her to pay the father. She said she "believed" she had made the payment. The father told the court she absolutely had not paid him. Respondent did not dispute the father's assertion. She then admitted she had not filed a final accounting. The court then ordered that she was not released until she had fulfilled the prior court order. The court gave her seven days.

On May 21, 2012, respondent filed the final accounting that noted payment to the father.

Eventually, the successor administrator was re-appointed. He was able to file a claim for the $30,000 life insurance policy and close the estate.

The respondent was notified of the complaint filed by the father by letter dated January 23, 2012. She was required to respond within 15 days. She did not respond within 15 days.

The respondent was notified of the complaint filed by the successor administrator on January 26, 2012. She was required to respond within 15 days. Again, she did not respond within 15 days.

The respondent failed to respond to requests for information from the assigned investigator.

Eventually, respondent obtained counsel and did file an answer to the Formal Complaint. She stipulated to violating KRPC 1.4, 1.16, 3.3,

8.1, 8.4 and Supreme Court Rule 207.

The Hearing Panel rejected her stipulation to a violation of KRPC 1.4 because her obligation was to represent the estate and the record was not developed regarding any communication with the 2 year-old child. The Panel concluded that it could not technically find a violation for failing to communicate with father or the successor administrator because they were not the client/estate. The Panel did find this conduct violated 8.4(d).

The Deputy Disciplinary Administrator recommended a 12-month suspension and a reinstatement hearing.

The Hearing Panel recommended that Respondent be suspended for a year. The Hearing Panel recommended respondent develop a plan of probation that would be in place for a minimum of 2 years and that she immediately put the plan in place. The Panel then recommended that if she puts a probation plan in place that she be allowed to resume her practice after a six month suspension. If she did not comply, then she should be required to serve the full 12-month suspension and be required to undergo a reinstatement hearing.

A majority of the Supreme Court concluded a 12-month suspension was appropriate, but that she could be reinstated after 6 months after a reinstatement hearing. The court ordered specific conditions for reinstatement. Should respondent be reinstated, she will be on supervised probation for 2 years.

In the Matter of Jeffrey M. Goodwin

____Kan. ____, 316 P.3d 748 (2014)
January 24, 2014
Eighteen-month suspension

Rules violated: 1.3 (2012 Kan. Ct. R. Annot. 454) (diligence); 1.4(a) (2012 Kan. Ct. R. Annot. 473) (communication); 1.16(d) (2012 Kan. Ct. R. Annot. 558) (termination of representation); Kansas Supreme Court Rule 207(b)(2012 Kan. Ct. R. Annot. 329)(failure to cooperate in disciplinary investigation) and Kansas Supreme Court Rule 208 (2012 Kan. Ct. R. Annot. 329) (registration of attorneys).

Respondent was administratively suspended on September 14, 2012. He was reinstated on November 1, 2012.

In 2012, respondent served on the juvenile appointment list. He was available in the juvenile division on designated dates to assist the juvenile defendants.

On September 2, 2012 a father accompanied his juvenile son to court. The son was charged with felony theft. They were not financially eligible for court appointed counsel.

Respondent met with them and encouraged them to hire a lawyer who was "in the system." Respondent was retained for $500.00.

Respondent did not enter an appearance. On September 17, 2012 the juvenile was to be arraigned. Respondent failed to appear and the case was continued. At this time, respondent was suspended but did not notify the client, did not withdraw and did not notify opposing counsel.

On October 17, 2012, the juvenile was to be arraigned. Respondent was still suspended and did not appear. Court personnel called the respondent who said he could not appear, but would be able to appear at the next setting. The case was continued to October 31, 2012.

On October 31, 2012, the respondent again failed to appear. Another attorney was present and assisted the juvenile. The juvenile received diversion.

The juvenile placed several calls to the respondent, requesting the return of the $500.00. The respondent failed to return calls and did not return the retainer.

On November 7, 2012, a complaint was filed.

Respondent failed to respond to the complaint. The Hearing Panel rejected allegations that the respondent violated KRPC 1.1, KRPC 1.5, KRPC 3.2, KRPC 5.5, KRPC 8.4(c) and Kansas Supreme Court Rule 211. The Hearing Panel found respondent violated KRPC 1.3, KRPC 1.4(a), KRPC 1.16 and Kansas Supreme Court Rules 207(b) and 208.

The Deputy Disciplinary Administrator recommended that the respondent, at the minimum, be indefinitely suspended and also requested the Panel consider disbarment. Respondent testified that he never wanted to practice law again. The respondent requested indefinite suspension.

The Hearing Panel rejected both indefinite suspension and disbarment, finding that the misconduct was not that serious. The Panel recommended the respondent be suspended for 18 months. The Panel also ordered Respondent to refund the $500 within 30 days.

The Panel also noted the respondent had indicated that he had no desire to practice law. The Panel recommended that should the respondent return to the practice of law, the respondent should "undergo an attitude adjustment."

The Kansas Supreme Court ordered that the respondent be suspended from the practice of law for 18 months and he be required to undergo a reinstatement hearing.

In the Matter of Ann G. Soderberg

____Kan. ____, 316 P.3d 762 (2014)
January 24, 2014
Eighteen-month suspension

Rules violated: 1.3 (2012 Kan. Ct. R. Annot. 454) (diligence); 1.4(a) (2012 Kan. Ct. R. Annot. 473) (communication); 1.16(d) (2012 Kan. Ct. R. Annot. 558) (termination of representation); 3.2 (expediting litigation) (2012 Kan. Ct. R. Annot. 376); 3.3(a)(1) (2012 Kan. Ct. R. Annot. 582) (candor toward tribunal); 8.1(b) (2012 Kan. Ct. R. Annot. 634) (failure to respond to lawful demand for information from disciplinary authority); Kansas Supreme Court Rule 207(b)(2012 Kan. Ct. R. Annot. 329)(failure to cooperate in disciplinary investigation) and Kansas Supreme Court Rule 211(b) (2012 Kan. Ct. R. Annot. 350) (failure to file answer in disciplinary proceedings).

Respondent was retained in April 2009 in a divorce proceeding. In September 2009, the court directed respondent to journalize the resolution of the case.

Respondent failed to prepare a journal entry.

In March 2010, respondent filed a motion for sanctions against the adverse party. The court ruled in favor of respondent's client. Respondent was ordered to prepare the journal entry.

Again, Respondent failed to prepare the journal entry.

Respondent failed to return calls and respond to electronic mail messages from the client.

In January 2011, respondent left the firm she worked for.

On January 24, 2011, respondent wrote to the client and promised to prepare the journal entry from 2009.

She failed to prepare the journal entry.

On January 31, 2011, the court took up the matter. The respondent told the court she had not prepared the journal entry because her client had instructed her not to. The client denied giving that instruction.

The court ordered the journal entry be filed within one week.

Respondent failed to file the journal entry.

On February 22, 2011, respondent's former law partner wrote to respondent and asked her to prepare the journal entry pursuant to the client's request.

Respondent failed to prepare the journal entry.

On February 23, 2011, the court held another hearing. The court entered judgment against the client for $450.00 which were the expenses incurred by opposing counsel who finally prepared the journal entry.

On March 1, 2011, the client wrote to respondent and asked to be reimbursed the $450.00. As of the date of the Panel Hearing, respondent had not reimbursed the client.

The client filed a complaint. The respondent failed to answer the complaint. The assigned attorney investigator wrote to respondent and asked for a response. The respondent did not respond to the investigator.

In a second case, respondent was retained in a divorce proceeding. The journal entry and decree of divorce were filed on July 24, 1997.

Respondent's client had retirement benefits and the opposing party was awarded half of those benefits. The court ordered respondent to prepare the QDRO.

Respondent prepared and filed a QDRO in November 1997. The QDRO was defective. The client's employer contacted respondent and instructed her on how to correct the QDRO.

The respondent took no action to correct the deficiencies. Neither the client nor the opposing party was aware that the QDRO was defective.

The respondent formally withdrew from representation without correcting the QDRO.

In May 2012, the opposing party attempted to claim his share of the retirement benefits. At that time, he learned the QDRO was deficient.

The opposing party repeatedly attempted to contact respondent. Respondent did have contact in November 2012. Respondent said she would look into the problem and get back to the party. She never corrected the QDRO and she never contacted the beneficiary again.

Neither party has received their share of the retirement benefits. The opposing party lost his job at age 57 and his financial situation became critical.

The complaint was filed in December 2012. The respondent failed to timely file a response.

The assigned attorney investigator repeatedly requested the respondent provide a response. Respondent never provided a written response.

The Formal Complaints were filed on January 16, 2013 and March 14, 2013. The respondent filed her answer to the Formal Complaints on June 17, 2013, the day before the hearing.

The Deputy Disciplinary Administrator recommended respondent be indefinitely suspended from the practice of law. Respondent requested she be given probation. However, respondent failed to develop a workable, substantial and detailed plan, failed to provide the plan to the Panel 14 days prior to the hearing and failed to put the plan in place prior to the hearing.

The Panel rejected the request for probation because respondent failed to comply with the requirements regarding probation and because the Panel determined that dishonest conduct cannot be corrected by probation. Additionally, the Panel noted that the misconduct was serious, the respondent had not taken any action to correct the misconduct and had failed to take responsibility for the misconduct.

The Hearing Panel recommended that respondent be indefinitely suspended from the practice of law and be subject to a reinstatement hearing.
Before the Kansas Supreme Court, the Deputy Disciplinary Administrator renewed the recommendation for indefinite suspension and the respondent renewed her request for probation.

The Kansas Supreme Court ordered that respondent be suspended from the practice of law for 18 months and that she is required to undergo a reinstatement hearing.

In the Matter of Ray Sandy Sutton

____Kan. ____, 316 P.3d 741 (2014)
January 24, 2014
Six month suspension

Rules violated: 5.5(a) (2012 Kan. Ct. R. Annot. 618) (unauthorized practice of law); 8.4(d) (2012 Kan. Ct. R. Annot. 643) (engage in conduct prejudicial to the administration of justice) and Kansas Supreme Court Rule 211(b) (2012 Kan. Ct. R. Annot. (2012 Kan. Ct. R. Annot. 350) (failure to file answer in disciplinary proceeding).

Respondent was admitted to the practice of law in 1966. He was also admitted in Missouri. In 1984, when Kansas began requiring Continuing Legal Education hours, the respondent registered as inactive. Respondent has been inactive since 1984 and has never reported any Kansas Continuing Legal Education hours.

For many years, respondent was general counsel for Interstate Bakery. In 2002, he retired. He was receiving $80,000 in annual pension.

Interstate Bakery declared bankruptcy in 2004 and respondent lost his pension.

In 2009, respondent was suspended in Missouri for failing to pay income taxes. He could not afford to pay his taxes due to the loss of the pension.
In 2012, respondent failed to pay the annual inactive registration fee to Kansas. He was administratively suspended.

In November 2011, respondent represented a client charged in Kansas with a felony. He did not have an active license. Respondent appeared with the client on three separate occasions, including the entry of a plea to misdemeanor charges.

In December 2011, respondent represented a Kansas client charged with drug crimes. Respondent conducted a preliminary hearing. Respondent appeared with the client for four appearances. A jury trial was scheduled for August 23, 2012.

The day before the trial, the prosecutor discovered respondent did not have an active license. When questioned about the lack of a license by the judge, respondent asked if it made a difference he was representing the client *pro bono*. The client said he could not afford a lawyer and that is why respondent was representing him.

In October 2012, the client died. The case was dismissed.

On August 27, 2012 the first complaint was filed. Respondent was informed of the complaint and was requested to respond.

Respondent failed to timely respond. On October 24, 2012, the Office of the Disciplinary Administrator reminded respondent of his obligation to respond.

On November 7, 2012, respondent filed a written response. Respondent contended that because he was representing the client *pro bono*, he was not required to have an active law license.

On January 13, 2013, respondent appeared with a client who was charged with a felony driving under the influence in Kansas.
Respondent was advised on February 3, 2013, that the Review Committee had determined there was probable cause that his conduct violated the Kansas Rules of Professional Conduct.

Respondent appeared with the DUI client on March 7, 2013.

At the hearing on the Formal Complaint, respondent admitted he represented approximately 10-15 clients in Kansas during the time his license was inactive or suspended. He also admitted he had represented clients in Missouri after his license was suspended by the Missouri Supreme Court. In fact, on the day of the hearing, he had current Missouri clients.

Respondent explained he worked for free and only intended to help people who otherwise could not afford legal counsel. There was no question regarding the quality of the representation.

The Disciplinary Administrator recommended respondent be suspended for a definite period of time and he be required to undergo a reinstatement hearing and show he is in compliance with all registration requirements.

The Respondent made no recommendation.

The Hearing Panel recommended that the respondent be suspended for 30 days and any reinstatement be conditioned upon a showing of registration requirements.

At oral argument, the respondent told the Kansas Supreme Court that he would not ever practice law again.

The Kansas Supreme Court ordered respondent be suspended for 6 months and to remain administratively suspended until he complied with the reinstatement requirements to be either on active or inactive status.

The Court warned that any future unauthorized practice of law, regardless of how well-meaning will likely result in disbarment.

SUPERVISED PROBATION

In the Matter of Pantaleon Florez, Jr.

____Kan. ____, 316 P.3d 755 (2014)
January 24, 2014
5 years supervised probation with an underlying suspension of six months

Rules violated: 8.4(d) (2013 Kan. Ct. R. Annot. 656) (engaging in conduct involving prejudicial to the administration of justice) and 8.4(g) (2013 Kan. Ct. R. Annot. 656) (engaging in conduct adversely reflecting on lawyer's fitness to practice law).

Florez was represented by counsel.

Respondent entered into a written stipulation of facts and stipulated to violations of KRPC 8.4(d) and 8.4(g).

Respondent was the subject of a paternity action. In December 2008, temporary child support orders were entered against respondent.

The court ordered respondent to provide income information and complete a domestic relations affidavit.

Respondent failed to timely respond to the request for income information and provided incomplete information. Respondent had not filed taxes for two years.

In September 2009, the court ordered an increase in the support amount and made the increase retroactive to the birth of the baby because it imputed income to respondent. The court also awarded reimbursement for medical bills, reimbursement for the DNA testing and

attorney fees.

Respondent appealed the imputation of income and the award of attorney's fees. The Court of Appeals affirmed the district court.

In July 2010, a motion to hold respondent in contempt was filed for failing to pay child support, failing to pay the medical expenses and failing to pay the DNA expenses. A hearing was conducted. Respondent was ordered to provide specific financial information. Again, respondent did not timely provide the information. Respondent was ordered to pay attorney's fees.

A contempt hearing was conducted. respondent admitted he had not paid support. He agreed to a judgment for the medical expenses and DNA fees. The court entered judgment for $5,536.21 for back child support, $10,000 in attorney's fees and an order to pay $2,025 for his own appointed attorney.

Respondent filed a motion to reduce support. The court denied the motion and ordered Respondent to pay an additional $4,993.00 in attorney's fees.

In the disciplinary action, the parties jointly recommended public censure. The parties also recommended that if respondent was found in contempt or failed to fulfil his obligations under the court orders, he would be subject to an order to show cause before the Kansas Supreme Court. The hearing panel added a recommendation that should respondent engage in misconduct again, he be suspended for 6 months.

The Supreme Court ordered respondent suspended for 6 months, but stayed imposition of the suspension and placed respondent on supervised probation for 5 years.

REINSTATEMENT

In the Matter of Megan Harrington

297 Kan. 180, 299 P.3d 308 (2013)
April 24, 2013
Reinstated to supervised probation

Harrington was suspended from the practice of law in Kansas on January 11, 2013, for a period of 2 years. *In re Harrington*, 296 Kan. 380, 293 P.3d 686 (2013), with a condition she could apply for reinstatement after meeting certain conditions after she served 3 months of suspension. Harrington complied with all of the requirements of reinstatement and was reinstated on April 24, 2013 to supervised probation.

In the Matter of Jeffrey M. Johns

297 Kan. 707, 304 P.3d 677 (2013)
June 24, 2013

Johns was suspended from the practice of law in Kansas on December 23, 2010 for a period of 2 years. *In re Johns*, 291 Kan. 638, 243 P.3d 1101 (2010). Johns complied with all of the requirements of reinstatement and was reinstated on June 24, 2013.

In the Matter of William J. Hunsaker

297Kan. 1242, 308 P.3d 1269 (2013)
September 24, 2013

Hunsaker was suspended from the practice of law in Kansas on October 9, 2009 for a period of 90 days. *In re Hunsaker*, 289 Kan. 828, 217 P.3d 962 (2009). Hunsaker filed a petition for reinstatement on July 18, 2013 and was reinstated on September 24, 2013.

In the Matter of Richard E. Jones

____Kan. ____, 315 P.3d 257 (2014)
January 7, 2014

Jones was suspended from the practice of law in Kansas on February 15, 2013 for a period of 6 months. *In re Jones*, 293 Kan. 871, 269 P.3d 833 (2012). Jones filed a Petition for Reinstatement on August 17, 2013 and was subject to a reinstatement hearing that was conducted on November 13, 2013. The Hearing Panel unanimously recommended that

Jones' Petition for Reinstatement be granted and he be allowed to practice law under restrictions and supervision. He was reinstated on January 7, 2014.

In the Matter of Christopher Y. Meek

____Kan. ____, 315 P.3d 259 (2014)
January 7, 2014

Meek was suspended from the practice of law in Kansas on December 7, 2012 for a period of 40 months. *In re Meek*, 295 Kan. 1160, 289 P.3d 95 (2012). Meek filed a Petition for Reinstatement on December 9, 2013. The Kansas Supreme Court granted the Petition Meek can practice law under certain restrictions and supervision. He was reinstated on January 7, 2014.

ANATOMY OF A COMPLAINT

I. PURPOSE OF THE LAWYER *DISCIPLINARY* SYSTEM

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

Jurisdiction granted under Kansas Supreme Court Rule 201. Authority only to investigate those who have a license, regardless of status of license. If never licensed in Kansas or disbarred, we have no jurisdiction. See *State ex. Rel. Stephan v. Williams*, 246 Kan. 681, 793 P.2d 234 (1990).

II. WHERE COMPLAINTS COME FROM RULE 209

A. Clients – 48% - some of which are forwarded by a local bar association Grievance committee – RULE 207(c) and 209.

B. Lawyers 18% pursuant to RULE 207(c).

C. Opposing parties 11%

D. Docketed under the name of the Disciplinary Administrator 9%

E. Self-report 5% pursuant to Rule 207 (c).

F. Judges 3% pursuant to RULE 207 (d) and Judicial Canon 2, Rule 2.15 (B), and (D)

C. Miscellaneous others 6% -- attorney-client relationship NOT prerequisite for filing a complaint – *State v. Freeman*, 229 Kan. 639 (1981).

III. ORAL COMPLAINTS OR INQUIRIES RULE 209

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

B. Attorney phone question or information request – discuss and suggest applicable rules – no written opinion – not binding – KBA Ethics Advisory Committee, 1200 Harrison Street, Topeka, Kansas 66601 – issues non binding written ethics opinions.

IV. WRITTEN COMPLAINT OR REPORT OF MISCONDUCT RULES 207 AND 226 AND ATTORNEY OATH OF OFFICE RULE 720

A. Burden is on each individual to report misconduct – RULES 207, 226 and 720 – *State v. Phelps*, 226 Kan. 371 (1979); *State v. Russell*, 227 Kan. 897 (1980); *State v. Freeman*, 229

Kan. 639 (1981).

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

C. All other complaints will be docketed – assigned a number – respondent lawyer(s) identified and notified – sent to local committee for full investigation attorney's truthful written response required within 10 days. RULE 207 (b) and RULE 209.

V. INVESTIGATION OF COMPLAINT
RULES 205, 207, 210 AND 223

A. All by/under the supervision of the Disciplinary Administrator – RULE 205 (c)(2) and 210 – directly in-house investigator or any other lawyer used as an investigator – *In re Pringle*, 248 Kan. 498 (1991). All of the disciplinary process is considered to be in the course of a judicial proceeding. All participants **shall** be entitled to judicial immunity. RULE 223

B. Disciplinary Administrator does directly request the responding lawyer to assist in the investigation – RULE 207 *Kansas v. Savaiano*, 234 Kan. 268 (1983); KRPC 8.3; and *In re Price*, 241 Kan. 836 (1987); *In re Pringle*, 248 Kan. 498 (1991); *In re Wood*, 247 Kan. 219 (1990).

C. Failing to cooperate is a violation of the KRPC.

D. Disciplinary Administrator may use state or local bar grievance and ethics committees –RULE 210(b) Any individual member of the bar or judiciary can be called upon for assistance – RULE 207(b) and (d) and 210(b).

F. If something appears to be amiss with the money, even if the complaint does not necessarily address fees, the Disciplinary Administrator can issue subpoenas for trust and operating accounts. RULE 216(c)

E. Report of the completed investigation is received by Disciplinary Administrator.

F. The assigned in-house attorney then creates a synopsis and sends the investigator's report, the complaint and the attorney response to the review committee with a recommendation on how to proceed.

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

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

I. RULE 214 – Related civil or criminal litigation does not stop the process.

J. Conduct does not have to be directly related to "legal work" i.e. meeting with clients, behavior inside a courthouse etc. See *In re Frahm*, 291 Kan. 443, 214 P.3d 1010 (2010) (finding that criminal activity of driving drunk, causing an accident and leaving the scene of the accident, at a minimum adversely reflects on lawyer's fitness to practice law) Criminal charges or a criminal conviction is not necessary to allege illegal conduct. See *In re Farrell*, 271 Kan. 291, 21 P.3d 552 (2001).

VI. REVIEW COMMITTEE
RULE 204, 205 and 210

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

1. Dismiss
2. Informal Admonition
3. Institution of formal charges before a hearing panel
4. Hold for other investigations/other reasons

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

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

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

VII. TYPES OF AVAILABLE DISCIPLINE
RULES 203, AND 217

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

B. Diversion-RULE 203(d) Respondents are notified of the existence of the program at the time they are notified of the docketed complaint. Under the Rule, it is the respondent's

responsibility to request acceptance into the program. However, some respondent's who would qualify don't request acceptance, the investigator and the assigned Deputy then discuss the program with the respondent.

1. General rule of thumb, no liars, cheats or thieves.
2. Good for substance abusers and people suffering from mental disability

C. Informal Admonition – RULE 203(a)(4) and (5) – done by Disciplinary Administrator in person – always public information –

1. Given on order of Review Committee after probable cause is found – respondent can request a formal hearing – RULE 210(c) and (d)
2. Given after hearing panel recommends and attorney decides to accept– RULE 212 – no argument before the Supreme Court
3. Given on order of Supreme Court after hearing arguments – RULE 203(5)

D. Censure – RULE 203(a)(3) may or may not be published upon order of the Court

E. Suspension – RULE 203(2) may be for a definite term or indefinite may or may not require a reinstatement hearing under RULE 219

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

VIII. INCAPACITY OF ATTORNEY – RULE 220 – AND APPOINTMENT OF COUNSEL TO PROTECT CLIENTS' INTEREST – RULE 221 IMPAIRED LAWYERS ASSISTANCE PROGRAM – RULE 206

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

IX. ANNUAL REGISTRATION – RULE 208

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

KANSAS LAWYERS ASSISTANCE PROGRAM

The Kansas Lawyers Assistance Program (KALAP) offers help to lawyers troubled by substance abuse problems, stress, depression and other types of disorders which may impair their ability to perform in a competent and professional manner. KALAP was originally created for this purpose in 1973. The director and peer volunteers of KALAP are members of the Kansas Lawyers Assistance Program who know the problems faced by their impaired colleagues and how to help overcome these problems.

Because of the sensitive nature of addiction and psychological problems, lawyers who may be in need of help are often very reluctant to seek it. Recognizing this concern and in order to foster early and confidential contact with KALAP and its volunteers, the Supreme Court of Kansas adopted Rule 206 (amended 2002). Rule 206 provides that the relationship between any KALAP volunteer and a lawyer who seeks or receives assistance through KALAP shall be the same **confidentiality as that of attorney and client privileges** for the purposes of application of Rule 206.

The foundation of KALAP is a network of lawyers throughout the state of Kansas, many of whom are experienced with recovery from alcohol and other drug addiction, psychological problems and impairment caused by these and other conditions. The KALAP director and these volunteers stand ready to assist their colleagues in all areas of their recovery.

KALAP CAN HELP

Lawyers suffer from many conditions that can negatively affect their personal and professional lives at a much higher rate than the general population. Lawyer Assistance Programs help lawyers successfully deal with virtually anything that is causing problems, such as gambling, sex, internet addictions, aging issues, the effects of attention deficit disorder in addition to alcohol and drug (including prescription medications) addiction and the stress—anxiety—depression—burnout cluster.

Assessment and Referral: The KALAP director and/or members of the program will meet with the affected person anywhere in the state to assess the problems and recommend available professional evaluation, treatment and rehabilitation options.

Interventions: In appropriate situations, the director will plan, rehearse, and facilitate a formal intervention to assist the affected person in recognizing his or her problem and in beginning the recovery process.

Peer Support Network: If possible, the affected person will be paired with a KALAP volunteer lawyer in his/her geographical area to provide support by acting as mentor, guiding him/her into the recovery process and assisting him/her to maintain recovery.

Education and Prevention: KALAP makes presentations and works with law firms, the courts and local bar associations to provide education concerning chemical dependency, depression and any other impairments and their negative effect on a lawyer's ability to practice law.

FACTS ABOUT IMPAIRMENT

Addiction and depression are treatable illnesses.

Early intervention and treatment of the addicted person often leads to complete recovery.

Addiction and depression occur in every socioeconomic group. It is generally accepted that their prevalence within certain professions, including the legal profession, is much higher than it is among the general population.

Alcohol is the most widely used and destructive drug in America. Alcohol abuse among women has doubled in recent years. Previously the ratio of female to male alcoholics was 1 to 6, it is now 1 to 3.

Complications associated with the use of cocaine include damage to the heart, brain and other vital organs. Continued use causes dramatic personality changes and deterioration of ethical values, leading to criminal and disciplinary penalties.

One of the unique symptoms of chemical dependency is denial—the addicted person usually has little or no insight into his/her problem and simply denies that it exists.

It has been estimated that as many as 50% to 70% of the lawyers who are respondents in proceedings before the bar disciplinary committee have an impairment.

The stigma is not in having the illness, but in failing to seek treatment once its presence is recognized.

Seeking treatment is perfectly acceptable social behavior. Chemical dependency is a progressive disease — it never gets better by itself.

Free, confidential help is available to any lawyer who may be having problems with alcohol or other drugs or with a psychological condition which is impairing the ability to practice law or to live life fully.

Stress, Anxiety, Depression, Burnout

Lawyers experience these at about twice the rate of other professions and any one of them can lead to serious physical or mental conditions and ethical lapses or malpractice. It is important to know the symptoms and to take action sooner rather than later.

Recognizing Depression:

Persistent sad, anxious or empty mood
Feelings of pessimism
Irritability or restlessness
Change in sleep patterns
Difficulty concentrating or making decisions
Change in eating patterns and weight
Loss of interest in activities once enjoyed
Fatigue or decreased energy
Increasing isolation and withdrawal

If you or someone you know has had several of these symptoms for two weeks or more, a professional evaluation is recommended. Almost all people with depression can get significantly better and enjoy life again with treatment. A combination of medication and talk therapy are usually the most effective. KALAP staff and volunteers have experience in working with lawyers affected by stress, anxiety, depression or burnout.

1-888-342-9080

ANOTHER BAR EXAM

1. Are my associates, clients, or support personnel alleging that my drinking/drug use is interfering with my work?
2. Do I plan my office routine around my drinking/drug use?
3. Do I ever feel I need a drink/drug to face certain situations?
4. Do I drink/use drugs alone?
5. Because of my drinking/drug use, have I ever had a loss of memory when I was apparently conscious and functioning ?
6. Do I ever drink/drug before meetings or court appearances to calm my nerves, gain courage, or improve performance?
7. Do I want, or take, a drink/drug the next morning?
8. Have I missed or continued closings, court appearances or other appointments because of my drinking/drug use?
9. Because of my drinking/using drugs, have I ever felt any of the following: fear, remorse, guilt, real loneliness, depression, severe anxiety?
10. Is drinking/drug use making me careless of my family's welfare or other personal responsibilities?
14. Have I ever neglected my office administration or misused funds because of my drinking/drug use?
15. Am I becoming increasingly reluctant to face my clients and colleagues in order to hide my drinking/drug use?

If I have answered **YES** to 1 or more of the above questions, then I owe it to myself, my family, my profession and my clients to contact the **KANSAS LAWYERS ASSISTANCE PROGRAM at 1-888-342-9080.**

KANSAS LAWYERS ASSISTANCE PROGRAM

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PILLARS OF PROFESSIONALISM

AND THE

KANSAS RULES OF PROFESSIONAL CONDUCT

Kimberly Knoll

Deputy Disciplinary Administrator

knollk@kscourts.org

Supplemental source J. Nick Badgerow, Spencer, Fane, Britt and Brown; author *Brave Lawyers' Work: The Pillars of Professionalism,* 82 J.K.B.A. No. 8 (October 2012).

I. Introduction

A. Pillars are the result of the Kansas Bar Association's Commission on Professionalism and the Bar

B. Commission created by the suggestion of late Chief Justice Robert E. Davis to address the public's perception of lawyers and the actual decline of civility and professionalism among lawyers themselves

C. The Pillars are not formal elements of the Kansas Rules of Professional Conduct; therefore a failure to follow any Pillar does not lead to disciplinary action against a lawyer.

D. The Pillars are aspirational goals that are meant to guide lawyers' conduct.

"[T]he rules of professional ethics that attorneys are duty-bound to 'observe most scrupu[l]ously are diametrically opposed to the code by which businessmen must live if they are to survive." *State Bar of Arizona v. Arizona Land Title and Trust Co.,* 90 Ariz. 76, 366 P.2d 1, 9 (1961).

II. Pillar One-Client interaction

A. **"P1. Respect your clients' goals and counsel them about their duties and responsibilities as participants in the legal process. Treat clients with courtesy, respect and consideration."**

B. Kansas Rule of Professional Conduct 1.2 Scope of Representation:

“(a) A lawyer shall abide by a client's decisions concerning the lawful objectives of representation, subject to paragraphs (c), (d), and (e), and shall consult with the client as to the means which the lawyer shall choose to pursue. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.
(b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.
(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent in writing.
(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.
(e) When a lawyer knows that a client expects assistance not permitted by the rules of professional conduct or other law, the lawyer shall consult with the client regarding the relevant limitations on the lawyer's conduct.”

C. Both the Pillar and the KRPC require a lawyer to be honest with the client, to manage the client’s expectations and to refrain from engaging in unethical or illegal behavior.

D. **“P2. Be candid with clients about the reasonable expectations of their matter’s results and costs.”**

E. Kansas Rule of Professional Conduct 1.5 requires fees to be reasonable:
“(a) A lawyer's fee shall be reasonable. The factors to be considered in determining the reasonableness of a fee include the following:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

(3) the fee customarily charged in the locality for similar legal services;

(4) the amount involved and the results obtained;

(5) the time limitations imposed by the client or by the circumstances;

(6) the nature and length of the professional relationship with the client;

(7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and

(8) whether the fee is fixed or contingent.

(b) When the lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation.

(c) A lawyer's fee shall be reasonable but a court determination that a fee is not reasonable shall not be presumptive evidence of a violation that requires discipline of the attorney.

(d) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (f) or other law. A contingent fee agreement shall be in writing and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal, and the litigation and other expenses to be deducted from the recovery. All such expenses shall be deducted before the contingent fee is calculated. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the client's share and amount and the method of its determination. The statement shall advise the client of the right to have the fee reviewed as provided in subsection (e).

(e) Upon application by the client, all fee contracts shall be subject to review and approval by the appropriate court having jurisdiction of the matter and the court shall have the authority to determine whether the contract is reasonable. If the court finds the contract is not reasonable, it shall set and allow a reasonable fee.

(f) A lawyer shall not enter into an arrangement for, charge, or collect:

(1) Any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the amount of alimony, support, or property settlement; or

(2) a contingent fee for representing a defendant in a criminal case; or

(3) a contingent fee in any other matter in which such a fee is precluded by statute.

(g) A division of fee, which may include a portion designated for referral of a matter, between or among lawyers who are not in the same firm may be made if the total fee is reasonable and the client is advised of and does not object to the division.

(h) This rule does not prohibit payments to former partners or associates or their estates pursuant to a separation or retirement agreement."

F. Kansas Rules of Professional Conduct 1.8 Client-Lawyer Relationship: Conflict of Interest: Current Clients: Specific Rules

"(a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:
(1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner which can be reasonably understood by the client; and
(2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and
(3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.
(b) A lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client gives informed consent, except as permitted or required by these Rules.

(c) A lawyer shall not solicit any substantial gift from a client, including a testamentary gift, or prepare on behalf of a client an instrument giving the lawyer or a person related to the lawyer any substantial gift unless the lawyer or other recipient of the gift is related to the client. For purposes of this paragraph, related persons include a spouse, client, grandchild, parent, grandparent or other relative or individual with whom the lawyer or the client maintains a close, familial relationship.
(d) Prior to the conclusion of representation of a client, a lawyer shall not make or negotiate an agreement giving the lawyer literary or media rights to a portrayal or account based in substantial part on information relating to the representation.
(e) A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:
(1) a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter; and
(2) a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client.
(f) A lawyer shall not accept compensation for representing a client from one other than the client unless:
(1) the client gives informed consent;
(2) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and
(3) information relating to representation of a client is protected as required by Rule 1.6.
(g) A lawyer who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients, or in a criminal case an aggregated agreement as to guilty or nolo contendere pleas, unless each client gives informed consent, in a writing signed by the client. The lawyer's disclosure shall include the existence and nature of all the claims or pleas involved and of the participation of each person in the settlement.
(h) A lawyer shall not:
(1) make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless the client is independently represented in making the agreement; or
(2) settle a claim or potential claim for such liability with an unrepresented client or former client unless that person is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel in connection therewith.
(i) A lawyer related to another lawyer as parent, child, sibling or spouse

shall not represent a client in a representation directly adverse to a person who the lawyer knows is represented by the other lawyer except upon consent by the client after consultation regarding the relationship.

(j) A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client, except that the lawyer may:

(1) acquire a lien authorized by law to secure the lawyer's fee or expenses; and

(2) contract with a client for a reasonable contingent fee in a civil case.

(k) A lawyer shall not have sexual relations with a client unless a consensual sexual relationship existed between them when the client-lawyer relationship commenced.

(l) While lawyers are associated in a firm, a prohibition in the foregoing paragraphs (a) through (j) that applies to any one of them shall apply to all of them."

G. Both the Pillar and the KRPC require reasonable fees. The Pillar requires a discussion with the client about expected costs. The KRPC requires a written fee agreement only in contingency fee cases. If you use written fee agreements in all cases, you will be following both!

H. **"P 3. Encourage clients to act with civility by, for example, granting reasonable accommodations to opponents. Maintaining a courteous relationship with opponents often helps achieve a more favorable outcome. Counsel clients against frivolous positions or delaying tactics, which are unprofessional even if they may not result in sanctions."**

I. Kansas Rule of Professional Conduct 3.1 Advocate: Meritorious Claims and Contentions "3.1 Advocate: Meritorious Claims and Contentions

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established."

J. K.S.A. 60-211. Signing of pleadings, motions and other papers; representations to the court; sanctions

(a) *Signature.* Every pleading, written motion and other paper must be signed by at least one attorney of record in the attorney's name, or by a party personally if the party is unrepresented. The paper must state the signer's address, e-mail address, telephone number and fax number. Unless a rule or statute specifically states otherwise, a pleading need not be verified or accompanied by an affidavit or a declaration pursuant to K.S.A. 53-601, and amendments thereto. The court must strike an unsigned paper unless the omission is promptly corrected after being called to the attorney's or party's attention.

(b) *Representations to the court.* By presenting to the court a pleading, written motion or other paper, whether by signing, filing, submitting or later advocating it, an attorney or unrepresented party certifies that to the best of the person's knowledge, information and belief formed after an inquiry reasonable under the circumstances:

(1) It is not being presented for any improper purpose, such as to harass, cause unnecessary delay or needlessly increase the cost of litigation;

(2) the claims, defenses and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying or reversing existing law or for establishing new law;

(3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.

(c) *Sanctions.* If, after notice and a reasonable opportunity to respond, the court determines that subsection (b) has been violated, the court may impose an appropriate sanction on any attorney, law firm or party that violated the statute or is responsible for a violation committed by its partner, associate or employee. The sanction may include an order to pay to the other party or parties that reasonable expenses, including attorney's fees, incurred because of the filing of the pleading, motion or other paper. A motion for sanctions under this section may be served and filed at any time during pendency of the action, but must be filed not later than 14 days after the entry of judgment.

K. Kansas Rule of Professional Conduct 3.4 Fairness to Opposing Party and Counsel: “A lawyer shall not:

(a) unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act;

(b) falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;

(c) knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists;

(d) in pretrial procedure, make a frivolous discovery request or fail to make a reasonably diligent effort to comply with a legally proper discovery request by an opposing party;

(e) in trial, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant or the guilt or innocence of an accused; or

(f) request a person other than a client to refrain from voluntarily giving relevant information to another party unless:

(1) the person is a relative or an employee or other agent of a client; and
(2) the lawyer reasonably believes that the person's interests will not be adversely affected by refraining from giving such information."

L. **"P 4. Counsel clients about the risks and benefits of alternatives before making significant decisions. Act promptly to resolve the matter once the relevant facts have been obtained and a course of action determined."**

M. Kansas Rule of Professional Conduct 1.3: "A lawyer shall act with reasonable diligence and promptness in representing a client."

N. Kansas Rule of Professional Responsibility 3.2 Advocate: Expediting Litigation "A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client."

O. **"P 5. Communicate regularly with clients about developments. Keep them informed about developments, both positive and negative."**

P. Kansas Rule of Professional Conduct 1.4 "(a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation."

Q. For the time period between July 1, 2012 through June 30, 2013, there were three lawyers disciplined for violation of KRPC 1.1; two for violation of 1.2; fourteen disciplined for violation of KRPC 1.3 (the most violated rule); eleven disciplined for violation of KRPC 1.4; four disciplined for violation of KRPC 1.5; three disciplined for violation of KRPC 1.8; none for violation of 3.1 and one disciplined for violation of KRPC 3.4.

III. Pillar Two-Interaction with courts

A. **"P 1. Treat judges and court personnel with courtesy, respect and consideration."**

B. Kansas Rule of Professional Conduct 3.5 Advocate: Impartiality and Decorum of the Tribunal: "A lawyer shall not: …(d) engage in undignified or discourteous conduct degrading to a tribunal."

C. **"P2. Act with candor, honesty and fairness to the court."**

D. Kansas Rule of Professional Conduct 3.3 Advocate: Candor Toward the Tribunal: "a) A lawyer shall not knowingly:
(1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;
(2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or
(3) offer evidence that the lawyer knows to be false. If a lawyer, the

lawyer's client, or a witness called by the lawyer has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.

(b) A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.

(c) The duties stated in paragraphs (a) and (b) continue to the conclusion of the proceeding and apply even if compliance requires disclosure of information otherwise protected by Rule 1.6.

(d) In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer which will enable the tribunal to make an informed decision, whether or not the facts are adverse."

E. **"P3. Counsel clients to behave courteously, respectfully and with consideration toward judges and court personnel."**

F. Kansas Rule of Professional Conduct 3.5 Advocate: Impartiality and Decorum of the Tribunal: "A lawyer shall not: …(a) give or lend anything of value to a judge, official, or employee of a tribunal except as permitted by Section D(5) of Canon 4 of the Code of Judicial Conduct as it may, from time to time be adopted in Kansas, nor may a lawyer attempt to improperly influence a judge, official or employee of a tribunal, but a lawyer may make a contribution to the campaign fund of a candidate for judicial office in conformity with Section C(2) and (4) of Canon 5 of the Code of Judicial Conduct;

(b) communicate or cause another to communicate with a member of a jury or the venire from which the jury will be selected about the matters under consideration other than in the course of official proceedings until after the discharge of the jury from further consideration of the case;

(c) communicate or cause another to communicate as to the merits of a cause with a judge or official before whom an adversary proceeding is pending except:

(1) in the course of official proceedings in the cause;

(2) in writing, if the lawyer promptly delivers a copy of the writing to opposing counsel or to the adverse party if unrepresented;

(3) orally upon adequate notice to opposing counsel or the adverse party if unrepresented;
(4) as otherwise authorized by law or court rule."

G. **Accept all rulings, favorable or unfavorable, in a manner that demonstrates respect for the court, even if expressing respectful disagreement with a ruling is necessary to preserve a client's rights."**

H. Kansas Rule of Professional Conduct 8.2 Maintaining the Integrity of the Profession: Judicial and Legal Officials "8.2 Maintaining the Integrity of the Profession: Judicial and Legal Officials
"(a) A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory officer or public legal officer, or of a candidate for election or appointment to judicial or legal office."

I. Lawyer drove from Portland, Oregon to Salem, Oregon (47 miles) the day an adverse opinion was issued. In Oregon, parties are afforded 14 days to file motions for reconsideration. When he arrived at the Court, his demeanor frightened a judicial assistant. While she was looking for assistance, lawyer saw one of the judges from the panel walking down the hall. The lawyer started walking toward the judge, waving a copy of the opinion above his head while angrily saying the opinion was full of lies. A law clerk stepped out of their office and got between lawyer and the judge in an attempt to protect the judge. Lawyer was told to leave. During his disciplinary hearing, the lawyer argued his statements were not "on the merits" so he could not have violated the Oregon rules of conduct. The Court disagreed and found that because the contact was with a judge that could have ruled on a motion to reconsider, the matter was still a pending case, the encounter was *ex parte* communication. The lawyer was suspended. *In re Thompson*, 325 Or. 467, 940 P.2d 512 (1997).

J. Defense attorney is informed by her client's wife that some of the jurors and the alleged victim were observed entering the women's restroom during a morning recess. Attorney told judge and demanded a mistrial. Judge said he would call the jurors together and ask if there had been improper communication between the victim and the jurors. The judge asked the bailiff to gather the jurors. Meanwhile, the defense attorney

(who is also female) went into the bathroom where she observed the alleged victim and some jurors. There was no interaction observed. Lawyer returned to the judge's chambers and was very upset and emotional. She demanded a mistrial and called the situation "bullshit." The judge again said before declaring a mistrial he was going to speak to the jurors. Lawyers' angst escalated and she was eventually held in direct contempt and fined $100. The prosecutor joined everyone in chambers and defense counsel asked to be excused from representing the defendant because the judge was prejudiced against her and because she "disagreed" with the judge, she had been unfairly held in contempt. She explained that she was "furious" and could not control herself. She told the judge that he had been "nasty" to her and she was not "gonna put up with it from [the judge] ever again." The judge said a recess was in order for everyone to gain control and ordered everyone to return that afternoon. Lawyer said she wasn't coming back. When everyone reconvened (including upset lawyer), the lawyer accused the judge of having conversations with jurors outside of the presence of both counsel. The judge explained he had not spoken to any juror. Lawyer persisted. Judge upheld the contempt order. Judge filed a disciplinary complaint. Lawyer admitted to the conduct and was censured. *In re Eckleman*, 282 Kan. 415, 144 P.3d 713 (2006).

K. In April 2008, Romious represented an individual in traffic court. After the docket ended, Romious went to the clerk and demanded that the clerk tell the prosecutor to get his "ass" to the courtroom. The prosecutor met with Romious and afterward Romious returned to the clerk's window and proceeded to repeatedly ring the service bell. On a later date, Respondent returned to the same clerk's window and told the clerk he wanted to "fucking" file his paperwork. The pleading he wanted to file was titled "Defendant's Application for Change of Judge." During this visit Romious: called the clerk a "fucking bitch," pointed his finger at the clerk, told her she'd better do what he told her to do, said he was smarter than everyone in the clerk's office, and pointed at the other clerks and called them "fucking bitches." The police were called, but by the time they arrived, Respondent had left. At the hearing the clerk testified she had never witnessed such bad behavior. In the "Application for Change of Judge," Respondent failed to set out any reason why the Judge needed to recuse, the included affidavit was from a party not related to the case in which the "Application" was filed, and the affidavit was not notarized.

Respondent represented a party in Missouri. During a suppression hearing in a case that did not involve Respondent, Respondent loudly and rudely interrupted the hearing by accusing the court of engaging in a pattern of setting Respondent's cases at the end of the docket. During various other settings Respondent commented the proceedings were a "joke" and a "travesty", accused the judge of "apparent reckless, bias, prejudice, and potentially racist activity and conduct," told the judge to "sit his ass up there," accused the court of "corrupting and stinking up the case," spoke over the court and opposing counsel and would not remain quiet when instructed by the judge to do so. Respondent also took an adverse pleading, wadded it up, threw it on the floor and used the sole of his shoe to grind it into the floor. The judge ordered Respondent to appear the next morning at 8:00 am. Respondent told the judge "to not expect him to be here" and to not "hold [his] breath." Respondent did appear as ordered and asked the judge if he is a "pedophile." Eventually, the court held Romious in contempt and ordered him to serve 120 days in jail. Respondent was incarcerated and did serve the entire sentence. In May 2008, Respondent attempted to enter the United States Courthouse in Kansas City, Kansas. The alarm on the magnetometer sounded. Respondent had emptied his pockets. The security officer told Respondent to remove his watch and walk through the device again. Respondent refused. Respondent became loud and used profane language. He was told to either comply with the officer's request or leave. Respondent began walking toward the elevators despite the fact he had not been cleared through security. The United States Marshals were summoned and quickly responded. The Marshal told Respondent to leave the Courthouse. Respondent refused and told the Marshal the Marshal would have to remove him. The Marshal touched Respondent. The Respondent shoved the Marshal. A struggle ensued. Respondent was arrested and a Marshal sustained minor injuries. Romious was federally indicted. Respondent pled guilty to a misdemeanor count of failing to comply with lawful orders. In June 2008, Respondent was in another Missouri court. He was disrupting other proceedings. The bailiff asked him to move to another area and keep his voice down. Respondent told the bailiff that Respondent could stand wherever Respondent wanted to stand. Due to the disruption, Respondent was brought before the court. He described the municipal court as a "kangaroo court." Respondent then began yelling: "I'm Carlos Romious and I'm an attorney and I'm being treated unfairly in the courtroom." Respondent was removed from the courtroom and placed in a detention area. As he was being removed, he

called the court security personnel “snakes.” The judge eventually admonished him to act professionally and released him from detention. Two days later, Romious was back in the same courtroom. He again called the security personnel “snakes.” *In re Romious*, 291 Kan. 300, 240 P.3d 945 (2010).

L. For the time period between July 1, 2012 through June 30, 2013, there were seven lawyers disciplined for violation of KRPC 3.3; three for violation of 3.5 and none disciplined for violation of KRPC 8.2.

IV. Pillar Three Interactions with Opposing Parties and Opposing Counsel

A. **“P1. Be courteous, respectful and considerate. If the opposing counsel or party behaves unprofessionally, do not reciprocate.”**

B. **“P2. Respond to communications and inquires as promptly as possible, both as a matter of courtesy and to resolve disputes expeditiously.”**

C. **“P3. Grant scheduling and other procedural courtesies that are reasonably requested whenever possible without prejudicing your client’s interests.”**

D. **“P4. Strive to prevent animosity between opposing parties from infecting the relationship between counsel.”**

E. **“P5. Be willing and available to cooperate with opposing parties and counsel in order to attempt to settle disputes without the necessity of judicial involvement whenever possible.”**

F. See Kansas Rules of Professional Conduct 1.3, 1.4, 3.2, and 3.4.

V. Pillar Four the Legal Process

A. **“P1. Focus on the disputed issues to avoid the assertion of extraneous claims and defenses.**

B. See Kansas Rule of Professional Conduct 3.1

C. “**P2. Frame discovery requests carefully to elicit only the information pertinent to the issues, and frame discovery responses carefully to provide that which is properly requested.”**

D. See Kansas Rule of Professional Conduct 3.4(d).

E. **“P3. Work with your client, opposing counsel, nonparties, and the court to determine whether the need for requested information is proportional to the cost and difficulty of providing it.**

F. Kansas Rule of Professional Conduct 4.4 Transactions with Persons other than Clients: Respect for Rights of Third Persons
“(a) In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.
(b) A lawyer who receives a document relating to the representation of the lawyer's client and knows or reasonably should know that the document was inadvertently sent shall promptly notify the sender.”

G. **“P4. Maintain proficiency, not only in the subject matter of the representation, but also in the professional rules that govern lawyers.**

H. Kansas Rule of Professional Conduct 1.1 Competence “A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.”

I. Kansas Supreme Court Rule 803 Continuing Legal Education Continuing Legal Education “Minimum Requirements

(a) **Credit Hours.** An active practitioner must earn a minimum of 12 CLE credit hours at approved programs in each compliance period (July 1 to June 30). Of the 12 hours, at least 2 hours must be in the area of ethics and professionalism.

(b) **Carryover Credit.** If an active practitioner completes CLE credit hours at approved programs during a compliance period exceeding the number of hours required by subsection (a) and the practitioner complies with the requirements of Rule 806, the practitioner may carry forward to the next compliance period up to 10 unused general attendance credit hours from the compliance period during which the credit hours were earned. However, ethics and professionalism credit hours in excess of the 2-hour requirement in

subsection (a) may be carried forward as general attendance credit hours but not as ethics and professionalism credit. CLE credit hours approved for teaching, authorship, or law practice management credit do not qualify for carryover credit."

J. **"P5. Be prepared on substantive procedural, and ethical issues involved in the representation."**

K. For the time period of July 1, 2012 through June 30, 2013, there were no lawyers disciplined for violation of KPRC 4.4, but there were 136 administratively suspended for failing to comply with the annual CLE requirements.

VI. Pillar Five interactions with the Public

A. **"P1. Be mindful that, as members of a self-governing profession, lawyers have an obligation to act in a way that does not adversely affect the profession or the system of justice."**

B. Kansas Supreme Court Rule 207 Duties of the Bar and Judiciary
"…(c) It shall be the further duty of each member of the bar of this state to report to the Disciplinary Administrator any action, inaction, or conduct which in his or her opinion constitutes misconduct of an attorney under these rules.

(d) It shall be the duty of each judge of this state to report to the Disciplinary Administrator any act or omission on the part of an attorney appearing before the court, which, in the opinion of the judge, may constitute misconduct under these rules. Upon receipt of such report, it shall be processed as hereinafter provided for complaints. Nothing herein shall be construed in any manner as limiting the powers of such judge in contempt or other proceedings."

C. **"P2. Be mindful that, as members of the legal profession, lawyers have an obligation to the rule of law and to ensure that the benefits and the burdens of the law are applied equally to all persons."**

D. **"P3. Participate in continuing legal education and legal publications to share best practices for dealing ethically and professionally with all participants in the judicial system."**

E. **"P4. Take opportunities to improve the legal system and profession."**

F. Kansas Rule of Professional Conduct 6.3 Public Service: Membership in Legal Services Organization “A lawyer may serve as a director, officer or member of a legal services organization, apart from the law firm in which the lawyer practices, notwithstanding that the organization serves persons having interests adverse to a client of the lawyer. The lawyer shall not knowingly participate in a decision or action of the organization:
(a) if participating in the decision or action would be incompatible with the lawyer's obligations to a client under Rule 1.7; or
(b) where the decision or action could have a material adverse effect on the representation of a client of the organization whose interests are adverse to a client of the lawyer.”

G. **“P5. Give back to the community through pro bono, civic or charitable involvement, mentoring or other public service.”**

H. Kansas Rule of Professional Conduct 6.1 Public Service: Pro Bono Public Service “A lawyer should render public interest legal service. A lawyer may discharge this responsibility by providing professional services at no fee or a reduced fee to persons of limited means or to public service or charitable groups or organizations, by service in activities for improving the law, the legal system or the legal profession, and by financial support for organizations that provide legal services to persons of limited means.”

I. **“P6. Defend the profession and the judiciary against unfounded and unreasonable attacks and educate others so that such attacks are minimized or eliminated.”**

J. **“P7. Be mindful of how technology could result in unanticipated consequences. A lawyer’s comments and actions can be broadcast to a large and potentially unanticipated audience.”**

K. Kansas Rule of Professional Conduct 4.4(b) “A lawyer who receives a document relating to the representation of the lawyer's client and knows or reasonably should know that the document was inadvertently sent shall promptly notify the sender.”

L. An Illinois hearing board is recommending a five-month suspension for Jesse Raymond Gilsdorf, a lawyer accused of posting a video of an undercover drug buy to YouTube with the caption “Cops and Task Force Planting Drugs.” Gilsdorf testified he initially thought the video exonerated his client, but he later changed his mind. Gilsdorf admitted hiring a company to post the video

because, at the time, he believed it showed drugs being planted on his client. He also testified that his client was well aware he was posting the videos and happy he did it. Gilsdorf's client testified she wasn't aware in advance that her lawyer had posted the video, but after he did so she posted it to other social media websites. "I guess I was instructed by my attorney to do so," she said. "I mean, I wasn't sure how it was going to help me, but I guess that's why you hire an attorney because they know the law." His purpose, he said, was to negate prejudicial pretrial publicity. Gilsdorf testified he watched the video again after the prosecutor told him it was proof that his client delivered drugs to the buyer. After reviewing the video on a large-screen TV, Gilsdorf said, he decided it did indeed show the drug delivery and he advised his client to accept a plea bargain. She also reviewed the video on big-screen TV and accepted the plea offer, obtaining a sentence of probation.

M. Florida public defender was fired after a judge declared a mistrial upon learning of a Facebook posting the lawyer made mocking her own client. Anya Cintron Stern posted the photo of leopard-print underwear that defendant Fermin Recalde's family had given him, according to the Miami Herald. Stern posted a picture of the underwear on her Facebook page, saying that Recalde's family believed the underwear was "proper attire for a trial." She had also allegedly made another comment on her wall openly questioning her client's innocence. Recalde was on trial for the 2010 death of his girlfriend of two years. Prosecutors say he stabbed his girlfriend twice, allegedly killing her after he saw a love bite on her cheek. His family had brought clean clothes for him to wear in court, including the underwear that Stern photographed. Her settings were private, but a "friend" reportedly tipped off the judge, who declared a mistrial.

N. Attorney Amy McTeer, helped Roy Kuykendall escape from Union City Correction Facility in Oklahoma. Kuykendall was arrested less than a day after his escape. Oklahoma City police found him in a Bricktown restaurant having lunch with McTeer. Investigators say during Kuykendall's few hours of freedom, McTeer took pictures of them together and uploaded them to her Facebook page. Investigators say those pictures may provide enough evidence to charge McTeer with harboring a fugitive.

O. **"P8. In all your activities, act in a manner which, if publicized, would reflect well on the legal profession."**

Criminal Defense Lawyer's Mug Shot ends up right next to his own advertisement

Criminal defense attorney, Thomas Edwards from Florida, was arrested for his involvement in a drunken hit and run. Edwards advertises on one of those mugshot websites and his ad ended up with his mugshot.