

Approved: January 29, 2008
Date

MINUTES OF THE HOUSE GOVERNMENT EFFICIENCY AND TECHNOLOGY COMMITTEE

The meeting was called to order by Chairman Jim Morrison at 3:36 P.M. on January 28, 2008, in Room 526-S of the Capitol.

All members were present except Representatives Johnson, McLeland, Sloan, Tafanelli, Wilk, and Frownfelter, all of whom were excused.

Committee staff present:

Jennifer Thierer, Kansas Legislative Research Department
Renae Jefferies, Office of the Revisor of Statutes
Gary Deer, Committee Secretary

Conferees appearing before the committee:

Carol Green, Clerk, Kansas Supreme Court, and Secretary, Commission on Judicial Qualifications
Patrick Brazil, former Chief Judge, Kansas Court of Appeals, and Commission member
Carolyn Tillotson, Leavenworth, former Kansas Senator and non-judge Commission member
Stan Hazlett, Disciplinary Administrator, Office of the Disciplinary Administrator

Others attending:

See attached list.

Carol Green, Clerk, Kansas Supreme Court, and Secretary, Commission on Judicial Qualifications, explained how the Commission handles the complaint process. She noted the list of Commission members ([Attachment 1](#)) and referenced the Commission's 2006 Annual Report ([Attachment 2](#)) and the Rules Relating to Judicial Conduct ([Attachment 3](#)). She gave a brief history of the Commission, which was established by the Kansas Supreme Court in 1974 as a nine-member body combining both investigative and judicial functions, a structure that was revised in 1999 to a 14-member body divided into two panels so that a complaint went to one panel and was adjudicated by the second panel. All members are appointed by the Supreme Court for four years with no term limits; membership is composed of six active or retired judges, four lawyers, and four non-lawyers, all with equal voice.

Ms. Green then outlined the complaint procedure, which can be filed by anyone with a complaint regarding the judicial process. She distinguished between appealing a judge's ruling (a non-Commission matter) and a judge's behavior or ethical violation (under the Commission's jurisdiction). Noting that some inquiries by the public can be settled over the phone, she said a formal complaint must be written; she observed that 221 written complaints were filed in 2006. When a complaint is filed, it is sent to Commission members, reviewed by the panel, and either placed on the docket or determined to be an undocketed complaint and thus not under the purview of the Commission.

Once a complaint is placed on the docket, a letter is sent to the relevant judge asking for a formal response and is also referred to an investigator, who will gather information relating to the alleged ethical lapse. Ms. Green said of the 221 complaints in 2006, 38 were docketed for further investigation. By comparison, in 2004 57 were docketed. After the investigation is completed, the Commission has several options: dismiss the

CONTINUATION SHEET

MINUTES OF THE House Government Efficiency and Technology Committee at 3:30 P.M. on January 28, 2008, in Room 526-S of the Capitol.

complaint, issue a formal letter of caution to a judge, send a letter noting an unproven allegation which, if true, would be grounds for censure, issue a cease-and-desist order, or proceed to a formal hearing, at which point the second panel would be called to adjudicate the case through a public hearing. If the charges are found to be valid, the panel can admonish the judge, issue a cease-and-desist order, or refer the matter to the Supreme Court. Ms. Green said in 2006 two cases went to a formal hearing, but neither went to the Supreme Court.

Ms.Green responded to several questions from members. She said a complainant can ask that the Commission reconsider its decision, but there is no appeals process beyond the Commission. She replied that during an investigation the Commission and investigators are required to hold all information in confidence, but that requirement does not apply to the judge or the complainant. Further, she said that in 2006 there were three public cease-and-desist orders and that the details are available through the Commission office. She responded that frequently a commission member will recuse him/herself from certain cases.

Patrick Brazil, former Chief Judge, Kansas Court of Appeals, and Commission member responded to members' questions. He said many complaints were matters over which the Commission has no jurisdiction. He replied that in smaller counties, the district judge handles criminal, civil, and domestic cases; but in larger counties judges are assigned to specific kinds of cases, further noting that in family courts there is no requirement for an attorney to represent the principals in a case, with the exception that parents are assigned an attorney in Child-in-Need-of-Care cases. He observed that Commission members are unpaid, dedicated, and conscientious.

Carolyn Tillotson, Leavenworth, former Kansas Senator and non-judge Commission member, commented that as a lay member she sees herself as a mediator for the ordinary citizen who files a complaint.

Responding to further questions, Judge Brazil said Sedgwick is a large county, so receiving a large number of complaints from that county would not be surprising. He commented that because Sedgwick County judges are elected, an opponent might make disparaging remarks about a judge, but there seems to be no higher percentage of complaints from the average litigant. Ms. Tillotson replied that federal complaints are referred to the federal judiciary, which has its own independent review process. She acknowledged that the Commission gets some complaints regarding the quality of the judiciary.

Stan Hazlett, Disciplinary Administrator, Office of the Disciplinary Administrator, said his office is under the jurisdiction of the Supreme Court, not the Bar Association, and that the fee-funded office investigates complaints against attorneys. He traced the anatomy of a complaint ([Attachment 4](#)), provided complaint statistics for the past year ([Attachment 5](#)), and listed the names of attorneys against whom complaints had been filed during the past year ([Attachment 6](#)). He said that oral complaints often can be resolved over the phone. If not, and if the complaint does not deal with an ethical violation, a letter is sent to the attorney against whom the complaint is lodged; he/she responds, and the attorney's response is sent to the complainant. Of the 890 complaints received in 2007, 300 were docketed for further investigation; investigations are carried out either by the Office's investigators or by a volunteer attorney. After the investigation is completed, a review committee of three attorneys decides if there is probably cause for action against the attorney, after

CONTINUATION SHEET

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which the issue becomes a public matter. (However, as with the Commission, the complainant and the respondent are not governed by confidentiality.) The review panel may admonish the attorney or file formal charges against the attorney; if the latter, the case is heard by a panel of three attorneys appointed by the Supreme Court.

Responding to questions, Mr. Hazlett said there are 10,000 active attorneys and 3000 on inactive status in Kansas. The 10% complaint ratio is consistent with national statistics. He replied that lawyers investigating lawyers works well, since most attorneys want to weed out unethical or impaired attorneys. He commented that an attorney will know who filed a complaint and will know who is doing the investigation. A member commended the Disciplinary Office for functioning effectively.

The meeting was adjourned at 4:44 p.m. The next meeting is scheduled for Tuesday, January 29, 2008.

HOUSE GOVERNMENT EFFICIENCY AND TECHNOLOGY COMMITTEE

GUEST LIST

DATE: JANUARY 28 2008

NAME	REPRESENTING
J. Funderburk	CCHR
Jeff Kittinger	"
Melanie Weston	CCHR
Mary Colburn	CCHR
Berrett Simpson	CFC
Thelma Gayer	CFC
Bill Gayer	C.F.C.I
Michelle Moore	Judicial Qualifications
Carolyn Tillotson	Lay members, Judicial Qualifications
Patricia Brazil	Judges ✓
Carol G. Green	Clerk, Appellate Courts
Stan Hazlett	Disciplinary Administrator
Donna Jones	Stop Family Violence Org
Marlene A. Jones	ACRA - citizens - for change.
Paul D. Rhodes	CITIZEN @ LARGE
Michael L. Burlison	KOVA - Independent Victims Rights Advocate
Kathy Porter	Judicial Branch
Bill MCKEAN	CONCERNED CITIZEN FOR TRANSPARENCY & ACCOUNTABILITY

Kansas Commission on Judicial Qualifications

MEMBERS

Judge Robert J. Fleming, Chair of the Full Commission and Chair of Panel B
Nancy S. Anstaett, Vice-Chair of the Full Commission and Chair of Panel A

	MEMBERS	POSITION	TERM EXPIRES
PANEL A	Nancy S. Anstaett	Lawyer Member	2009
	J. Patrick Brazil	Judge Member	2007
	Theodore B. Ice	Judge Member	2010
	Jennifer L. Jones	Judge Member	2008
	Christina Pannbacker	Lay Member	2007
	William B. Swearer	Lawyer Member	2007
	Carolyn Tillotson	Lay Member	2010
PANEL B	Robert J. Fleming	Judge Member	2010
	Bruce Buchanan	Lay Member	2009
	Mary Davidson Cohen	Lay Member	2008
	David J. King	Judge Member	2009
	Jeffery A. Mason	Lawyer Member	2010
	Lawrence E. Sheppard	Judge Member	2008
	Mikel L. Stout	Lawyer Member	2008

Supreme Court Liaison

Justice Marla Luckert

Commission Staff

Carol Gilliam Green, Secretary

Michelle R. Moore, Administrator

Commission Office

Kansas Judicial Center, Room 374
301 SW Tenth Avenue
Topeka, Kansas 66612-1507

Telephone: 785-296-2913
Web: www.kscourts.org
E-mail: ksjudicialqual@kscourts.org

*Attachment 1
HGET 1-28-08*

State of Kansas

Commission on Judicial Qualifications



Kansas Judicial Center

2006 ANNUAL REPORT

Attachment 2
HGET 1-28-08

STATE OF KANSAS



COMMISSION ON JUDICIAL QUALIFICATIONS

Telephone 785-296-2913

Kansas Judicial Center
301 S.W. Tenth Avenue
Topeka, Kansas 66612-1507

Facsimile 785-296-1028

FROM THE CHAIR

For the past 32 years, the Commission on Judicial Qualifications has worked diligently to assist the Supreme Court in monitoring ethical concerns with regard to the men and women in the Kansas Judiciary. The Commission's goal has been, and continues to be, to promote high ethical standards and conduct among members of our judiciary.

This report indicates that the preceding year has not been without its challenges. During 2006, the Commission reviewed 221 complaints. A total of 38 complaints were docketed for further investigation. Two docketed complaints led to formal proceedings resulting in discipline by the Commission or the Kansas Supreme Court.

The Commission also experienced its first challenge of a personal nature by being named party defendants in a civil action challenging the constitutionality of portions of the Kansas Code of Judicial Conduct. At the time of this writing, the lawsuit remains pending in the 10th Circuit Court of Appeals.

Despite these challenges, the Commission members remain steadfast in their commitment to insure that "our legal system is based on the principle that an independent, fair and competent judiciary will interpret and apply the laws that govern us," as required by the Preamble of the Kansas Code of Judicial Conduct.

As my term as chair of the Commission comes to an end, I wish to thank the secretary of the Commission and Clerk of the Appellate Courts, Carol Green, and her assistant Michelle Moore for their invaluable support. Their hard work and dedication made a difficult task much easier for me and other members of the Commission.

As always, the Commission welcomes comments and suggestions and thanks you for your continued support.

Jennifer L. Jones, Chair
Kansas Commission on Judicial Qualifications

April 2007

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Kansas Commission on Judicial Qualifications

MEMBERS

Judge Jennifer Jones, Chair of the Full Commission and Chair of Panel A
Judge Robert J. Fleming, Vice-Chair of the Full Commission and Chair of Panel B

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	Jeffery A. Mason	Lawyer Member	2010
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Commission on Judicial Qualifications

The Kansas Commission on Judicial Qualifications was established by the Supreme Court of the State of Kansas on January 1, 1974. The Commission, created under the authority granted by Article III, Section 15 of the Kansas Constitution and in the exercise of the inherent powers of the Supreme Court, is charged with assisting the Supreme Court in the exercise of the court's responsibility in judicial disciplinary matters.

Commission on Judicial Qualifications

Kansas Judicial Center

301 SW 10th Avenue, Room 374

Topeka Kansas 66612-1507

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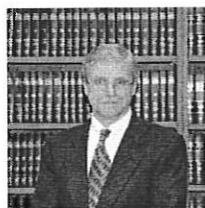
**BIOGRAPHIES
MEMBERS WHO SERVED DURING 2006**



Nancy S. Anstaett, a lawyer member of the Commission, practices in Overland Park, Kansas, and is a member of Rowe & Anstaett, L.L.C. She graduated from Kansas State University, *magna cum laude*, with degrees in journalism and sociology in 1977. She attended Washburn University School of Law and received her juris doctorate, *magna cum laude*, in 1980. She was an active member of the staff of the *Washburn Law Journal* and served as its Comments Editor during 1979-1980. She is a member of the Johnson County and Kansas Bar Associations and the Kansas Women Attorneys Association. Ms. Anstaett has served on the Kansas Continuing Legal Education Commission and was elected to the Kansas Supreme Court Nominating Commission where she served from 1996-2000. She has been a member of the Commission on Judicial Qualifications since July 2002.



The Honorable J. Patrick Brazil received a BS/BA degree from Rockhurst College, Kansas City, Missouri, in 1957. He received his law degree from Washburn University School of Law in 1962. Judge Brazil was a state district judge from 1972 until his appointment to the Kansas Court of Appeals on December 11, 1985. He was appointed Chief Judge June 1, 1995, and served as Chief Judge until his retirement in January 2001. He continues to sit with the appellate courts as a Senior Judge. He has served in the officer positions of the Kansas District Judges' Association, including president from 1980-1981. He was a member of the Advisory Committee of the Kansas Judicial Council for Civil and Criminal Pattern Instructions for Kansas and is currently a member of the KBA Bench/Bar Committee. He served on the Kansas Continuing Legal Education Commission from its creation in 1985 to July 1, 1991. In 1994, he received one of six Outstanding Service Awards conferred by the Kansas Bar Association. He is a member of the Topeka South Rotary Club. Judge Brazil has been a member of the Kansas Commission on Judicial Qualifications since 1984, including service as chairman from 1991 to 1994 and vice chair (includes chair of Panel A) from 2003 to 2005.



Bruce Buchanan, a lay member of the Commission, is president of Harris Enterprises, a media company based in Hutchinson. He received a bachelor's degree in journalism from Kansas State University in 1981. Following graduation, he worked as a reporter and editor at the *Hutchinson News*, then joined the Harris Group's management training program. In late 1984, he was named editor and publisher of the *Parsons Sun*. In 1990, he became editor and publisher of the *Olathe Daily News*. In 1996, he moved to Hutchinson as editor and publisher of *The News*. He became a director of Harris Enterprises in 1995 and vice president in 1998. He assumed his current post in 2006. Buchanan is on the board of the Reno County Historical Society and the Hutchinson/Reno County Chamber of Commerce. He is past president of the Kansas Press Association. Buchanan has been a member of the Commission since May 1999.





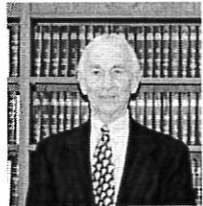
Dr. Mary Davidson Cohen, a lay member of the Commission from Leawood, received a bachelor of science in education at the University of Missouri at Columbia in 1958. She received her master of arts in science education for elementary teachers from Columbia University in 1962 and her doctorate in education administration from University of Kansas in 1977. She began her education career as a teacher in 1958 teaching fifth, sixth, and seventh grades in the Kansas City, Missouri, School District. She also taught science for K-7 grades for the Kansas City School

District's educational television station KCSD - Channel 19. She was assistant vice chancellor for academic affairs at the University of Kansas Regents Center from 1976 to 1992. She served as assistant director of the William T. Kemper Foundation from 1993 to 1997. She served as vice president for adult and continuing education and dean of the graduate school at Saint Mary College in Leavenworth Kansas, from 1997 to 1999. She currently serves the U. S. Secretary of Education as his regional representative (SRR) for Region VII, covering the states of Iowa, Kansas, Missouri, and Nebraska. She was appointed to the Commission in July 2004.



The Honorable Robert J. Fleming, a district judge from Parsons, received a BS/BA degree from Pittsburg State University in 1964 and a Juris Doctorate degree from Washburn University Law School in 1968. He practiced law in Pittsburg from 1968 until 1996, during which time he served as president of the Crawford County Bar Association, a member of the Law in Education Committee of the Kansas Bar Association, and a member of the Ethics and Grievance Committee of the Kansas Bar Association. Fleming was appointed to the bench in August 1996. He is

currently a member of the Labette County Bar Association and the Kansas Bar Association. He served on the Board of Trustees of the Labette County Correctional Camp, was the previous chairman of the Eleventh Judicial District Community Corrections Board, is a member of the Executive Committee of the Kansas District Judges' Association, serves on the Nonjudicial Salary Initiative Committee, and as a member of the Kansas Judicial Council. He became a member of the Commission in May 1999.



The Honorable Theodore Branine Ice, a retired district judge from Newton, Kansas, received his B.A. from the University of Kansas in 1956 and his Juris Doctorate in 1961, following service in the United States Navy. He practiced law in Newton for twenty-five years in the firm of Branine, Ice, Turner & Ice. During that time, he was president of the Newton Chamber of Commerce and served on several community boards. He was appointed district judge in 1987 and served until he retired in

March 2002. He has also served as an assigned panel member of the Kansas Court of Appeals. Judge Ice was the organizing judge for the Harvey County CASA (Court-appointed Special Advocate), Multi-Disciplinary Team, and CRB (Citizens Review Board). He served as president of the Harvey County Bar Association and also served four years on the Board of Editors of the Journal of the Kansas Bar Association. Judge Ice is a member of the American Bar Association, the Kansas Bar Association, the Harvey County Bar Association, Phi Delta Theta Social Fraternity, Omicron Delta Kappa Honorary Society, and Phi Delta Phi Legal Fraternity. He serves currently as assigned judge in the Ninth Judicial District. He has served on the Commission on Judicial Qualifications since July 1994.





The Honorable Jennifer Jones is the Administrative Judge for the City of Wichita Municipal Court. Prior to being appointed to this position, she served as a district judge in the Juvenile Division of the 18th Judicial District for eight years. When elected to that position, she became the first African American female district court judge in the history of the State of Kansas. She obtained a Bachelor's Degree in Social Work from the University of Missouri-Columbia in 1982. She received her Juris Doctorate Degree from the University of Oklahoma in May 1985. Jones began her career as an Assistant District Attorney in Muskogee, Oklahoma. Upon her return to Wichita in May 1988, she became associated with the law firm of Bruce & Davis and became a partner in January 1992. She maintained an active general practice in the areas of commercial, juvenile, family, bankruptcy, and probate law. Judge Jones has served as an assigned panel member of the Kansas Court of Appeals. She is an active member of the community, serving on the Board of Directors for the YMCA Community Development Board, President of the Wichita Chapter of Links, Inc., and a member of the Air Capital Wichita Chapter of Jack and Jill of America. She has been a member of the Commission since May 1999.



The Honorable David J. King, a district judge from Leavenworth, is a graduate of the University of Kansas (B.A. 1976; J.D. 1980). He was in the private practice of law in Leavenworth, Kansas, from 1981 to 1986. He served as Assistant Leavenworth County Attorney from 1981 to 1984. He was appointed to the Leavenworth District Court in May 1986. He has served as the Chief Judge for the First Judicial District since 1991. He is a member of the Leavenworth Bar Association, the Kansas Bar Association, and the Kansas District Judges Association. He was appointed to the Commission in November 2004.



Jeffery A. Mason, a lawyer member of the Commission, practices law in Goodland, Kansas. He received his undergraduate degree from the University of Kansas in 1980 and his law degree from the University of Kansas Law School in 1983. He has practiced law in Goodland since 1983 and is a member of the firm of Vignery & Mason L.L.C. Prior to his appointment to the Commission, he served as a member of the Kansas State Highway Advisory Commission (1996-2006) and as a member of the Kansas Continuing Legal Education Commission (1997-2003), serving as chairperson from 2001-2003. He also served on the Kansas Water Authority from 1988-1994. He is an active member of the Sherman County, Kansas, and American Bar Associations. He served for a number of years on the Continuing Legal Education Committee for the Kansas Bar Association and received the Kansas Bar Association Outstanding Service Award in 1998. He is presently a member of the Kansas Bar Foundation Iolta Committee. He served as president of the Solo and Small Firm Section in 1996-1997. He is active in the community as president of the Northwest Kansas Area Medical Foundation, Genesis-Sherman County, and serves as secretary for the Kiwanis Club of Goodland. He was appointed to the Commission in July 2006.



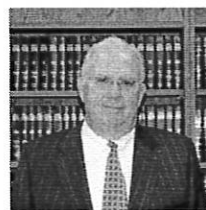
projects and activities
2003.

Christina Pannacker, a lay member of the Commission from Washington, received a bachelor's degree in communication arts from Washburn University and a master's degree in journalism and mass communications from Kansas State University. She has worked for weekly newspapers in Wamego, Marysville, and Washington, Kansas. She was editor and publisher of *The Washington County News* for five years. Pannacker has served one term on the USD 222 Board of Education, been a Girl Scout leader for 20 years, and participated in many



appointment as a district judge in July 1987. Judge Sheppard is a member of the Kansas Bar Association, Johnson County Bar Association (President 1981), the National College of Probate Judges, and a Master in the Earl E. O'Connor American Inn of Court. He was a member of the Kansas Board for Discipline of Attorneys (1986-1987) and was appointed to the Commission on Judicial Qualifications in July 2000.

The Honorable Lawrence E. Sheppard, district judge in the Tenth Judicial District, Olathe, Kansas, is a graduate of the University of Kansas with degrees in economics (B.A. 1963) and law (J.D. 1966). Upon graduation from law school he entered the private practice of law with the firm of Pflumm, Mitchelson and Amrein in Mission, Kansas (1966-67). He served as Executive Assistant to U.S. Rep. (ret.) Larry Winn, Jr. (1968). He was an assistant city attorney for the City of Overland Park (1969-1971). He resumed private law practice (1972-1987) until his



(President 1983-84); Wichita Bar Association (President 1987-88); Kansas Bar Foundation (President 1991-93); Civil Justice Reform Act Advisory Committee for the United States District Court for the District of Kansas (co-chair 1991-1995); and member of the American Bar Association. In community activities, Stout was president of Wichita Festival, Inc. 1978-79, and captain of the Wichita Wagonmasters 1982-83 and Admiral Windwagon Smith XXVIII 2001-02. He has been a member of the Commission since January 1984.

Mikel L. Stout, lawyer member of the Commission, is in private practice with Foulston Siefkin LLP in Wichita. He received his B.S. from Kansas State University in 1958 and his LL.B., with distinction, from the University of Kansas in 1961. Stout was a member of the Order of the Coif and associate editor of the *University of Kansas Law Review*. His professional activities include the American College of Trial Lawyers (Regent 2000-2004) (Secretary 2004-2005) (Treasurer 2005-2006); (President-Elect 2006-2007); Kansas Association of Defense Counsel



William B. Swearer, a lawyer member of the Commission, graduated from Princeton University in 1951 and the University of Kansas School of Law in 1955. He served with the United States Army (artillery) in Korea in 1952-53. He is of counsel to the law firm of Martindell, Swearer and Shaffer, LLP, of Hutchinson, Kansas. He has practiced law in Hutchinson since 1955. Swearer served as a member (1979-92) and as chair (1987-92) of the Kansas Board of Discipline for Attorneys, and currently serves on the Review Committee. He has been active in the Kansas Bar Association, having served on various committees, as one of the Association's representatives to the House of Delegates of the American Bar Association (1995-2000), and as president of the Association (1992-93). He received Outstanding Service Awards in 1977 and 1979 and the 2002 Distinguished Service Award from the Kansas Bar Association. He is a member of the Reno County, Kansas and American Bar Associations, as well as a member of the Kansas Bar Foundation and the American Bar Foundation (state chair, 1997-2001). Swearer has been active in his community where he has served as president of the Hutchinson Chamber of Commerce and as a board member of the Hutchinson Hospital Corporation, Health Care, Inc., the Hutchinson Hospital Foundation, and the Hutchinson Library. He currently serves as an elder of Northminister Presbyterian Church. He was appointed to the Commission in July 2003.



Carolyn A. Tillotson, a lay member of the commission from Leavenworth, is a native of Little Rock, Arkansas. She received a bachelor's degree in English from the University of Arkansas. She has served as Leavenworth City Commissioner, Leavenworth Mayor, and Kansas State Senator for Leavenworth and Jefferson Counties. She is a former newspaper reporter and editor and a former health care public relations director. She is a CASA volunteer. She was appointed to the Commission in May 2004.

SECRETARY TO THE COMMISSION



Carol Gilliam Green, by Supreme Court Rule, has served as Secretary to the Commission since her appointment as Clerk of the Kansas Appellate Courts in September 1991. Prior to that appointment she served as research attorney to Chief Justice Alfred G. Schroeder and as Director of the Central Research Staff for the Kansas Court of Appeals. Ms. Green received her J.D. degree from Washburn University School of Law, *magna cum laude*, in May 1981. She also holds a Master of Arts in English from the University of Missouri at Columbia. She was a member of the Kansas Continuing Legal Education Commission from its inception in 1985 until 1993, serving as chair from 1991-1993. She serves, by Supreme Court Rule, as Secretary to the Client Protection Fund Commission and by Supreme Court appointment as a member of the Board of Examiners of Court Reporters. She is past chair of both the Kansas Bar Association Public Information Committee and the Handbook Subcommittee of the CLE Committee. Ms. Green edited the second and third editions of the *Kansas Appellate Practice Handbook* and received a KBA Outstanding Service Award in 1995. She has served as secretary and on the Executive Committee of the National Conference of Appellate Court Clerks.

A BRIEF HISTORY OF THE COMMISSION

The Kansas Commission on Judicial Qualifications was established by the Supreme Court of the State of Kansas on January 1, 1974. The Commission, created under the authority granted by Article III, Section 15 of the Kansas Constitution and in the exercise of the inherent powers of the Supreme Court, is charged with assisting the Supreme Court in the exercise of the court's responsibility in judicial disciplinary matters.

Originally conceived as a one-tier system with nine members, the Commission functioned effectively for a quarter century before significant change was implemented. On May 1, 1999, a two-tier system was adopted, expanding the Commission from nine to fourteen members, including six active or retired judges, four lawyers, and four non-lawyers. The members are divided into two panels. One panel meets each month. In formal matters, one panel investigates the complaint, while the other conducts the hearing, thus separating the investigative and judicial functions. All members are appointed by the Supreme Court and serve four-year terms. The Chair of the Commission chairs one panel, while the Vice-Chair chairs the second panel.

Those who have chaired the Commission include:

Judge L. A. McNalley	1974-1977
Fred N. Six	1977-1981
Kenneth C. Bronson	1981-1983
Charles S. Arthur	1983-1985
Judge Lewis C. Smith	1985-1986
Judge O. Q. Claflin	1986-1988
Judge Steven P. Flood	1988-1991
Judge J. Patrick Brazil	1991-1994
Mikel L. Stout	1994-1997
David J. Waxse	1997-1999
Judge Kathryn Carter	1999-2001
Judge Theodore B. Ice	2001-2003
Robert A. Creighton	2003-2005
Judge Jennifer L. Jones	2005-2007
Judge Robert J. Fleming	2007-



Past members of the Commission who served with distinction include:

Served while active judges and subsequently as retired judges	
James J. Noone	Wichita
James W. Paddock	Lawrence
Served as retired judges	
L. A. McNalley	Salina
O. Q. Claflin, III	Kansas City
Served while active judges	
Bert Vance	Garden City
Harold R. Riggs	Olathe
Brooks Hinkle	Paola
M.V. Hoobler	Salina
Lewis C. Smith	Olathe
Steven P. Flood	Hays
Kathryn Carter	Concordia
Served as lawyer members	
Robert H. Nelson	Wichita
Edward F. Am	Wichita
John J. Gardner	Olathe
Fred N. Six	Lawrence
Charles S. Arthur	Manhattan
David J. Waxse	Overland Park
Karen L. Shelor	Shawnee Mission
John W. Mize	Salina
Robert A. Creighton	Atwood
Served as non-lawyer members	
Georgia Neese Gray	Topeka
Kenneth C. Bronson	Topeka
Dr. Nancy Bramley Hiebert	Lawrence
Marcia Poell Holston	Topeka
Ray Call	Emporia
Carol Sader	Prairie Village



HOW THE COMMISSION OPERATES

Jurisdiction/Governing Rules

The Commission's jurisdiction extends to approximately 500 judicial positions including justices of the Supreme Court, judges of the Court of Appeals, judges of the district courts, district magistrate judges, and municipal judges. This number does not include judges pro tempore and others who, from time to time, may be subject to the Code of Judicial Conduct.

The Supreme Court Rules governing operation of the Commission are found in the Kansas Court Rules Annotated. See 2006 Kan. Ct. R. Annot. 565-610.

Staff

The Clerk of the Supreme Court serves as secretary to the Commission pursuant to Supreme Court Rule 603. The secretary acts as custodian of the official files and records of the Commission and directs the daily operation of the office. An administrator, Michelle Moore, manages the operation of the office.

The Commission also retains an examiner, a member of the Kansas Bar who investigates complaints, presents evidence to the Commission, and participates in proceedings before the Supreme Court.

Initiating a Complaint

The Commission is charged with conducting an investigation when it receives a complaint indicating that a judge has failed to comply with the Code of Judicial Conduct or has a disability that seriously interferes with the performance of judicial duties.

Any person may file a complaint with the Commission. Initial inquiries may be made by telephone, by letter, by e-mail, or by visiting the Appellate Clerk's Office personally.

All who inquire are given a copy of the Supreme Court Rules Relating to Judicial Conduct, a brochure about the Commission, and a complaint form. The complainant is asked to set out the facts and to state specifically how the complainant believes the judge has violated the Code of Judicial Conduct. Very often, the opportunity to voice the grievance is sufficient, and the Commission never receives a formal complaint. In any given year, one-fourth to one-third of the initial inquiries will result in a complaint being filed.



The remainder of the complaints filed come from individuals already familiar with the Commission's work or who have learned about the Commission from another source. Use of the standard complaint form is encouraged but not mandatory. If the complaint received is of a general nature, the Commission's secretary will request further specifics.

In addition to citizen complaints, the Commission may investigate matters of judicial misconduct on its own motion. Referrals are also made to the Commission through the Office of Judicial Administration and the Office of the Disciplinary Administrator.

Referrals are made through the Office of Judicial Administration on personnel matters involving sexual harassment. The Kansas Court Personnel Rules provide that, if upon investigation the Judicial Administrator finds probable cause to believe an incident of sexual harassment has occurred involving a judge, the Judicial Administrator will refer the matter to the Commission on Judicial Qualifications. See Kansas Court Personnel Rule 9.4(e).

The Disciplinary Administrator refers complaints to the Commission if investigation into attorney misconduct implicates a judge. There is a reciprocal sharing of information between the two offices.

Commission Review and Investigation

When written complaints are received, all are mailed to a panel of the Commission for review at its next meeting. In the interim, if it appears that a response from the judge would be helpful to the Commission, the secretary may request the judge to submit a voluntary response. With that additional information, the panel may be able to consider a complaint and reach a decision at the same meeting.

All complaints are placed on the agenda, and the panel determines whether they will be docketed or remain undocketed. A docketed complaint is given a number and a case file is established.

Undocketed complaints are those which facially do not state a violation of the Code; no further investigation is required.

Appealable matters constitute the majority of the undocketed complaints and arise from a public misconception of the Commission's function. The Commission does not function as an appellate court. Examples of appealable matters which are outside the Commission's jurisdiction include: matters involving the exercise of judicial discretion, particularly in domestic cases; disagreements with the judge's application of the law; and evidentiary or procedural matters, particularly in criminal cases.



Many complaints address the judge's demeanor, attitude, degree of attention, or alleged bias or prejudice. These are matters in which the secretary is likely to request a voluntary response from the judge and, based on that response, the Commission in some instances determines there has clearly been no violation of the Code.

These undocketed complaints are dismissed with an appropriate letter to the complainant and to the judge, if the judge has been asked to respond to the complaint.

Docketed complaints are those in which a panel feels that further investigation is warranted.

A panel has a number of investigative options once it docketed a complaint. Docketed complaints may be assigned to a subcommittee for review and report at the next meeting. These complaints may be referred to the Commission Examiner for investigation and report. Finally, the panel may ask for further information or records from the judge.

Disposition of Docketed Complaints

After investigation of docketed complaints, the panel may choose a course of action short of filing formal proceedings.

A complaint may be dismissed after investigation. On docketing, there appeared to be some merit to the complaint, but after further investigation the complaint is found to be without merit.

A letter of caution or informal advice may be issued if the investigation does not disclose sufficient cause to warrant further proceedings. Such letters have been issued, for example, to address isolated instances of delay, discourtesy to litigants or counsel, or inappropriate personal conduct.

A cease and desist order may be issued when the panel finds factually undisputed violations of the Code which represent a continuing course of conduct. The judge must agree to comply by accepting the order, or formal proceedings will be instituted. Examples of conduct resulting in cease and desist orders include: activity on behalf of a political candidate or continuing to handle matters in a case in which the judge has recused.

Upon disposition of any docketed complaint, the judge and the complainant are notified of the panel's action. Other interested persons may be notified within the panel's discretion.



Confidentiality

The panel assigned a complaint conducts investigations, often contacting the judge involved as well as witnesses. The Commission and its staff are bound by a rule of confidentiality unless public disclosure is permitted by the Rules Relating to Judicial Conduct or by order of the Supreme Court. See Rule 607(a). One exception to the confidentiality rule exists if the panel gives written notice to the judge, prior to the judge's acceptance of a cease and desist order, that the order will be made public. Rule 611(a).

Other narrowly delineated exceptions to the rule of confidentiality exist. Rule 607(c) provides a specific exception to the rule of confidentiality with regard to any information which the Commission or a panel considers relevant to current or future criminal prosecutions or ouster proceedings against a judge. Rule 607 further permits a waiver of confidentiality, in the Commission's or panel's discretion, to the Disciplinary Administrator, the Impaired Judges Assistance Committee, the Supreme Court Nominating Commission, the District Judicial Nominating Commissions, and the Governor with regard to nominees for judicial appointments. The Commission or a panel may also, in its discretion, make public all or any part of its files involving a candidate for election or retention in judicial office.

The rule of confidentiality does not apply to the complainant or to the respondent. See Rule 607(b).

Formal Proceedings

During the investigation stage prior to the filing of the notice of formal proceedings, the judge is advised by letter that an investigation is underway. The judge then has the opportunity to present information to the examiner. Rule 609.

If a panel institutes formal proceedings, specific charges stated in ordinary and concise language are submitted to the judge. The judge has an opportunity to answer and a hearing date is set. Rule 611(b); Rule 613. The hearing on that notice of formal proceedings is conducted by the other panel, which has no knowledge of the investigation or prior deliberations.

The hearing on a notice of formal proceedings is a public hearing. The judge is entitled to be represented by counsel at all stages of the proceedings, including the investigative phase prior to the filing of the notice of formal proceedings if the judge so chooses. The rules of evidence applicable to civil cases apply at formal hearings. Procedural rulings are made by the chair, consented to by other members unless one or more calls for a vote. Any difference of opinion with the chair is controlled by a majority vote of those panel members present.



The Commission Examiner presents the case in support of the charges in the notice of formal proceedings. At least five members of the panel must be present when evidence is introduced. A vote of five members of the panel is required before a finding may be entered that any charges have been proven.

If the panel finds the charges proven, it can admonish the judge, issue an order of cease and desist, or recommend to the Supreme Court the discipline or compulsory retirement of the judge. Discipline means public censure, suspension, or removal from office. Rule 620.

The panel is required in all proceedings resulting in a recommendation to the Supreme Court for discipline or compulsory retirement to make written findings of fact, conclusions of law, and recommendations which shall be filed and docketed by the Clerk of the Supreme Court as a case. Rule 622. The respondent judge then has the opportunity to file written exceptions to the panel's report. A judge who does not wish to file exceptions may reserve the right to address the Supreme Court with respect to disposition of the case. Rule 623.

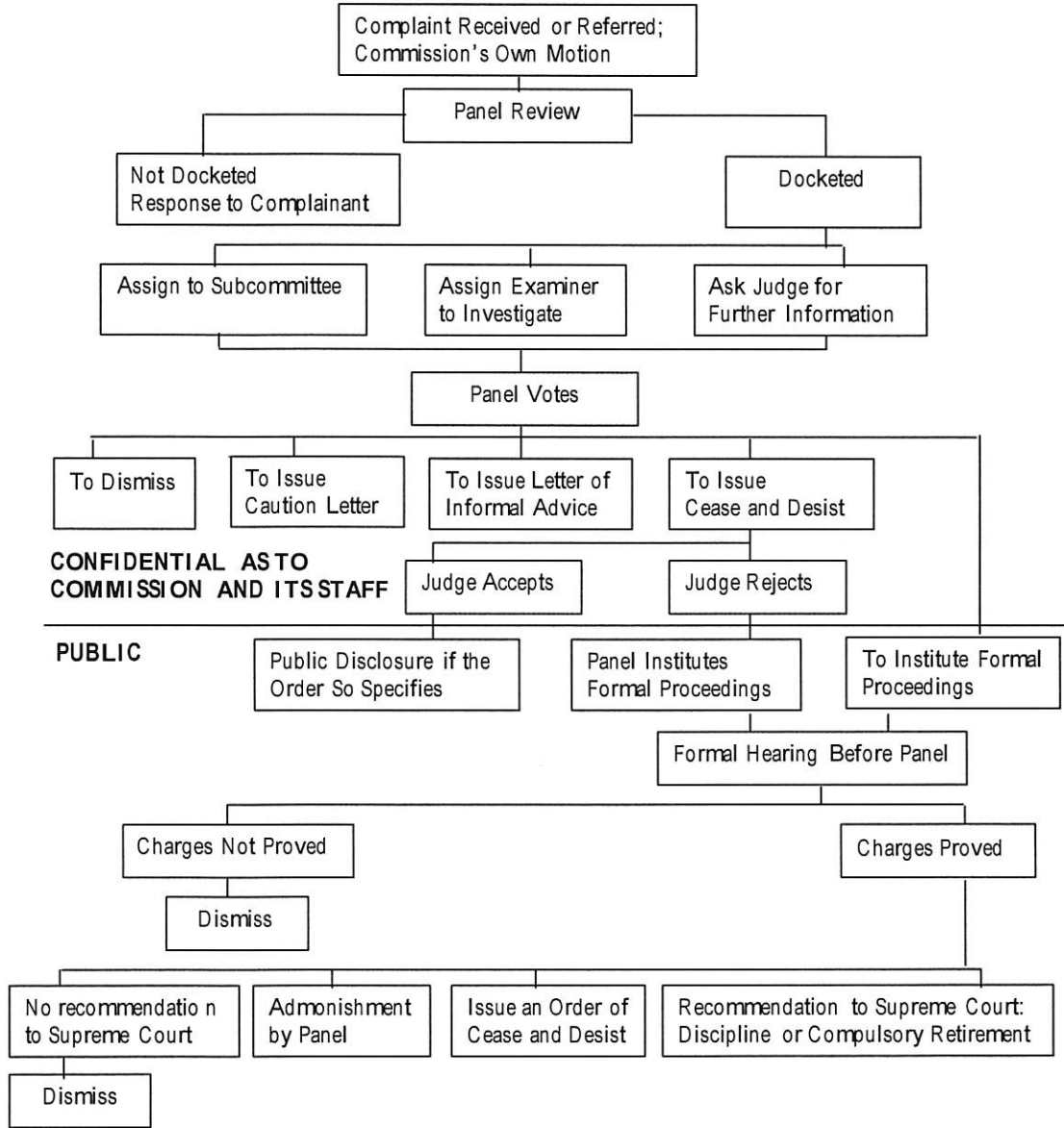
If exceptions are taken, a briefing schedule is set; thereafter, argument is scheduled before the Supreme Court at which time respondent appears in person and, at respondent's discretion, by counsel. If exceptions are not taken, the panel's findings of fact and conclusions of law are conclusive and may not later be challenged by respondent. The matter is set for hearing before the Supreme Court, at which time the respondent appears in person and may be accompanied by counsel but only for the limited purpose of making a statement with respect to the discipline to be imposed. In either case, the Supreme Court may adopt, amend, or reject the recommendations of the panel. Rule 623.

The following flow charts trace the progress of a complaint before a panel of the Commission and through Supreme Court proceedings.



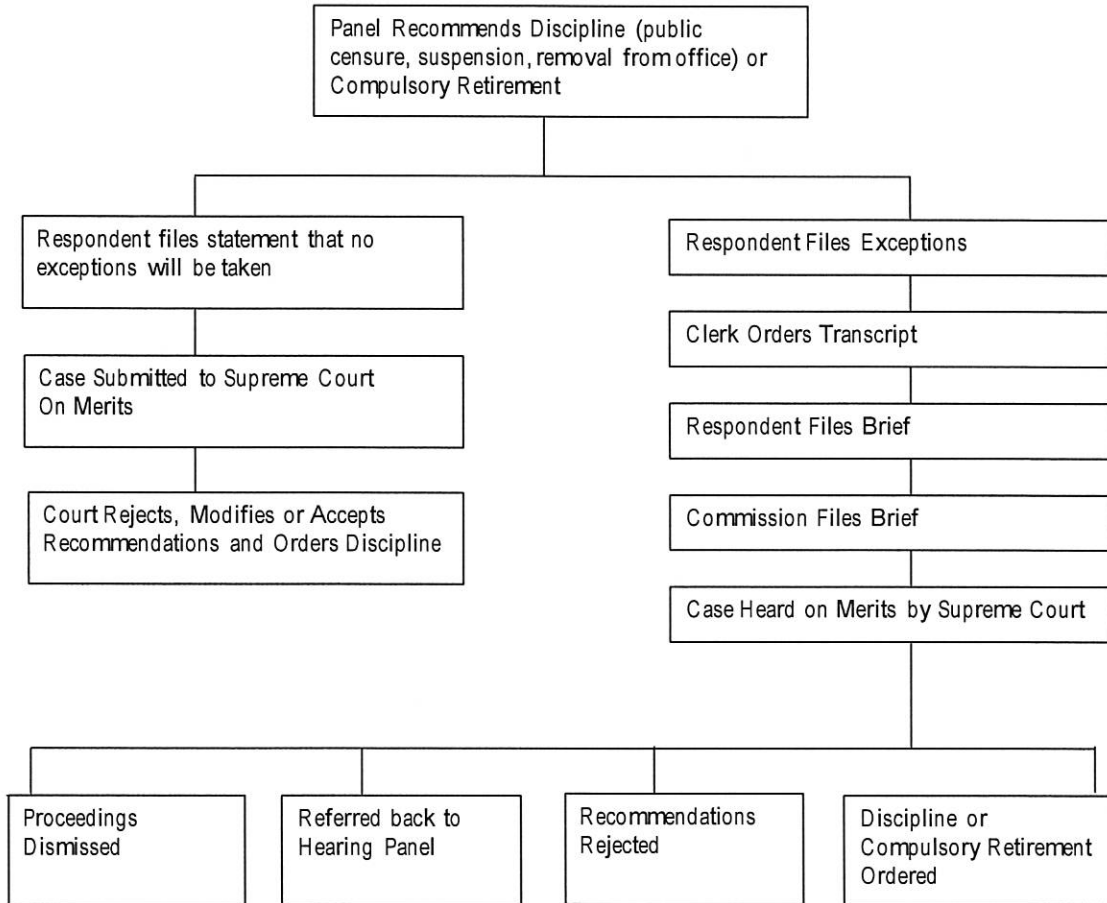
COMMISSION PROCEDURES

RECEIPT OF COMPLAINT THROUGH FORMAL PROCEEDINGS



PROCEEDINGS BEFORE THE SUPREME COURT

REVIEW OF COMMISSION FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS



COMMISSION ACTIVITY IN 2006

At the close of 2006, there were 517 judicial positions subject to the Commission's jurisdiction.

Justices of the Supreme Court	7
Judges of the Court of Appeals	12
District Court Judges	163
District Magistrate Judges	78
Municipal Judges	257

Others are subject to the Code of Judicial Conduct on an ad hoc basis. The compliance statement appended to the Code provides: "Anyone, whether or not a lawyer, who is an officer of the judicial system, is a judge within the meaning of this Code. Judge is defined as: 'Any judicial officer who performs the functions of a judge in the courts of this state including Kansas Supreme Court Justices, Court of Appeals Judges, District Judges, District Magistrate Judges, and Municipal Court Judges. Where applicable, the term "judge" also contemplates Masters, Referees, Temporary Judges, Pro Tempore Judges, Part-time Judges, and Commissioners if they perform any functions of a judge in any court of this state.'" 2006 Kan. Ct. R. Anno t. 593. No attempt has been made in this report to enumerate those individuals.

In 2006, the Commission received 368 inquiries by telephone, by letter, by e-mail, or by personal visit to the Clerk's Office. Of those individuals, 332 were provided copies of the Supreme Court Rules Relating to Judicial Conduct, a complaint form, and a brochure describing the work of the Commission. Of that number, 120 responded by filing a complaint. An additional 101 complaints were received for a total of 221 complaints received in 2006. Of those complaints, 38 were eventually docketed. For a discussion of the distinction between undocketed and docketed complaints, see this report at pages 10 and 11. See Figure 1 for a five-year summary.



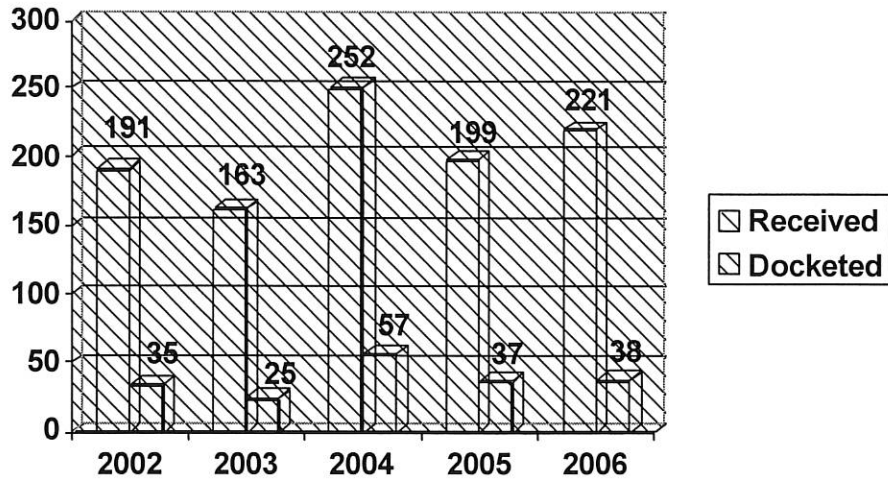


Figure 1: Five-year Summary of Complaints Received and Docketed

The Commission disposed of 178 undocketed complaints and 47 docketed complaints in 2006. See Figure 2 for a five-year summary.

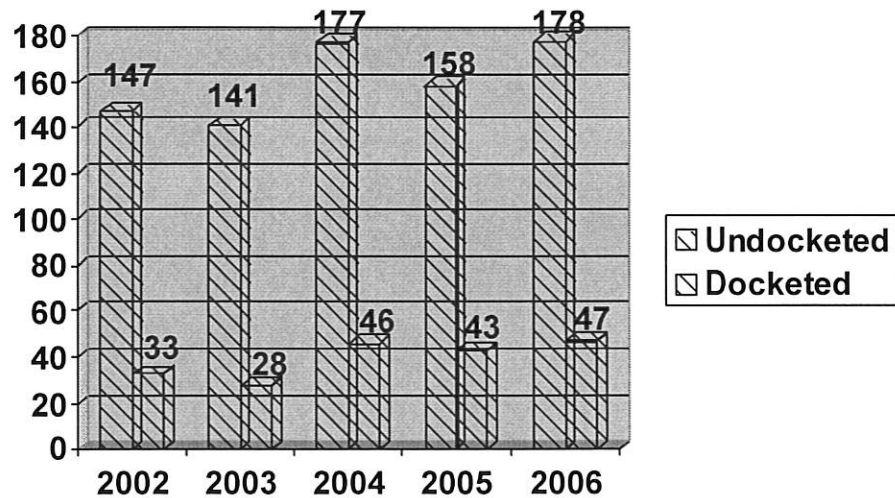


Figure 2: Five-year Summary of Disposed Complaints which may include carryover from a prior year



COMMISSION ON JUDICIAL QUALIFICATIONS
January 1, 2006 – December 31, 2006

TOTAL NUMBER OF INQUIRIES	368
RULES AND COMPLAINT FORMS MAILED	332
NUMBER OF COMPLAINTS RECEIVED	221
NUMBER OF COMPLAINTS DOCKETED	38
DOCKETED COMPLAINTS PENDING ON JANUARY 1, 2006	14

DISPOSITION OF DOCKETED COMPLAINTS

Dismissed after investigation	17
Caution	7
Informal Advice	3
Public Cease & Desist	3
Notice of Formal Proceedings filed and/or Recommendation to the Court	2
Stipulation (Resignation)	7
Withdrawn	1
No Action – issue corrected	2
Pending on December 31, 2006	<u>10</u>
	52

POSITION OF JUDGE AGAINST WHOM A DOCKETED COMPLAINT WAS FILED

Supreme Court Justice	7
Chief Judge	4
District Judge	18
District Magistrate Judge	1 (not law trained)
Municipal Judge	5 (all law trained)
Pro Tempore	1 (law trained)
Retired, Taking Assignments	1
Hearing Officer	<u>1</u>
	38 ¹

¹In some instances, more than one complaint was filed against the same judge.



SUBSTANCE OF COMPLAINTS

2006

Abuse of Power	6
Administrative Inefficiency	14
Conduct Inappropriate to Judicial Office	21
Conflict of Interest	18
Delay in Making Decision	24
Denied Hearing/Denied Fair Hearing	39
Disagreement with Ruling	12
Ex Parte Communication	12
Failure to Enforce Order	0
Failure to State a Complaint, Appealable Matter, or Legal Issue	88
Improper Election Campaign Conduct/Political Activity Inappropriate to Judicial Office	3
Improper Influence	9
Inappropriate Personal Comment	16
Injudicious Temperament	18
Prejudice/Bias	51
Failure to Control Courtroom	0
Intemperance	0
Incompetence in Law	5
Failure to Discharge Disciplinary Responsibilities	5
Sexual Harassment	2

Individual complaints may contain more than one allegation of misconduct.



EXAMPLES OF CONDUCT FOUND TO BE PROPER OR OUTSIDE THE COMMISSION'S JURISDICTION

No violation was found against a judge for delay. Although the case had been pending for several years, once the case was transferred to this judge, a decision was rendered 60 days after the judge received notice from parties that the case was fully briefed and ready for decision.

No violation was found against a judge for delay after it was alleged that a hearing was not scheduled in response to a litigant's letter to the court. The letter was considered to be a dispute to computations of judgment, and a hearing was not requested. The matter was resolved once proper procedure was explained to the litigant.

No violation was found when it was alleged a judge did not schedule a hearing on an answer to a garnishment order. The litigant did not file the appropriate paperwork to get the matter before the court, and the judge was never made aware of personal correspondence that was placed directly in the court file.

No violation was found when it was alleged a judge lost his temper and went into a tirade, yelling at a litigant. A microphone was used in the courtroom to maintain order and decorum. There were no supporting witnesses to this allegation.

No violation was found against a judge for delay after it was alleged a judge had failed to respond to or schedule a hearing on a motion to correct illegal sentence, which was filed four months after the notice of appeal. The motion could not be maintained while an appeal from the conviction and sentence was pending. Appellate counsel was appointed.

No violation was found when it was alleged a judge made derogatory comments and called the litigant a liar. Transcripts of the proceedings did not reflect any inappropriate comments.

No violation was found against a judge for delay after it was alleged that 15 months elapsed between the filing of a motion and the date of the hearing on the motion. The case had been before the court on additional motions without comment from the parties on the original motion. New procedures and calendar policies were implemented.

No violation was found when it was alleged a judge threw away correspondence from litigants and, further, no violation was found on the allegation of delay after it was alleged that four months had elapsed between conviction and sentencing. The judge forwards all *ex parte* communications to a litigant's attorney, and the four-month delay occurred upon the litigant's request for continuances.



EXAMPLES OF CONDUCT FOUND TO BE IMPROPER

A judge, who failed to respect appropriate boundaries between a judge and a subordinate employee, was publicly ordered to cease and desist from initiating or participating in inappropriate personal relationships with subordinate employees.

A judge, who used official court letterhead and postage for personal business, was cautioned to refrain from using official court letterhead for private matters.

A retired judge, taking assignments, was retained as an expert witness and issued a written report as an expert. The judge was found to have violated Canon 2B and was cautioned that, should judicial assignment be accepted again, serving as an expert witness would be a violation of Canon 2B by lending the prestige of judicial office to advance the private interests of others.

A judge was informally advised to review all pro se pleadings for content and take appropriate action in a timely manner, including providing a response to movant.

A judge was cautioned that allowing parties to converse with attorneys during small claims proceedings undermines public confidence in the proceedings.

A judge, who threatened contempt proceedings, was informally advised not to make threats of contempt unless both the underlying facts and the law support such a sanction.

A judge was found to have violated the Canons for failing to dispose of judicial matters promptly. The judge admitted the error, implemented new procedures, and wrote a letter of apology to the parties.

A judge, who participated in an *ex parte* communication, was found to have violated Canon 3B(7). The judge was cautioned to refrain from discussing the merits of a pending proceeding outside the presence of the parties. The judge was further cautioned to file all documents relating to a case in the official file.

A judge, who made an inappropriate, sexually demeaning comment, was publicly ordered to cease and desist from making inappropriate comments.

Two judges who each voluntarily wrote a letter of character reference, on official letterhead, for a respondent in a disciplinary proceeding were cautioned not to lend the prestige of judicial office to advance the private interests of others.



APPENDICES



Appendix A

REPORTED JUDICIAL DISCIPLINARY CASES
UNDER RULE 601

In re Rome, 218 Kan. 198, 542 P.2d 676 (1975).

In a criminal proceeding, a magistrate judge issued a memorandum decision which held the defendant out to public ridicule or scorn. The decision was, incidentally, issued in poetic form.

The Supreme Court found the conduct violated Canon 3A(3) which requires a judge to be "patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom he deals in his official capacity." The court ordered public censure.

In re Baker, 218 Kan. 209, 542 P.2d 701 (1975).

The Commission on Judicial Qualifications found six violations of Canon 7 arising out of advertising materials used in a campaign for judicial office.

The Supreme Court found no violation as to five charges, holding the activities to come within the pledge of faithful performance of the duties of judicial office. The court found the health, work habits, experience, and ability of the candidates to be matters of legitimate concern to the electorate. As to the sixth charge, the court found that a campaign statement by a candidate for judicial office that an incumbent judge is entitled to a substantial pension if defeated, when the judge is not in fact eligible for any pension, violates the prohibition of Canon 7B(1)(c) against misrepresentation of facts. The court imposed the discipline of public censure.

In re Sortor, 220 Kan. 177, 551 P.2d 1255 (1976).

A magistrate judge was found by the Commission to have been rude and discourteous to lawyers and litigants and, on occasion, to have terminated proceedings without granting interested parties the right to be heard.

The Supreme Court found violations of Canons 3A(3) and (4) and imposed public censure.



In re Dwyer, 223 Kan. 72, 572 P.2d 898 (1977).

A judge of the Court of Common Pleas of Sedgwick County was found to lack patience, courtesy, dignity, and the appearance of fairness and objectivity. A course of conduct was established which demonstrated an intemperate, undignified, and discourteous attitude toward and treatment of litigants and members of the public who came before the judge.

The Supreme Court found the judge had violated Canons 3A(2), (3), and (4). The court imposed public censure.

In re Miller, 223 Kan. 130, 572 P.2d 896 (1977).

A judge of the district court asked a judge of the county court to dismiss a ticket of an acquaintance of the judge. When the judge of the county court declined, the judge of the district court inquired whether the fine could be reduced. The judge of the county court again declined; whereupon, the judge of the district court remarked, "Well, I guess that is one favor I don't owe you."

The Supreme Court found violations of Canons 2A and 2B which exhort a judge to avoid impropriety and the appearance of impropriety. The court ordered public censure.

In re Hammond, 224 Kan. 745, 585 P.2d 1066 (1978).

A judge of the district court was found to have demanded sexual favors of female employees as a condition of employment.

The Supreme Court found violations of Canons 1, 2A, and 3B(4). Noting that the judge's retirement due to disability made suspension from duty or removal from office unnecessary, the court ordered public censure.

In re Rome, 229 Kan. 195, 623 P.2d 1307 (1981).

An associate district judge was found to lack judicial temperament as evidenced by his actions in the following regard. The judge acted in a manner that did not promote public confidence in the integrity and impartiality of the judiciary and allowed his personal views or appeared to allow his personal views on the political issue of selection of judges to influence his judicial conduct or judgment. The judge, in writing a memorandum decision, purposefully attempted to be critical of actions of the county



attorney and of a fellow judge. The judge purposefully made allegations of fact and stated as conclusions factual matters that were, at the time he made his statements, being contested in separate criminal cases. Subsequent to making such statements, the judge purposefully and intentionally attempted to get them publicized by sending copies to the news media.

The Supreme Court found violations of Canons 1, 2, 3A(1), 3A(3), and 3A(6). The judge was ordered removed from office.

In re Woodworth, 237 Kan. 884, 703 P.2d 844 (1985).

A judge of the district court was convicted of violating a statute which makes it unlawful to have in one's possession any package of alcoholic liquor without having thereon the Kansas tax stamps required by law.

The Supreme Court found violations of Canons 1 and 2A relating to the integrity and independence of the judiciary and the avoidance of impropriety and the appearance of impropriety. The court ordered public censure.

In re Levans, 242 Kan. 148, 744 P.2d 800 (1987).

A district magistrate judge removed eight railroad ties belonging to a railway company without written permission or verification of purported oral authority. The judge did not fully cooperate during investigation of the incident.

The Supreme Court found violations of Canons 1 and 2. The court ordered public censure.

In re Yandell, 244 Kan. 709, 772 P.2d 807 (1989).

A judge of the district court violated the law by leaving the scene of a non-injury accident and in so doing also violated the terms of a previous cease and desist order issued by the Commission on Judicial Qualifications. Numerous other violations arose out of the judge's conduct in various financial transactions and his failure to recuse himself in contested cases involving his creditors.

The Supreme Court found violations of Canons 1, 2A, 3C, 5C(1), 5C(3), and 5C(4)(b). The court ordered removal from office.



In re Long, 244 Kan. 719, 772 P.2d 814 (1989).

A judge of the district court was found to have failed to respect and comply with the law, carry out her adjudicative responsibility of promptly disposing of the business of the court, and diligently discharge her administrative responsibilities and maintain professional competence in judicial administration.

The Supreme Court found violations of Canons 2A, 3A(5), and 3B(1). The court ordered public censure.

In re Alvord, 252 Kan. 705, 847 P.2d 1310 (1993).

A magistrate judge was found to have treated a female employee in a manner which was not dignified and courteous. Unsolicited inquiries on behalf of the employee regarding a traffic ticket were also found to be inappropriate.

The Supreme Court found violations of Canons 2 and 3 and ordered public censure.

In re Handy, 254 Kan. 581, 867 P.2d 341 (1994).

A judge of the district court was found to have violated Canons of the Code of Judicial Conduct in the following particulars: ignoring a conflict of interest by handling cases that involved the city which employed him as a municipal judge; creating an appearance of impropriety in purchasing property involved in pending litigation; and lacking sensitivity to conflict of interest, creating an appearance of impropriety, and being less than candid in a real estate transaction.

The Supreme Court found violations of Canons 1, 2A, 3C(1), 3C(1)(c), and 5C(1). The court ordered public censure.

**REPORTED JUDICIAL DISCIPLINARY CASES
UNDER RULE 601A**

In re Moroney, 259 Kan 636, 914 P.2d 570 (1996).

A majority of the Commission on Judicial Qualifications recommended to the Kansas Supreme Court that Respondent be disciplined by removal from the bench. After Findings of Fact, Conclusions of Law, and Recommendations were submitted to the Supreme Court, Respondent voluntarily resigned from office. The Supreme Court removed the case from its docket, finding the hearing on removal to be moot.



In re Platt, 269 Kan. 509, 8 P.3d 686 (2000).

A judge of the district court followed a disqualification policy with respect to several attorneys which involved not hearing newly filed cases and implementation of an "informed consent policy" for ongoing cases in which the judge did not recuse.

The Supreme Court found violations of Canons 1, 2A, 3B(1), 3B(5), 3B(7), 3C(1), and 3E(1). The court ordered public censure.

In re Groneman, 272 Kan. 1345, 38 P.3d 735 (2002).

A district court judge allowed his administrative assistant to maintain dual employment during courthouse hours and falsely reported time and leave information.

The respondent stipulated to violations of Canons 1, 2A, 2B, 3C(1), (2), and (4). The Supreme Court ordered public censure and other conditions, including repayment to the State of Kansas for hours not worked.

In re Robertson, 280 Kan. 266, 120 P.3d 790 (2005).

A district court judge admitted violation of the judicial district's administrative order regarding computer and internet usage when, over an extended period of time, he used the county-owned computer located in his office at the courthouse to access and display sexually explicit images, messages, and materials.

The Supreme Court found violations of Canon 1, Canon 2, and Canon 4(A)(2). The court ordered removal from office.



Appendix B
Statistical Summaries 2002 – 2006

	2002	2003	2004	2005	2006
Total Number of Inquiries	375	242	360	341	368
Rules and Complaint Forms mailed	212	230	326	340	332
Number of Complaints Received	191	163	252	199	221
Number of Complaints Docketed	35	25	57	37	38
Docketed Complaints Pending at beginning of year	5	9	5	16	14
Disposition of Docketed Complaints					
Dismissed after investigation	24	20	27	23	17
Dismissed after investigation with caution	9	3	0	3	0
Letter of caution issued	0	0	10	4	7
Letter of informal advice issued	0	3	1	2	3
Private Cease and Desist issued	0	1	5	2	0
Public Cease and Desist issued	0	0	0	4	3
Notice of Formal Proceedings filed and/or Recommendation to the Court	0	0	0	2	
Withdrawn	0	0	0	0	1
Judge resigned	0	1	3	0	7
No action – issue corrected	0	0	0	0	2
Complaints pending year end	11	6	16	14	10
Position of Judge Against Whom a Docketed Complaint was filed¹					
Supreme Court Justice	0	0	0	0	7
Chief Judge	0	0	10	2	4
District Judge	23	12	25	18	18
District Magistrate Judge	4	3	6	5	1
Municipal Judge	1	4	4	2	5
Judge Pro Tempore	1	2	0	2	1
Hearing Officer/Court Trustee	0	0	0	0	1
Senior Judge	0	0	1	0	0
Retired, Taking Assignments	0	0	0	1	1

¹In some instances, more than one complaint was filed against the same judge.



APPENDIX C

Kansas Commission on Judicial Qualifications

Room 374, Kansas Judicial Center 301 SW Tenth Avenue Topeka, Kansas 66612 785-296-2913

Complaint against a judge

Person making the complaint

Address

City, State, Zip Code

Phone Number

I would like to file a complaint against:

Name of Judge

Type of Judge (if known)

County or City

BEFORE YOU COMPLETE THIS FORM, please review the accompanying brochure which describes the functions of the Commission on Judicial Qualifications. Note in particular the examples of functions which the Commission cannot perform.

PLEASE TELL THE COMMISSION IN TWENTY-FIVE WORDS OR LESS WHAT THE JUDGE DID THAT WAS UNETHICAL. INCLUDE A MORE DETAILED EXPLANATION ON THE FOLLOWING PAGE.

Continue on Next Page



Details and specifics of complaint: Please state all specific facts and circumstances which you believe constitute judicial misconduct or disability. Include any details, names, dates, places, addresses, and telephone numbers which will assist the Commission in its evaluation and investigation of this complaint. Identify the name and address of any witnesses. If there are documents, letters, or any other materials *directly* related to the complaint, please include them. Do not include documents which do not directly support or relate to the complaint, for example, documents only generally related to the litigation. Keep a copy of everything you submit for your records.

Multiple horizontal lines for writing the details of the complaint.

If additional space is required, use additional pages as needed and attach them to this page.

I certify that the allegations and statements of fact set forth above are true and correct to the best of my knowledge, information and belief.

_____ Date

_____ Complainant's Signature





Kansas Commission on Judicial Qualifications
Kansas Judicial Center
301 SW Tenth Avenue
Topeka, Kansas 66612-1507
785-296-2913
www.kscourts.org

**RULES RELATING TO
JUDICIAL CONDUCT**

**Rule 601
CODE OF JUDICIAL CONDUCT**

[**History:** Superseded by Rule 601A effective Jun 1, 1995.]

**Rule 601A
CODE OF JUDICIAL CONDUCT**

Grateful recognition is due the Commission on Judicial Qualifications for its assistance in the extensive analysis and study that preceded the adoption of Rule 601A. The Commission members were: Chairman, Hon. J. Patrick Brazil, Court of Appeals Judge, Topeka, Kansas; Vice-Chairman, Mikel L. Stout, Attorney, Wichita, Kansas; Secretary, Carol G. Green, Appellate Court Clerk, Topeka, Kansas; Charles S. Arthur, Attorney, Manhattan, Kansas; Ray Call, The Emporia Gazette, Emporia, Kansas; Hon. Kathryn Carter, District Magistrate Judge, Concordia, Kansas; Dr. Nancy Bramley Hiebert, Lawrence, Kansas; Hon. James J. Noone, District Court Judge, Retired, Wichita, Kansas; Hon. James W. Paddock, Retired, District Judge, Lawrence, Kansas; David J. Waxse, Attorney, Overland Park, Kansas; Former Members participating in this Code revision: Kenneth C. Bronson, Stauffer Communications, Inc., Topeka, Kansas; Hon. Steven P. Flood, District Judge, Hays, Kansas; John J. Gardner, Attorney, Olathe, Kansas; and Georgia Neese Gray, Topeka, Kansas.

The Model Code of Judicial Conduct adopted by the House of Delegates of the American Bar Association on August 7, 1990, as hereinafter modified, is adopted as a rule of this Court. The Model Code of Judicial Conduct as hereinafter set forth shall be effective as of June 1, 1995. All alleged violations committed before June 1, 1995, shall be subject to Rule 601 (1999 Kan. Ct. R. Annot. 443).

PREAMBLE

Our legal system is based on the principle that an independent, fair and competent judiciary will interpret and apply the laws that govern us. The role of the judiciary is central to American concepts of justice and the rule of law. Intrinsic to all sections of this Code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in our legal system. The judge is an arbiter of facts and law for the resolution of disputes and a highly visible symbol of government under the rule of law.

The Code of Judicial Conduct is intended to establish standards for ethical conduct of judges. It consists of broad statements called Canons, specific rules set forth in Sections under each Canon, a Terminology Section, an Application Section and Commentary. The text of the Canons and the Sections, including the Terminology and Application Sections, is authoritative. The Commentary, by explanation and example, provides guidance with respect to the purpose and meaning of the Canons and Sections. The Commentary is not intended as a statement of additional rules. When the text uses "shall" or "shall not," it is intended to impose binding obligations the violation of which can result in disciplinary action. When "should" or "should not" is used, the text is hortatory and a statement of what is or is not appropriate conduct but not a binding rule under which a judge may be disciplined. When "may" is used, it denotes permissible discretion or, depending on the context, it refers to action that is not covered by specific proscriptions.

The Canons and Sections are rules of reason. They should be applied consistent with constitutional requirements, statutes, other court rules and decisional law and in the context of all relevant circumstances. The Code is to be construed so as not to impinge on the essential independence of judges in making judicial decisions.

The Code is designed to provide guidance to judges and candidates* for judicial office and to provide a structure for regulating conduct through disciplinary agencies. It is not designed or intended as a basis for civil liability or criminal prosecution. Furthermore, the purpose of the Code would be subverted if the Code were invoked by lawyers for mere tactical advantage in a proceeding.

The text of the Canons and Sections is intended to govern conduct of judges and to be binding upon them. It is not intended, however, that every transgression will result in disciplinary action. Whether disciplinary action is appropriate, and the degree of discipline to be imposed, should be determined through a reasonable and reasoned application of the text and should depend on such factors as the seriousness of the transgression, whether there is a pattern of improper activity, and the effect of the improper activity on others or on the judicial system. See ABA Standards Relating to Judicial Discipline and Disability Retirement.

The Code of Judicial Conduct is not intended as an exhaustive guide for the conduct of judges. They should also be governed in their judicial and personal conduct by general ethical standards. The Code is intended, however, to state basic standards which should govern the conduct of all judges and to provide guidance to assist judges in establishing and maintaining high standards of judicial and personal conduct.

TERMINOLOGY

Terms explained below are noted with an asterisk () in the Sections where they appear.*

"Appropriate authority" denotes the authority with responsibility for initiation of disciplinary process with respect to the violation to be reported. See Sections 3D(1) and 3D(2).

"Candidate." A candidate is a person seeking selection for or retention in judicial office by election or appointment. A person becomes a candidate for judicial office as soon as he or she makes a public announcement of candidacy, declares or files as a candidate with the election authority or commission which either appoints or recommends to the appointment authority, or authorizes solicitation or acceptance of contributions or support. The term "candidate" has the same meaning when applied to a judge seeking election or appointment to nonjudicial office. See Preamble and Sections 5A, 5B, 5C and 5E.

"Court personnel" does not include the lawyers in a proceeding before a judge. See Section 3B(7) and 3B(9).

"De minimis" denotes an insignificant interest that could not raise reasonable question as to a judge's impartiality. See Section 3E(1).

"Economic interest" denotes ownership of a more than de minimis legal or equitable interest, or a relationship as officer, director, advisor or other active participant in the affairs of a party, except that:

(i) service by a judge as an officer, director, advisor or other active participant in an educational, religious, charitable, fraternal or civic organization, or service by a judge's spouse, parent or child as an officer, director, advisor or other active participant in any such organization does not create an economic interest in securities held by that organization;

(ii) a deposit in a financial institution, the proprietary interest of a policy holder in a mutual insurance company, a deposit in a mutual savings association, membership in a credit union, or a similar proprietary interest, is not an economic interest in the organization unless a proceeding pending or impending before the judge could substantially affect the value of the interest;

(iii) ownership of government securities is not an economic interest in the issuer unless a proceeding pending or impending before the judge could substantially affect the value of the securities. See Sections 3E(1) and 3E(2).

"Fiduciary" includes such relationships as executor, administrator, trustee, and guardian. See Sections 3E(2) and 4E.

"Knowingly," "knowledge," "known" or "knows" denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances. See Sections 3D, 3E(1), and 5A(3).

"Law" denotes court rules as well as statutes, constitutional provisions and decisional law. See Sections 2A, 3A, 3B(2), 3B(7), 4B, 4C, 4D(5), 4F, 4I, 5A(2), 5B(2), 5C(1), 5C(3) and 5D.

"Member of the candidate's family" denotes a spouse, child, grandchild, parent, grandparent or other relative or person with whom the candidate maintains a close familial relationship. See Section 5A(3)(a).

"Member of the judge's family" denotes a spouse, child, grandchild, parent, grandparent, or other relative or person with whom the judge maintains a close familial relationship. See Sections 4D(3), 4E and 4G.

"Member of the judge's family residing in the judge's household" denotes any relative of a judge by blood or marriage, or a person treated by a judge as a member of the judge's family, who resides in the judge's household. See Sections 3E(1) and 4D(5).

"Nonpublic information" denotes information that, by law, is not available to the public. Nonpublic information may include but is not limited to: information that is sealed by statute or court order, impounded or communicated in camera; and information offered in grand jury proceedings, presentencing reports, dependency cases or psychiatric reports. See Section 3B(11).

"Part-time judge." A part-time judge is a judge who serves on a continuing or periodic basis, but is permitted by law to devote time to some other profession or occupation and whose compensation for that reason is less than that of a full-time judge. See Application Section C.

"Political organization" denotes a political party or other group, the principal purpose of which is to further the election or appointment of candidates to political office. See Sections 5A(1), 5B(2) and 5C(1).

"Pro tempore part-time judge." A pro tempore part-time judge is a judge who serves or expects to serve occasionally on a part-time basis under a separate appointment for each period of service or for each case heard. See Application Section D.

"Public election." This term refers to partisan elections and includes primary and general elections. See Section 5C.

"Require." The rules prescribing that a judge "require" certain conduct of others are, like all of the rules in this Code, rules of reason. The use of the term "require" in that context means a judge is to exercise reasonable direction and control over the conduct of those persons subject to the judge's direction and control. See Sections 3B(3), 3B(4), 3B(6), 3B(9) and 3C(2).

"Third degree of relationship." The following persons are relatives within the third degree of relationship: great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew or niece. See Section 3E(1).

[**History:** Terminology section Am. effective July 15, 1996; Am. effective January 1, 2002.]

CANON 1

A Judge Shall Uphold the Integrity and Independence of the Judiciary

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining and enforcing high standards of conduct, and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved. The provisions of this Code are to be construed and applied to further that objective.

Commentary:

Deference to the judgments and rulings of courts depends upon public confidence in the integrity and independence of judges. The integrity and independence of judges depends in turn upon their acting without fear or favor. Although judges should be independent, they must comply with the law, including the provisions of this Code. Public confidence in the impartiality of the judiciary is maintained by the adherence of each judge to this responsibility. Conversely, violation of this Code diminishes public confidence in the judiciary and thereby does injury to the system of government under law.

Case Annotations

1. Judge's ex parte conversation with her long-time attorney friend regarding the pending case was found inappropriate under Rule 601A, Canons 1, 2A, and 3B(7). *Subway Restaurants, Inc. v. Kessler*, 266 Kan. 433, 970 P.2d 526 (1998).
2. Judge found to have violated Canons 1, 2A, 3B, 3C, 3E, and 3F; by signing the cease and desist order, judge agreed to accept the Commission's conclusions that he violated the Canons per Rule 611; public censure per rule 620. *In re Platt*, 269 Kan. 509, 8 P.3d 686 (2000).
3. Judge found to have violated Canons 1, 2A, 2B, and 3C(1), (2) and (4); judge stipulated to evidence; Commission recommends public censure; public censure per Rule 620. *In re Groneman*, 272 Kan. 1345, 38 P.3d 735 (2002).
4. Judge found to have violated Canons 1, 2, and 4A(2) of the Code of Judicial Conduct; Commission assigned panel to conduct investigation per Rule 609; since respondent failed to file exceptions, the Commission's findings and conclusions are conclusive per Rule 623; removal from office per Rule 620(a). *In re Robertson*, 280 Kan 266, 120 P.3d 790 (2005)

CANON 2

A Judge Shall Avoid Impropriety and the Appearance of Impropriety in All of the Judge's Activities

A. A judge shall respect and comply with the law* and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

Commentary:

Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety. A judge must expect to be the subject of constant public scrutiny. A judge must therefore accept restrictions on the judge's conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly.

The prohibition against behaving with impropriety or the appearance of impropriety applies to both the professional and personal conduct of a judge. Because it is not practicable to list all prohibited acts, the proscription is necessarily cast in general terms that extend to conduct by judges that is harmful although not specifically mentioned in the Code. Actual improprieties under this standard include violations of law, court rules or other specific provisions of this Code. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality and competence is impaired.

B. A judge shall not allow family, social, political or other relationships to influence the judge's judicial conduct or judgment. A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge. A judge shall not testify voluntarily as a character witness.

Commentary:

Maintaining the prestige of judicial office is essential to a system of government in which the judiciary functions independently of the executive and legislative branches. Respect for the judicial office facilitates the orderly conduct of legitimate judicial functions. Judges should distinguish between proper and improper use of the prestige of office in all of their activities. For example, it would be improper for a judge to allude to his or her judgeship to gain a personal advantage such as deferential treatment when stopped by a police officer for a traffic offense. Similarly, judicial letterhead must not be used for non-official matters of any kind.

A judge must avoid lending the prestige of judicial office for the advancement of the private interests of others. For example, a judge must not use the judge's judicial position to gain advantage in a civil suit involving a member of the judge's family. In contracts for publication of a judge's writings, a judge should retain control over the advertising to avoid exploitation of the judge's office. As to the acceptance of awards, see Section 4(D)(5)(a) and Commentary.

Although a judge should be sensitive to possible abuse of the prestige of office, a judge may, based on the judge's personal knowledge, serve as a reference or provide a letter of recommendation.

Judges may participate in the process of judicial selection by cooperating with appointing authorities, nominating commissions and screening committees seeking names for consideration, and by responding to official inquiries concerning a person being considered for a judgeship. See also Canon 5 regarding use of a judge's name in political activities.

A judge must not testify voluntarily as a character witness because to do so may lend the prestige of the judicial office in support of the party for whom the judge testifies. Moreover, when a judge testifies as a witness, a lawyer who regularly appears before the judge may be placed in the awkward position of cross-examining the judge. A judge may, however, testify when properly summoned. Except in unusual circumstances where the demands of justice require, a judge should discourage a party from requiring the judge to testify as a character witness.

C. A judge shall refrain from speech, gestures or other conduct that could be perceived by a reasonable person as harassment based upon race, color, religion, gender, national origin, age, disability, or sexual orientation, and shall require the same standard of conduct of others subject to the judge's direction and control.

Commentary:

“Harassment” is verbal or physical conduct that denigrates or shows hostility or aversion toward an individual because of his/her race, color, religion, gender, national origin, age, disability or sexual orientation or that of his/her relatives, friends, or associates.

“Harassing conduct” includes, but is not limited to, the following:

- (i) Epithets, slurs, negative stereotyping, or threatening, intimidating or hostile acts that relate to race, color, religion, gender, national origin, age, disability or sexual orientation and
- (ii) Written or graphic material that denigrates or shows hostility or aversion toward an individual or group because of gender and that is placed on walls, bulletin boards, or elsewhere on the premises, or circulated in the workplace, and
- (iii) sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that are unwelcome, regardless of gender.

[History: Am. C. effective July 14, 2000.]

Case Annotations

1. Judge’s ex parte conversation with her long-time attorney friend regarding the pending case was found inappropriate under Rule 601A, Canons 1, 2A, and 3B(7). *Subway Restaurants, Inc. v. Kessler*, 266 Kan. 433, 970 P.2d 526 (1998).

2. Court disapproves of the sentencing judge’s crude and undignified comments in violations of Supreme Court Rule 601A Cannons 2A and 3B(4); dissent would vacate the sentence imposed because the judge’s comments show partiality, prejudice, and oppression against female victims of sex crimes. *State v. Sampsel*, 268 Kan. 264, 997 P.2d 664 (2000).

3. Judge found to have violated Canons 1, 2A, 3B, 3C, 3E, and 3F; by signing the cease and desist order, judge agreed to accept the Commission’s conclusions that he violated the Canons per Rule 611; public censure per rule 620. *In re Platt*, 269 Kan. 509, 8 P.3d 686 (2000).

4. Judge found to have violated Canons 1, 2A, 2B, and 3C(1), (2) and (4); judge stipulated to evidence; Commission recommends public censure; public censure per Rule 620. *In re Groneman*, 272 Kan. 1345, 38 P.3d 735 (2002).

5. Court disapproves of the trial judge's statements and comments in violations of Supreme Court Rule 601A Canons 2 and 3; defendant's conviction reversed and case remanded for new trial before different judge. *State v. Miller*, 274 Kan. 113, 49 P.3d 458 (2002).

6. Judge found to have violated Canons 1, 2, and 4A(2) of the Code of Judicial Conduct; Commission assigned panel to conduct investigation per Rule 609; since respondent failed to file exceptions, the Commission's findings and conclusions are conclusive per Rule 623; removal from office per Rule 620(a). *In re Robertson*, 280 Kan 266, 120 P.3d 790 (2005).

CANON 3

A Judge Shall Perform the Duties of Judicial Office Impartially and Diligently

A. Judicial Duties in General. The judicial duties of a judge take precedence over all the judge’s other activities. The judge’s judicial duties include all the duties of the judge’s office prescribed by law.* In the performance of these duties, the following standards apply.

B. Adjudicative Responsibilities.

- (1) A judge shall hear and decide matters assigned to the judge except those in which disqualification is required.
- (2) A judge shall be faithful to the law* and maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor or fear of criticism.
- (3) A judge shall require* order and decorum in proceedings before the judge.
- (4) A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity, and shall require* similar conduct of lawyers, and of staff, court officials and others subject to the judge's direction and control.

Commentary:

The duty to hear all proceedings fairly and with patience is not inconsistent with the duty to dispose promptly of the business of the court. Judges can be efficient and businesslike while being patient and deliberate.

- (5) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, and shall not permit staff, court officials and others subject to the judge's direction and control to do so.

Commentary:

A judge must refrain from speech, gestures or other conduct that could reasonably be perceived as sexual harassment and must require the same standard of conduct of others subject to the judge's direction and control.

A judge must perform judicial duties impartially and fairly. A judge who manifests bias on any basis in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute. Facial expressions and body language, in addition to oral communication, can give to parties or lawyers in the proceeding, jurors, the media and others an appearance of judicial bias. A judge must be alert to avoid behavior that may be perceived as prejudicial.

- (6) A judge shall require* lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, against parties, witnesses, counsel or others. This Section 3B(6) does not preclude legitimate advocacy when race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, or other similar factors, are issues in the proceeding.
- (7) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law.* A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties concerning a

pending or impending proceeding except that:

- (a) Where circumstances require, ex parte communications for scheduling, administrative purposes or emergencies that do not deal with substantive matters or issues on the merits are authorized; provided:
 - (i) the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication, and
 - (ii) the judge makes provision promptly to notify all other parties of the substance of the ex parte communication and allows an opportunity to respond.
- (b) A judge may obtain the advice of a disinterested expert on the law applicable to a proceeding before the judge by inviting the expert to file a brief *amicus curiae* provided the judge affords the parties reasonable opportunity to respond.
- (c) A judge may consult with the court personnel* whose function is to aid the judge in carrying out the judge's adjudicative responsibilities or with other judges.
- (d) A judge may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to mediate or settle matters pending before the judge.
- (e) A judge may initiate or consider any ex parte communications when expressly authorized by law to do so.

Commentary:

The proscription against communications concerning a proceeding includes communications from lawyers, law teachers, and other persons who are not participants in the proceeding, except to the limited extent permitted.

To the extent reasonably possible, all parties or their lawyers shall be included in communications with a judge.

Whenever presence of a party or notice to a party is required by Section 3B(7), it is the party's lawyer, or if the party is unrepresented, the party who is to be present or to whom notice is to be given.

An appropriate and often desirable procedure for a court to obtain the advice of a disinterested expert on legal issues is to invite the expert to file a brief *amicus curiae*.

Certain ex parte communication is approved by Section 3B(7) to facilitate scheduling and other administrative purposes and to accommodate emergencies. In general, however, a judge must discourage ex parte

communication and allow it only if all the criteria stated in Section 3B(7) are clearly met. A judge must disclose to all parties all ex parte communications described in Sections 3B(7)(a) and 3B(7)(b) regarding a proceeding pending or impending before the judge.

A judge must not independently investigate facts in a case and must consider only the evidence presented.

A judge may request a party to submit proposed findings of fact and conclusions of law, so long as the other parties are apprised of the request and are given an opportunity to respond to the proposed findings and conclusions.

A judge must make reasonable efforts, including the provision of appropriate supervision, to ensure that Section 3B(7) is not violated through law clerks or other personnel on the judge's staff.

If communication between the trial judge and the appellate court with respect to a proceeding is permitted, a copy of any written communication or the substance of any oral communication should be provided to all parties.

(8) A judge shall dispose of all judicial matters promptly, efficiently and fairly.

Commentary:

In disposing of matters promptly, efficiently and fairly, a judge must demonstrate due regard for the rights of the parties to be heard and to have issues resolved without unnecessary cost or delay. Containing costs while preserving fundamental rights of parties also protects the interests of witnesses and the general public. A judge should monitor and supervise cases so as to reduce or eliminate dilatory practices, avoidable delays and unnecessary costs. A judge should encourage and seek to facilitate settlement, but parties should not feel coerced into surrendering the right to have their controversy resolved by the courts.

Prompt disposition of the court's business requires a judge to devote adequate time to judicial duties, to be punctual in attending court and expeditious in determining matters under submission, and to insist that court officials, litigants and their lawyers cooperate with the judge to that end.

(9) A judge shall not, while a proceeding is pending or impending in any court, make any public comment that might reasonably be expected to affect its outcome or impair its fairness or make any nonpublic comment that might substantially interfere with a fair trial or hearing. The judge shall require* similar abstention on the part of court personnel* subject to the judge's direction and control. This Section does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court. This Section does not apply to proceedings in which the judge is a litigant in a personal capacity.

Commentary:

The requirement that judges abstain from public comment regarding a pending or impending proceeding continues during any appellate process and until final disposition. This Section does not prohibit a judge from commenting on proceedings in which the judge is a litigant in a personal capacity, but in cases such as a writ of mandamus where the judge is a litigant in an official capacity, the judge must not comment publicly. The conduct of lawyers relating to trial publicity is governed by Rule 3.6 of the Kansas Rules of Professional Conduct (KRPC 3.6 [2007 Kan. Ct. R. Annot.520]).

(10) A judge shall not commend or criticize jurors for their verdict other than in a court order or opinion in a proceeding, but may express appreciation to jurors for their

service to the judicial system and the community.

Commentary:

Commending or criticizing jurors for their verdict may imply a judicial expectation in future cases and may impair a juror's ability to be fair and impartial in a subsequent case.

- (11) A judge shall not disclose or use, for any purpose unrelated to judicial duties, nonpublic information* acquired in a judicial capacity.

C. Administrative Responsibilities.

- (1) A judge shall diligently discharge the judge's administrative responsibilities without bias or prejudice and maintain professional competence in judicial administration, and should cooperate with other judges and court officials in the administration of court business.
- (2) A judge shall require* staff, court officials and others subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge and to refrain from manifesting bias or prejudice in the performance of their official duties.
- (3) A judge with supervisory authority for the judicial performance of other judges shall take reasonable measures to encourage the prompt disposition of matters and the proper performance of judicial responsibilities.
- (4) A judge shall not make unnecessary appointments. A judge shall exercise the power of appointment impartially and on the basis of merit. A judge shall avoid nepotism and favoritism. A judge shall not approve compensation of appointees beyond the fair value of services rendered.

Commentary:

Appointees of a judge include assigned counsel, officials such as referees, commissioners, special masters, receivers and guardians and personnel such as clerks, secretaries and bailiffs. Consent by the parties to an appointment or an award of compensation does not relieve the judge of the obligation prescribed by Section 3C(4).

D. Disciplinary Responsibilities.

- (1) A judge who receives information indicating a substantial likelihood that another judge has committed a violation of this Code should take appropriate action. A judge having knowledge* that another judge has committed a violation of this Code that raises a substantial question as to the other judge's fitness for office shall inform the appropriate authority.*
- (2) A judge who receives information indicating a substantial likelihood that a lawyer

has committed a violation of the Kansas Rules of Professional Conduct (KRPC) Rule 226 (2007 Kan. Ct. R. Annot. 375) should take appropriate action. A judge having knowledge* that a lawyer has committed a violation of the KRPC that raises a substantial question as to the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects shall inform the appropriate authority.*

- (3) Acts of a judge, in the discharge of disciplinary responsibilities, required or permitted by Sections 3D(1) and 3D(2) are part of a judge's judicial duties and shall be absolutely privileged, and no civil action predicated thereon may be instituted against the judge.

Commentary:

Appropriate action may include direct communication with the judge or lawyer who has committed the violation, other direct action if available, and reporting the violation to the appropriate authority or other agency or body.

E. Disqualification.

- (1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

Commentary:

Under this rule, a judge is disqualified whenever the judge's impartiality might reasonably be questioned, regardless whether any of the specific rules in Section 3E(1) apply. For example, if a judge were in the process of negotiating for employment with a law firm, the judge would be disqualified from any matters in which that law firm appeared, unless the disqualification was waived by the parties after disclosure by the judge.

A judge should disclose on the record information that the judge believes the parties or their lawyers might consider relevant to the question of disqualification, even if the judge believes there is no real basis for disqualification.

By decisional law, the rule of necessity may override the rule of disqualification. For example, a judge might be required to participate in judicial review of a judicial salary statute, or might be the only judge available in a matter requiring immediate judicial action, such as a hearing on probable cause or a temporary restraining order. In the latter case, the judge must disclose on the record the basis for possible disqualification and use reasonable efforts to transfer the matter to another judge as soon as practicable.

- (a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge* of disputed evidentiary facts concerning the proceeding;
- (b) the judge served as a lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or the judge has been a material witness concerning it;

Commentary:

A lawyer in a government agency does not ordinarily have an association with other lawyers employed by that agency within the meaning of Section 3E(1)(b); a judge formerly employed by a government agency, however, should disqualify himself or herself in a proceeding if the judge's impartiality might reasonably be questioned because of such association.

- (c) the judge knows* that he or she, individually or as a fiduciary, or the judge's spouse, parent or child wherever residing, or any other member of the judge's family residing in the judge's household,* has an economic interest* in the subject matter in controversy or in a party to the proceeding or has any other more than de minimis* interest that could be substantially affected by the proceeding;
- (d) the judge or the judge's spouse, or a person within the third degree of relationship* to either of them, or the spouse of such a person:
 - (i) is a party to the proceeding, or an officer, director or trustee of a party;
 - (ii) is acting as a lawyer in the proceeding;
 - (iii) is known* by the judge to have a more than de minimis* interest that could be substantially affected by the proceeding;
 - (iv) is to the judge's knowledge* likely to be a material witness in the proceeding.

Commentary:

The fact that a lawyer in a proceeding is affiliated with a law firm with which a relative of the judge is affiliated does not of itself disqualify the judge. Under appropriate circumstances, the fact that "the judge's impartiality might reasonably be questioned" under Section 3E(1), or that the relative is known by the judge to have an interest in the law firm that could be "substantially affected by the outcome of the proceeding" under Section 3E(1)(d)(iii) may require the judge's disqualification.

- (2) A judge shall keep informed about the judge's personal and fiduciary* economic interests,* and make a reasonable effort to keep informed about the personal economic interests of the judge's spouse and minor children residing in the judge's household.

F. Remittal of Disqualification. A judge disqualified by the terms of Section 3E may disclose on the record the basis of the judge's disqualification and may ask the parties and their lawyers to consider, out of the presence of the judge, whether to waive disqualification. If following disclosure of any basis for disqualification other than personal bias or prejudice concerning a party, the parties and lawyers, without participation by the judge, all agree that the

judge should not be disqualified, and the judge is then willing to participate, the judge may participate in the proceeding. The agreement shall be incorporated in the record of the proceeding.

Commentary:

A remittal procedure provides the parties an opportunity to proceed without delay if they wish to waive the disqualification. To assure that consideration of the question of remittal is made independently of the judge, a judge must not solicit, seek or hear comment on possible remittal or waiver of the disqualification unless the lawyers jointly propose remittal after consultation as provided in the rule. A party may act through counsel if counsel represents on the record that the party has been consulted and consents. As a practical matter, a judge may wish to have all parties and their lawyers sign the remittal agreement.

Case Annotations

1. Judge's duty to recuse discussed in test to determine if defendant received fair trial without due process rights violation. *State v. Alderson*, 260 Kan. 445, 922 P.2d 435 (1996).

2. Judge's ex parte meeting with the family of homicide victim and ex parte consideration of petition requesting imposition of harsh punishment denied defendant a fair sentencing hearing; Rule 601, Canon 3A(4) and Rule 601A, Canon 3B(7) cited. *State v. Scales*, 261 Kan. 734, 933 P.2d 737 (1997).

3. Two-part test in deciding whether to vacate a judgment because of a judge's failure to recuse discussed. *Subway Restaurants, Inc. v. Kessler*, 266 Kan. 433, 970 P.2d 526 (1998).

4. Judge's ex parte conversation with her long-time attorney friend regarding the pending case was found inappropriate under Rule 601A, Canons 1, 2A, and 3B(7). *Subway Restaurants, Inc. v. Kessler*, 266 Kan. 433, 970 P.2d 526 (1998).

5. Court disapproves of the sentencing judge's crude and undignified comments in violations of Supreme Court Rule 601A Canons 2A and 3B(4); dissent would vacate the sentence imposed because the judge's comments show partiality, prejudice, and oppression against female victims of sex crimes. *State v. Sampsel*, 268 Kan. 264, 997 P.2d 664 (2000).

6. Judge found to have violated Canons 1, 2A, 3B, 3C, 3E, and 3F; by signing the cease and desist order, judge agreed to accept the Commission's conclusions that he violated the Canons per Rule 611; public censure per rule 620. *In re Platt*, 269 Kan. 509, 8 P.3d 686 (2000).

7. Attorney filed a motion per Rule 204(d) and Canon 3E(1) to vacate the panel's report and to grant a new hearing on a basis that the panel's chairperson practiced in the same law firm of an attorney who prosecuted claim against him. *In re Lucas*, 269 Kan. 785, 7 P.3d 1186 (2000).

8. Judge found to have violated Canons 1, 2A, 2B, and 3C(1), (2), and (4); judge stipulated to evidence; Commission recommends public censure; public censure per Rule 620. *In re Groneman*, 272 Kan. 1345, 38 P.3d 735 (2002).

9. Court disapproves of the trial judge's statements and comments in violations of Supreme Court Rule 601A Canons 2 and 3; defendant's conviction reversed and case remanded for new trial before different judge. *State v. Miller*, 274 Kan. 113, 49 P.3d 458 (2002).

10. Court disapproves of trial judge's misconduct and statements citing Canon 3B(4); defendant did not get fair trial; defendant's convictions reversed and remanded for new trial before different district judge. *State v. Hayden*, 281 Kan. 112, 130 P.3d 24 (2006).

11. District judge violated Canon 3 and her comments constituted judicial misconduct; however, her misconduct did not prejudice defendant's substantial rights. *State v. Gaither*, 283 Kan. 671, 156 P.3d 602 (2007).

12. Canon 3E discussed relating to defendant's motion requesting recusal of trial judge; motion denied. *State v. Walker*, 283 Kan. 587, 153 P.3d 1257 (2007).

CANON 4

**A Judge Shall so Conduct the Judge's Extra-judicial Activities
as to Minimize the Risk of Conflict with Judicial Obligations**

A. Extra-judicial Activities in General. A judge shall conduct all of the judge's extra-judicial activities so that they do not:

- (1) cast reasonable doubt on the judge's capacity to act impartially as a judge;
- (2) demean the judicial office; or
- (3) interfere with the proper performance of judicial duties.

Commentary:

Complete separation of a judge from extra-judicial activities is neither possible nor wise; a judge should not become isolated from the community in which the judge lives.

Expressions of bias or prejudice by a judge, even outside the judge's judicial activities, may cast reasonable doubt on the judge's capacity to act impartially as a judge. Expressions which may do so include jokes or other remarks demeaning individuals on the basis of their race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status.

B. Avocational Activities. A judge may speak, write, lecture, teach and participate in other extra-judicial activities concerning the law,* the legal system, the administration of justice and non-legal subjects, subject to the requirements of this Code.

Commentary:

As a judicial officer and person specially learned in the law, a judge is in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice, including revision of substantive and procedural law and improvement of criminal and juvenile justice. To the extent that time permits, a judge is encouraged to do so, either independently or through a bar association, judicial conference or other organization dedicated to the improvement of the law. Judges may participate in efforts to promote the fair administration of justice, the independence of the judiciary and the integrity of the legal profession and may express opposition to the persecution of lawyers and judges in other countries because of their professional activities.

In this and other Sections of Canon 4, the phrase "subject to the requirements of this Code" is used, notably in connection with a judge's governmental, civic or charitable activities. This phrase is included to remind judges that the use of permissive language in various Sections of the Code does not relieve a judge from the other requirements of the Code that apply to the specific conduct.

C. Governmental, Civic or Charitable Activities.

- (1) A judge shall not appear at a public hearing before, or otherwise consult with, an executive or legislative body or official except on matters concerning the law,* the legal system or the administration of justice or except when acting pro se in a matter involving the judge or the judge's interests.

Commentary:

See Section 2B regarding the obligation to avoid improper influence.

- (2) A judge shall not accept appointment to a governmental committee or commission or other governmental position that is concerned with issues of fact or policy on matters other than the improvement of the law,* the legal system or the administration of justice. A judge may, however, represent a country, state or locality on ceremonial occasions or in connection with historical, educational or cultural activities.

Commentary:

Section 4C(2) prohibits a judge from accepting any governmental position except one relating to the law, legal system or administration of justice as authorized by Section 4C(3). The appropriateness of accepting extra-judicial assignments must be assessed in light of the demands on judicial resources created by crowded dockets and the need to protect the courts from involvement in extra-judicial matters that may prove to be controversial. Judges should not accept governmental appointments that are likely to interfere with the effectiveness and independence of the judiciary.

Section 4C(2) does not govern a judge's service in a nongovernmental position. See Section 4C(3) permitting service by a judge with organizations devoted to the improvement of the law, the legal system or the administration of justice and with educational, religious, charitable, fraternal or civic organizations not conducted for profit. For example, service on the board of a public educational institution, unless it were a law school, would be prohibited under Section 4C(2), but service on the board of a public law school or any private educational institution would generally be permitted under Section 4C(3).

- (3) **Quasi-judicial Activities.** A judge may serve as a member, officer, or director of an organization or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice. A judge may assist such an organization in raising funds and may participate in their management and investment, but should not personally participate in public fund-raising activities. A judge may make recommendations to public and private fund-granting agencies on projects and programs concerning the law, the legal system, and the administration of justice.
- (4) **Civic and Charitable Activities.** A judge may participate in civic and charitable activities that do not reflect adversely upon the judge's impartiality or interfere with the performance of the judge's judicial duties. A judge may serve as an officer, director, trustee, or non-legal advisor of an educational, religious, charitable, fraternal, or civic organization not conducted for the economic or political advantage of its members, subject to the following limitations:
 - (a) A judge should not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before the judge or will be

regularly engaged in adversary proceedings in any court.

- (b) A judge should not solicit funds for any educational, religious, charitable, fraternal, or civic organization, or use or permit the use of the prestige of office for that purpose, but a judge may be listed as an officer, director, or trustee of such an organization, so long as the listing is not used for fund-raising purposes. A judge should not be a speaker or the guest of honor at an organization's fund-raising events, but may attend such events.
- (c) A judge should not give investment advice to such an organization, but a judge may serve on its board of directors or trustees even though it has the responsibility for approving investment decisions.

Commentary:

The changing nature of some civic and charitable organizations and of their relationship to the law makes it necessary for a judge regularly to reexamine the activities of each organization with which the judge is affiliated to determine if it is proper to continue his or her relationship with it. For example, in many jurisdictions, charitable hospitals are in court now more frequently than in the past. Similarly, the boards of some organizations now make policy decisions that may have political significance or imply commitment to causes that may come before the courts for adjudication.

D. Financial Activities.

- (1) A judge shall not engage in financial and business dealings that:
 - (a) may reasonably be perceived to exploit the judge's judicial position, or
 - (b) involve the judge in frequent transactions or continuing business relationships with those lawyers or other persons likely to come before the court on which the judge serves.

Commentary:

The Time for Compliance provision of this Code (Application, Section E) postpones the time for compliance with certain provisions of this Section in some cases.

When a judge acquires in a judicial capacity information, such as material contained in filings with the court, that is not yet generally known, the judge must not use the information for private gain. See Section 2B; see also Section 3B(11).

A judge must avoid financial and business dealings that involve the judge in frequent transactions or continuing business relationships with persons likely to come either before the judge personally or before other judges on the judge's court. In addition, a judge should discourage members of the judge's family from engaging in dealings that would reasonably appear to exploit the judge's judicial position. This rule is necessary to avoid creating an appearance of exploitation of office or favoritism and to minimize the potential for disqualification. With respect to affiliation of relatives of a judge with law firms appearing before the judge, see Commentary to Section 3E(1)(d) relating to disqualification.

Participation by a judge in financial and business dealings is subject to the general prohibitions in Section 4A against activities that tend to reflect adversely on impartiality, demean the judicial office, or interfere with the proper performance of judicial duties. Such participation is also subject to the general prohibition in Canon 2 against activities involving impropriety or the appearance of impropriety and the prohibition in Section 2B against the misuse of the prestige of judicial office. In addition, a judge must maintain high standards of conduct in all of the judge's activities, as set forth in Canon 1. See Commentary for Section 4B regarding use of the phrase "subject to the requirements of this Code."

- (2) A judge may, subject to the requirements of this Code, hold and manage investments of the judge and members of the judge's family,* including real estate, and engage in other remunerative activity.

Commentary:

This Section provides that, subject to the requirements of this Code, a judge may hold and manage investments owned solely by the judge, investments owned solely by a member or members of the judge's family, and investments owned jointly by the judge and members of the judge's family.

- (3) A judge shall not serve as an officer, director, manager, general partner, advisor or employee of any business entity except that a judge may, subject to the requirements of this Code, manage and participate in:
 - (a) a business closely held by the judge or members of the judge's family,* or
 - (b) a business entity primarily engaged in investment of the financial resources of the judge or members of the judge's family.

Commentary:

Subject to the requirements of this Code, a judge may participate in a business that is closely held either by the judge alone, by members of the judge's family, or by the judge and members of the judge's family.

Although participation by a judge in a closely-held family business might otherwise be permitted by Section 4D(3), a judge may be prohibited from participation by other provisions of this Code when, for example, the business entity frequently appears before the judge's court or the participation requires significant time away from judicial duties. Similarly, a judge must avoid participating in a closely-held family business if the judge's participation would involve misuse of the prestige of judicial office.

- (4) A judge shall manage the judge's investments and other financial interests to minimize the number of cases in which the judge is disqualified. As soon as the judge can do so without serious financial detriment, the judge shall divest himself or herself of investments and other financial interests that might require frequent disqualification.
- (5) A judge shall not accept, and shall urge members of the judge's family residing in the judge's household,* not to accept, a gift, bequest, favor or loan from anyone

except for:

Commentary:

Section 4D(5) does not apply to contributions to a judge's campaign for judicial office, a matter governed by Canon 5.

Because a gift, bequest, favor or loan to a member of the judge's family residing in the judge's household might be viewed as intended to influence the judge, a judge must inform those family members of the relevant ethical constraints upon the judge in this regard and discourage those family members from violating them. A judge cannot, however, reasonably be expected to know or control all of the financial or business activities of all family members residing in the judge's household.

- (a) a gift incident to a public testimonial, books, tapes and other resource materials supplied by publishers on a complimentary basis for official use, or an invitation to the judge and the judge's spouse or guest to attend a bar-related function or an activity devoted to the improvement of the law,* the legal system or the administration of justice;

Commentary:

Acceptance of an invitation to a law-related function is governed by Section 4D(5)(a); acceptance of an invitation paid for by an individual lawyer or group of lawyers is governed by Section 4D(5)(h).

A judge may accept a public testimonial or a gift incident thereto only if the donor organization is not an organization whose members comprise or frequently represent the same side in litigation, and the testimonial and gift are otherwise in compliance with other provisions of this Code. See Sections 4A(1) and 2B.

- (b) a gift, award or benefit incident to the business, profession or other separate activity of a spouse or other family member of a judge residing in the judge's household, including gifts, awards and benefits for the use of both the spouse or other family member and the judge (as spouse or family member), provided the gift, award or benefit could not reasonably be perceived as intended to influence the judge in the performance of judicial duties and is reported if its value exceeds \$150;
- (c) ordinary social hospitality;
- (d) a gift from a relative or friend, for a special occasion, such as a wedding, anniversary or birthday, if the gift is fairly commensurate with the occasion and the relationship.

Commentary:

A gift to a judge, or to a member of the judge's family living in the judge's household, that is excessive in

value raises questions about the judge's impartiality and the integrity of the judicial office and might require disqualification of the judge where disqualification would not otherwise be required. See, however, Section 4D(5)(e).

- (e) a gift, bequest, favor or loan from a relative or close personal friend whose appearance or interest in a case would in any event require disqualification under Section 3E;
- (f) a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges;
- (g) a scholarship or fellowship awarded on the same terms and based on the same criteria applied to other applicants; or
- (h) any other gift, bequest, or favor to the judge, the judge's spouse, dependent children, or dependent step children, only if: the donor is not a party or other person who has come or is likely to come or whose interests have come or are likely to come before the judge; and, if its value exceeds \$150, the judge reports it in the same manner as the judge reports a gift.

Commentary:

Section 4D(5)(h) prohibits judges from accepting gifts, favors, or bequests from lawyers or their firms if they have come or are likely to come before the judge; it also prohibits gifts, favors, or bequests from clients of lawyers or their firms when the clients' interests have come or are likely to come before the judge.

[History: Am. 4D(5)(b) and (h) effective January 1, 2002; Am. 4D(5)(h) effective September 11, 2002.]

E. Fiduciary Activities.

- (1) A judge shall not serve as executor, administrator or other personal representative, trustee, guardian, attorney in fact or other fiduciary,* except for the estate, trust or person of a member of the judge's family,* and then only if such service will not interfere with the proper performance of judicial duties.
- (2) A judge shall not serve as a fiduciary* if it is likely that the judge as a fiduciary will be engaged in proceedings that would ordinarily come before the judge, or if the estate, trust or ward becomes involved in adversary proceedings in the court on which the judge serves or one under its appellate jurisdiction.
- (3) The same restrictions on financial activities that apply to a judge personally also apply to the judge while acting in a fiduciary* capacity.

Commentary:

The Time for Compliance provision of this Code (Application, Section F) postpones the time for compliance with certain provisions of this Section in some cases.

The restrictions imposed by this Canon may conflict with the judge's obligation as a fiduciary. For example, a judge should resign as trustee if detriment to the trust would result from divestiture of holdings the retention of which would place the judge in violation of Section 4D(4).

F. Service as Arbitrator or Mediator. A judge shall not act as an arbitrator or mediator or otherwise perform judicial functions in a private capacity unless expressly authorized by law.*

Commentary:

Section 4F does not prohibit a judge from participating in arbitration, mediation or settlement conferences performed as part of judicial duties.

G. Practice of Law. A judge shall not practice law. Notwithstanding this prohibition, a judge may act pro se and may, without compensation, give legal advice to and draft or review documents for a member of the judge's family.*

Commentary:

This prohibition refers to the practice of law in a representative capacity and not in a pro se capacity. A judge may act for himself or herself in all legal matters, including matters involving litigation and matters involving appearances before or other dealings with legislative and other governmental bodies. However, in so doing, a judge must not abuse the prestige of office to advance the interests of the judge or the judge's family. See Section 2(B).

The Code allows a judge to give legal advice to and draft legal documents for members of the judge's family, so long as the judge receives no compensation. A judge must not, however, except as authorized under 4E(1), act as an advocate or negotiator for a member of the judge's family in a legal matter.

H. Annual Reporting of Compensation, Fees and Commissions, Ownership Interests, Expense Reimbursement, Positions, and Liabilities. A judge may receive compensation, fees and commissions, and reimbursement of expenses for the quasi-judicial and extra-judicial activities permitted by this Code, if the source of such payments does not give the appearance of influencing the judge in the performance of judicial duties or otherwise give the appearance of impropriety, subject to the restrictions set out below. Ownership interests, positions, and liabilities are reportable as set out below.

- (1) **Compensation.** Compensation should not exceed a reasonable amount nor should it exceed what a person who is not a judge would receive for the same activity. Reportable compensation means income received for the personal services of the judge in an amount in excess of \$500 from any single payor or in excess of \$3,000 from all payors during the reporting period; income received for the personal services of the judge's spouse in an amount in excess of \$3,000 from a single source during the reporting period; and income derived from business; royalties, including ownership of mineral rights; annuities; life insurance and contract payments.
- (2) **Fees and Commissions.** A judge shall report each client or customer who pays fees or commissions to a business or combination of businesses from which fees or

commissions the judge or the judge's spouse received an aggregate in excess of \$3,000 during the reporting period. The phrase "client or customer" relates only to businesses or combination of businesses. The term "business" means any corporation, association, partnership, proprietorship, trust, joint venture, or a governmental agency unit, or a governmental subdivision, and every other business interest, including ownership or use of land for income. The term "combination of businesses" means any two or more businesses owned or controlled directly by the same interests. The term "other business interest" means any endeavor which produces income, including appraisals, consulting, authorships, inventing or the sale of goods and services.

- (3) **Ownership Interests.** A judge shall report any corporation, partnership, proprietorship, trust, retirement plan, joint venture, and every other business interest, including land used for income, in which either the judge or the judge's spouse, dependent children, or dependent step children have owned a legal or equitable interest exceeding \$5,000 during the reporting period.
- (4) **Expense Reimbursement.** Expense reimbursement should be limited to the actual cost of travel, food, and lodging reasonably incurred by the judge and, where appropriate to the occasion, by the judge's spouse. Any payment in excess of such an amount is compensation, except that travel expenses or subsistence allowances paid by the state or any political subdivision are not compensation.
- (5) **Positions.** A judge shall report any business, organization, labor organization, educational or other institution or entity in which the judge now holds or has held a position of officer, director, associate, partner, proprietor, trustee, guardian, custodian, or similar fiduciary, representative, employee, or consultant at the time of filing this report or during the reporting period.
- (6) **Liabilities.** A judge shall report all of the judge's, the judge's spouse's, dependent children's, and dependent step children's liabilities to any creditor which exceeded \$10,000 at any time during the reporting period except for any liability owed to a spouse, parent, brother, sister, or child; any mortgage secured by real property which is a personal residence of the judge or the judge's spouse; any loan secured by a personal motor vehicle, household furniture, or appliances that does not exceed the purchase price of the item securing the liability; any revolving charge account, the balance of which did not exceed \$10,000 at the close of the reporting period; and political campaign funds.
- (7) **Public Reports.** A judge shall report annually the information listed in Canon 4D(5)(b), (h) and 4H(1) - (6) on a form provided by the Commission on Judicial Qualifications. The judge's report for the preceding calendar year shall be filed as a public document in the office of the Clerk of the Appellate Courts on or before April 15 of each year.

Commentary:

See Section 4D(5) regarding reporting of gifts, bequests and loans.

The Code does not prohibit a judge from accepting honoraria or speaking fees provided that the compensation is reasonable and commensurate with the task performed. A judge should ensure, however, that no conflicts are created by the arrangement. A judge must not appear to trade on the judicial position for personal advantage. Nor should a judge spend significant time away from court duties to meet speaking or writing commitments for compensation. In addition, the source of the payment must not raise any question of undue influence or the judge's ability or willingness to be impartial.

[History: Am. H. effective January 1, 2002.]

I. Disclosure of a judge's income, debts, investments or other assets is required only to the extent provided in this Canon and in Sections 3E and 3F, or as otherwise required by law.*

Commentary:

Section 3E requires a judge to disqualify himself or herself in any proceeding in which the judge has an economic interest. See "economic interest" as explained in the Terminology Section. Section 4D requires a judge to refrain from engaging in business and from financial activities that might interfere with the impartial performance of judicial duties; Section 4H requires a judge to report all compensation the judge received for activities outside judicial office. A judge has the rights of any other citizen, including the right to privacy of the judge's financial affairs, except to the extent that limitations established by law are required to safeguard the proper performance of the judge's duties.

Case Annotations

1. Judge found to have violated Canons 1, 2, and 4A(2) of the Code of Judicial Conduct; Commission assigned panel to conduct investigation per Rule 609; since respondent failed to file exceptions, the Commission's findings and conclusions are conclusive per Rule 623; removal from office per Rule 620(a). *In re Robertson*, 280 Kan 266, 120 P.3d 790 (2005).

CANON 5

**A Judge or Judicial Candidate Shall Refrain From
Inappropriate Political Activity**

A. All Judges and Candidates.

- (1) Except as authorized in Sections 5B(2), 5C(1), 5C(3), and 5C(4), a judge or a candidate* for election or appointment to judicial office shall not:
 - (a) act as a leader or hold an office in a political organization*;
 - (b) publicly endorse or publicly oppose another candidate for public office;
 - (c) make speeches on behalf of a political organization;
 - (d) attend political gatherings; or

- (e) solicit funds for, pay an assessment to or make a contribution to a political organization or candidate, or purchase tickets for political party dinners or other functions.

Commentary:

A judge or candidate for judicial office retains the right to participate in the political process as a voter.

Where false information concerning a judicial candidate is made public, a judge or another judicial candidate having knowledge of the facts is not prohibited by Section 5A(1) from making the facts public.

Section 5A(1)(a) does not prohibit a candidate for elective judicial office from retaining during candidacy a public office such as county prosecutor, which is not "an office in a political organization."

Section 5A(1)(b) does not prohibit a judge or judicial candidate from privately expressing his or her views on judicial candidates or other candidates for public office.

A candidate does not publicly endorse another candidate for public office by having that candidate's name on the same ticket.

- (2) A judge shall resign from judicial office upon becoming a candidate* for a nonjudicial office either in a primary or in a general election, or upon election or appointment to fill a vacancy in an elective nonjudicial office.

Commentary:

A judge must resign to run for nonjudicial office and cannot hold judicial office while holding an elective nonjudicial office, whether the nonjudicial office is held by election or by appointment.

- (3) A candidate* for a judicial office:
 - (a) shall maintain the dignity appropriate to judicial office, and act in a manner consistent with the integrity and independence of the judiciary, and shall act in a manner that promotes public confidence in the integrity and impartiality of the judiciary, and shall encourage members of the candidate's family to adhere to the same standards of political conduct in support of the candidate that apply to the candidate;

Commentary:

Although a judicial candidate must encourage members of his or her family to adhere to the same standards of political conduct in support of the candidate that apply to the candidate, family members are free to participate in other political activity.

- (b) shall prohibit employees and officials who serve at the pleasure of the candidate, and shall discourage other employees and officials subject to the

candidate's direction and control from doing on the candidate's behalf what the candidate is prohibited from doing under the Sections of this Canon;

- (c) except to the extent permitted by Section 5C(2), shall not authorize or knowingly* permit any other person to do for the candidate what the candidate is prohibited from doing under the Sections of this Canon;
- (d) shall not:
 - (i) ~~make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office;~~
 - (ii) ~~make statements that commit or appear to commit the candidate with respect to cases, controversies or issues that are likely to come before the court; or~~
 - (iii) knowingly misrepresent the identity, qualifications, present position or other fact concerning the candidate or an opponent;

Commentary:

Section 5A(3)(d) prohibits a candidate for judicial office from making statements that appear to commit the candidate regarding cases, controversies or issues likely to come before the court. As a corollary, a candidate should emphasize in any public statement the candidate's duty to uphold the law regardless of his or her personal views. See also Section 3B(9), the general rule on public comment by judges. Section 5A(3)(d) does not prohibit a candidate from making pledges or promises respecting improvements in court administration. Nor does this Section prohibit an incumbent judge from making private statements to other judges or court personnel in the performance of judicial duties. This Section applies to any statement made in the process of securing judicial office, such as statements to commissions charged with judicial selection and tenure and legislative bodies confirming appointment. See also Rule 8.2(b) of the Kansas Rules of Professional Conduct (KRPC 8.2[b] [2007 Kan. Ct. R. Annot. 557]).

- (e) may respond to personal attacks or attacks on the candidate's record as long as the response does not violate Section 5A(3)(d).

B. Candidates Seeking Appointment to Judicial or Other Governmental Office.

- (1) A candidate* for appointment to judicial office or a judge seeking other governmental office shall not solicit or accept funds, personally or through a committee or otherwise, to support his or her candidacy.
- (2) A candidate* for appointment to judicial office or a judge seeking other governmental office shall not engage in any political activity to secure the appointment except that:
 - (a) such persons may:

- (i) communicate with the appointing authority, including any selection or nominating commission or other agency designated to screen candidates;
 - (ii) seek support or endorsement for the appointment from organizations that regularly make recommendations for reappointment or appointment to the office, and from individuals to the extent requested or required by those specified in Section 5B(2)(a); and
 - (iii) provide to those specified in Sections 5B(2)(a)(i) and 5B(2)(a)(ii) information as to his or her qualifications for the office;
- (b) a nonjudge candidate* for appointment to judicial office may, in addition, unless otherwise prohibited by law*:
- (i) retain an office in a political organization,*
 - (ii) attend political gatherings, and
 - (iii) continue to pay ordinary assessments and ordinary contributions to a political organization or candidate and purchase tickets for political party dinners or other functions.

Commentary:

Section 5B(2) provides a limited exception to the restrictions imposed by Sections 5A(1) and 5D. Under Section 5B(2), candidates seeking reappointment to the same judicial office or appointment to another judicial office or other governmental office may apply for the appointment and seek appropriate support.

Although under Section 5B(2) nonjudge candidates seeking appointment to judicial office are permitted during candidacy to retain office in a political organization, attend political gatherings and pay ordinary dues and assessments, they remain subject to other provisions of this Code during candidacy. See Sections 5B(1), 5B(2)(a), 5E and Application Section.

C. Judges and Candidates Subject to Public Election.

- (1) A judge or a candidate* subject to public election* may, except as prohibited by law*:
- (a) at any time
 - (i) purchase tickets for and attend political gatherings;
 - (ii) identify himself or herself as a member of a political party; and

- (iii) contribute to a political organization*;
- (b) when a candidate for election
 - (i) speak to gatherings on his or her own behalf;
 - (ii) appear in newspaper, television and other media advertisements supporting his or her candidacy;
 - (iii) distribute pamphlets and other promotional campaign literature supporting his or her candidacy; and
 - (iv) publicly endorse or publicly oppose other candidates for the same judicial office in a public election in which the judge or judicial candidate is running.

Commentary:

Section 5C(1) permits judges subject to election at any time to be involved in limited political activity. Section 5D, applicable solely to incumbent judges, would otherwise bar this activity.

- (2) A candidate* shall not personally solicit or accept campaign contributions ~~or solicit publicly stated support~~ nor shall a candidate serve as his or her own campaign treasurer. A candidate subject to public election* may, however, establish committees of responsible persons to solicit and accept reasonable campaign contributions, to manage the expenditure of funds for the candidate's campaign ~~and to obtain public statements of support for his or her candidacy~~. Such committees may solicit and accept reasonable campaign contributions ~~and public support~~ from lawyers. A candidate's committees may solicit contributions ~~and public support~~ for the candidate's campaign no earlier than one year before an election and no later than 90 days after the last election in which the candidate participates during the election year. A candidate shall not use or permit the use of campaign contributions for the private benefit of the candidate or others.

Commentary:

Section 5C(2) permits a candidate subject to public election to establish campaign committees to solicit and accept public support and reasonable financial contributions. At the start of the campaign, the candidate must instruct his or her campaign committees to solicit or accept only contributions that are reasonable under the circumstances. Though not prohibited, campaign contributions of which a judge has knowledge, made by lawyers or others who appear before the judge, may be relevant to disqualification under Section 3E.

Campaign committees established under Section 5C(2) should manage campaign finances responsibly avoiding deficits that might necessitate post-election fund-raising, to the extent possible.

Section 5C(2) does not prohibit a candidate from initiating an evaluation by a judicial selection commission or bar association, or, subject to the requirements of this Code, from responding to a request for information from any

organization.

- (3) Except as prohibited by law,* a candidate* for judicial office in a public election* may permit the candidate's name: (a) to be listed on election materials along with the names of other candidates for elective public office, and (b) to appear in promotions of the ticket.

Commentary:

Section 5C(3) provides a limited exception to the restrictions imposed by Section 5A(1).

- (4) An incumbent judge who is a candidate for retention in office without a competing candidate and whose candidacy has drawn active opposition may campaign in response thereto in the manner provided in Section 5C(1)(b)(i), (ii), and (iii) and may obtain publicly stated support and campaign funds in the manner provided in Section 5C(2). An incumbent judge may, however, establish a committee in a manner and for purposes consistent with Section 5C(2) no earlier than 12 months prior to the election, but funds may not be expended (except for production of campaign materials) nor may statements in support or such materials be disseminated by said committee unless and until such candidate has drawn active opposition. For purposes of K.S.A. 25-4157, a committee formed under this provision shall be deemed terminated 60 days after the election.

D. Incumbent Judges. A judge shall not engage in any political activity except (i) as authorized under any other Section of this Code, (ii) on behalf of measures to improve the law,* the legal system or the administration of justice, or (iii) as expressly authorized by law.

Commentary:

Neither Section 5D nor any other section of the Code prohibits a judge in the exercise of administrative functions from engaging in planning and other official activities with members of the executive and legislative branches of government. With respect to a judge's activity on behalf of measures to improve the law, the legal system and the administration of justice, see Commentary to Section 4B and Section 4C(1) and its Commentary.

E. Applicability. Canon 5 generally applies to all incumbent judges and judicial candidates.* A successful candidate, whether or not an incumbent, is subject to judicial discipline for his or her campaign conduct; an unsuccessful candidate who is a lawyer is subject to lawyer discipline for his or her campaign conduct. A lawyer who is a candidate for judicial office is subject to Rule 8.2(b) of the Kansas Rules of Professional Conduct (2006 Kan. Ct. R. Annot. 508).

[**History:** Am. effective July 15, 1996; Am. 5C(2) effective February 17, 2005; Am. 5A(2) effective September 6, 2005; Am. 5C(4) effective January 30, 2006.]

APPLICATION OF THE CODE OF JUDICIAL CONDUCT

A. Anyone, whether or not a lawyer, who is an officer of the judicial system, is a judge within the meaning of this Code. Judge is defined as: "Any judicial officer who performs the functions of a judge in the courts of this state including Kansas Supreme Court Justices, Court of Appeals Judges, District Judges, District Magistrate Judges, and Municipal Court Judges. Where applicable, the term "judge" also contemplates Masters, Referees, Temporary Judges, *Pro Tempore* Judges, Part-time Judges, and Commissioners if they perform any functions of a judge in any court of this state." All judges shall comply with this Code except as provided below.

Commentary:

The four categories of judicial service in other than a full-time capacity are necessarily defined in general terms because of the widely varying forms of judicial service. For the purposes of this Section, as long as a retired judge is subject to recall, the judge is considered to "perform judicial functions." The determination of which category and, accordingly, which specific Code provisions apply to an individual judicial officer, depend upon the facts of the particular judicial service.

B. Retired Judge. A retired judge who accepts judicial assignments is not required to comply at any time with Sections 4E, 4F, 4G, and 4H.

C. Part-time Judge. A part-time judge:

- (1) is not required to comply:
 - (a) with Section 3B(9), except while serving as a judge;
 - (b) at any time with Sections 4C(2), 4C(3), 4D(1)(b), 4D(3), 4D(4), 4E, 4F, 4G, 5A(1), 5B(2) and 5D.
 - (c) with Sections 4D(5) and 4H, unless the judge derives at least \$15,000 of his or her annual income from the performance of judicial duties.
- (2) shall not practice law of the type which the judge is assigned to hear in the court on which the judge serves and shall not act as a lawyer in a proceeding in which the judge has served as a judge or in any other proceeding related thereto.

Commentary:

When a person who has been a part-time judge is no longer a part-time judge (no longer accepts appointments), that person may act as a lawyer in a proceeding in which he or she has served as a judge or in any other proceeding related thereto only with the express consent of all parties pursuant to Rule 1.12(a) of the Kansas Rules of Professional Conduct (KRPC 1.12[a] [2007 Kan. Ct. R. Annot. 466]).

D. Pro Tempore Part-time Judge. A pro tempore part-time judge*:

- (1) is not required to comply:
 - (a) except while serving as a judge, with Sections 2A, 2B, 3B(9) and

4C(1);

(b) at any time with Sections 4C(2), 4C(3), 4D(1)(b), 4D(3), 4D(4), 4E, 4F, 4G, 5A(1), 5A(2), 5B(2) and 5D.

(c) with Sections 4D(5) and 4H, unless the judge derives at least \$15,000 of his or her annual income from the performance of judicial duties.

(2) shall not appear as a lawyer in the court or specialized division to which the judge is assigned during such service.

(3) shall not act as a lawyer in a proceeding in which the judge has served as a judge or in any other proceeding related thereto except as otherwise permitted by Rule 1.12(a) of the Kansas Rules of Professional Conduct (2007 Kan. Ct. R. Annot. 466).

E. Time for Compliance. A person to whom this Code becomes applicable shall comply immediately with all provisions of this Code except Sections 4D(2), 4D(3), and 4E and shall comply with these Sections as soon as reasonably possible and shall do so in any event within the period of one year.

Commentary:

If serving as a fiduciary when selected as judge, a new judge may, notwithstanding the prohibitions in Section 4E, continue to serve as fiduciary but only for that period of time necessary to avoid serious adverse consequences to the beneficiary of the fiduciary relationship and in no event longer than one year. Similarly, if engaged at the time of judicial selection in a business activity, a new judge may, notwithstanding the prohibitions in Section 4D(3), continue in that activity for a reasonable period but in no event longer than one year.

[**History:** New rule adopted effective June 1, 1995; Am. effective July 15, 1996; Am. effective January 1, 2002.]

Rule 602

COMMISSION ON JUDICIAL QUALIFICATIONS

(a) Under the authority granted by Article 3, Section 15, of the Constitution of the State of Kansas, and in the exercise of the inherent power of the Supreme Court, there is hereby created a commission to be known as the Commission on Judicial Qualifications which, subject to direction and approval of this court, shall assist the court in the exercise of its responsibility in judicial disciplinary matters.

(b) The commission shall consist of fourteen members, including six active or retired

judges, four non-lawyers, and four lawyers to be appointed by the Supreme Court. Initial terms of the members appointed to the expanded commission shall be as follows:

- For a one-year term: 1 lawyer, 1 non-lawyer
- For a two-year term: 1 judge
- For a three-year term: 1 non-lawyer
- For a four-year term: 1 judge

At the conclusion of the initial terms members shall be appointed for four-year terms.

(c) A vacancy shall occur upon the death or resignation of a member, or when the qualifications for the appointment of any member are no longer met. Vacancies shall be filled by the Supreme Court.

(d) The commission shall meet each January to select a chair and vice-chair, each of whom shall serve for a term of one year and until a successor is elected. At the initial meeting of the expanded commission, the chairs shall divide the commission into two seven-person panels, one to be designated Panel A and the other Panel B. Each panel shall consist of three judges, two non-lawyers and two lawyers. The chair of the commission shall chair Panel A and the vice-chair of the commission shall chair Panel B. Each panel shall elect a second vice-chair, who shall serve for a term of one year and until a successor is elected.

(e) A quorum for the transaction of business by a panel shall be four members. A quorum for the transaction of business by the commission shall be nine members.

(f) The entire commission shall meet upon call by the Supreme Court or by the chair of a panel of the commission or in accordance with rules of the commission. If there are matters to consider, each panel of the commission shall meet every other month, alternating such meetings with the other panel. Hearing panels shall meet as needed to conduct formal hearings.

(g) If the commission anticipates difficulty in discharging its responsibilities due to the disqualification or unavailability of its members, the Supreme Court, upon request of the chair or vice-chair of the commission, may appoint temporary commission members to serve as specified.

(h) The second vice-chairs shall perform all of the duties and exercise the authority of chair or vice-chair, in their absence.

[**History:** Am. effective December 21, 1977; Am. effective January 8, 1979; Am. effective May 1, 1999; Am. (e) effective May 24, 2001.]

Case Annotations

1. Jurisdiction of commission under this rule cumulative with statutory methods for removal of magistrate judge. *In re Rome*, 218 Kan. 198, 542 P.2d 676 (1975).
2. Composition of commission is noted. *In re Alvord*, 252 Kan. 705, 847 P.2d 1310 (1993).
3. Dissent contends judicial misconduct should be dealt with pursuant to Rule 602 by filing a complaint with

the Commission on Judicial Qualifications instead of reversing defendant's conviction for new trial. *State v. Hayden*, 281 Kan. 112, 130 P.3d 24 (2006).

Rule 603
SECRETARY OF THE COMMISSION AND PANELS

The clerk of the Supreme Court shall serve as secretary of the commission and of each panel. The secretary shall not be a member of the commission or a panel. The secretary shall act as the custodian of the official files and records of the commission and panels and shall perform such other ministerial functions as the commission or panel shall direct. All papers and pleadings shall be filed with the secretary of the commission.

[**History:** Am. effective May 1, 1999.]

Rule 604
DEFINITIONS

In these rules, unless the context or subject matter otherwise requires:

- (a) "Commission" means Commission on Judicial Qualifications.
- (b) "Judge" means any judicial officer who performs the functions of a judge in the courts of this state including Kansas Supreme Court Justices, Court of Appeals Judges, District Judges, District Magistrate Judges, Municipal Court Judges, and Retired Judges accepting judicial appointments. Where applicable, the term "judge" contemplates Masters, Referees, Temporary Judges, Pro Tempore Judges, Part-time Judges, and Commissioners if they perform any functions of a judge in any court of this state. The term "judge" also includes a candidate for judicial office; a candidate is a person seeking selection for or retention in judicial office by election or appointment.
- (c) "Examiner" means counsel designated by a panel or the commission to make or supervise the making of an investigation and the gathering of evidence, and to present evidence to the commission, a panel, or other tribunals.
- (d) "Panel" means the panel whose members are used to constitute either the initial review and investigation panel or the hearing panel that then conducts the formal proceedings to inquire into charges against a judge.
- (e) "Allocation process" means the process to be established by the commission to be used to assign a complaint to a panel that shall then conduct the initial review and investigation without any involvement or knowledge of the other panel which shall conduct any formal proceedings to inquire into charges against a judge.

[**History:** Am. effective December 21, 1977; Previously Rule 605, Am. effective January 8, 1979; (b) Am. effective May 11, 1995; Am. effective May 1, 1999.]

Law Review and Bar Journal References

1. Six, *A Judge's Conduct: The Kansas Commission on Judicial Qualifications*, 48 J.K.B.A. 237 (1979).

Rule 605

POWERS OF COMMISSION

In addition to powers expressly granted by these rules, the commission shall have all powers necessary to institute, conduct and dispose of proceedings hereunder.

(a) The chair, vice-chair, second vice-chairs, secretary, or any member of the commission, acting under these rules, may administer oaths and affirmations and, subject to the rules of civil procedure, compel by subpoena the attendance of witnesses and the production of pertinent books, papers and documents. A respondent may, subject to the rules of civil procedure, compel by subpoena the attendance of witnesses and the production of pertinent books, papers and documents after formal disciplinary proceedings are instituted. Subpoenas shall clearly indicate that they are issued in connection with a confidential investigation under these rules, and a breach of the confidentiality of the investigation by the person subpoenaed constitutes contempt of the Supreme Court. A person subpoenaed may consult with his or her attorney without committing a breach of confidentiality.

(b) All subpoenas in connection with proceedings hereunder shall be issued by and returned to the secretary of the commission.

(c) A judge of the district court of any judicial district in which the attendance or production is required shall, upon proper application, enforce the attendance and testimony of any witness and the production of any documents subpoenaed. Subpoena and witness fees and mileage shall be the same as in the district court.

(d) The examiner in making investigations under these rules is authorized to administer oaths. He or she may request the issuance of subpoenas by the secretary.

(e) Upon request, the examiner shall disclose to the respondent or his or her attorney all statements, including those in writing and stenographically or electronically taken, the names and addresses of all prospective witnesses, and the identity of all documents the examiner proposes to use in a proceeding under these rules.

(f) Depositions, including the deposition of the respondent, may be allowed as provided by the code of civil procedure. Any question arising during the taking or using of a deposition shall be referred to and ruled upon by the person chairing the panel before which the complaint is pending.

(g) The subpoena and deposition procedures shall be subject to the protective requirements of confidentiality provided in Rule 607.

(h) The commission on its own motion or upon the request of the Supreme Court shall study and recommend changes in either the Code of Judicial Conduct or these rules. [History: Previously Rule 604, Am. effective January 8, 1979; Am. effective May 1, 1999; Am. effective July 14, 2000.]

Law Review and Bar Journal References

1. Six, *A Judge's Conduct: The Kansas Commission on Judicial Qualifications*, 48 J.K.B.A. 237 (1979).

Rule 605A

POWERS OF HEARING PANEL

In addition to powers expressly granted by these rules, a hearing panel that is conducting formal hearings shall have all powers necessary to institute, conduct and dispose of proceedings hereunder.

(a) The person chairing a hearing panel, acting under these rules, may administer oaths and affirmations and, subject to the rules of civil procedure, compel by subpoena the attendance of witnesses and the production of pertinent books, papers and documents. A respondent may, subject to the rules of civil procedure, compel by subpoena the attendance of witnesses and the production of pertinent books, papers and documents after formal disciplinary proceedings are instituted.

(b) A judge of the district court of any judicial district in which the attendance or production is required shall, upon proper application, enforce the attendance and testimony of any witness and the production of documents subpoenaed. Subpoena and witness fees and mileage shall be the same as in the district court.

(c) At the discretion of the person chairing a hearing panel, a prehearing conference may be ordered for the purpose of obtaining admissions or otherwise narrowing the issues presented by the pleadings. The conference may be held before the person chairing the hearing panel or any other member designated by its chair. A record shall be made reciting the action taken.

(d) Depositions may be allowed as provided by the code of civil procedure. Any question arising during the taking or using of a deposition shall be referred to and ruled on by the person chairing the panel or designated hearing panel member.

[History: New rule effective May 1, 1999.]

Rule 606

DISQUALIFICATION/ RECUSAL

(a) A judge who is a member of the commission or of the Supreme Court shall be disqualified from participation as a member in any proceedings involving his or her own discipline, suspension, removal or compulsory retirement.

(b) A judge who is the subject of a complaint may file a written motion to disqualify a member of a panel, stating with particularity the grounds for disqualification. If formal proceedings have been commenced, a motion to disqualify must be filed no later than twenty days after mailing of the formal complaint. The panel member may, within ten days after a motion to disqualify is filed, file a response thereto. A motion to disqualify shall be determined by majority vote of the panel if the member does not voluntarily recuse. The panel member whose disqualification is requested shall not be eligible to vote on the motion for his or her disqualification. Any member of the commission or of a panel may voluntarily recuse at any time. [History: Am. effective May 1, 1999.]

Rule 607 CONFIDENTIALITY

(a) All complaints, investigations, reports, correspondence, proceedings, and records of the commission shall be private and confidential, and shall not be divulged in whole or in part to the public except as provided in these rules or by order of the court. This rule of confidentiality, however, shall not apply to a written notice of formal proceedings issued pursuant to Rule 611(b), or to any document filed with or issued by the commission thereafter, or to any hearing held before the hearing panel pursuant to Rules 614 and 619.

(b) The rule of confidentiality shall not apply to the complainant or to the respondent.

(c) The rule of confidentiality shall not apply to any information which the commission or a panel considers to be relevant to any current or future criminal prosecution or ouster proceedings against the judge.

(d) The commission or a panel is authorized in its discretion, to disclose relevant information and to submit all or any part of its files to the Disciplinary Administrator for his or her use and consideration in investigating or prosecuting alleged violations of the Supreme Court Rules Relating to Discipline of Attorneys.

(e) The commission or a panel is authorized, in its discretion, to disclose relevant information and to submit all or any part of its files to the Impaired Judges Assistance Committee.

(f) The commission or a panel is authorized, in its discretion, to disclose to the Supreme Court Nominating Commission, District Judicial Nominating Commissions, and to the Governor, all or any part of its file involving any prospective nominee for judicial appointment; and the commission or a panel is authorized, in its discretion, to make public all or any part of its files involving any candidate for election to or retention in judicial office.

[History: Am. effective January 8, 1979; Am. effective September 16, 1992; Am. effective May 11, 1995; Am. effective May 1, 1999; Am. (b) effective March 12, 2004.]

Law Review and Bar Journal References

1. Six, *A Judge's Conduct: The Kansas Commission on Judicial Qualifications*, 48 J.K.B.A. 237 (1979).

Rule 608
IMMUNITY

Complaints, reports, or testimony in the course of proceedings under these rules shall be deemed to be made in the course of judicial proceedings. Commission counsel and members of the commission, commission staff, either panel and panel staff shall be absolutely immune from suit for all conduct in the course of their official duties. All other participants shall be entitled to all rights, privileges, and immunities afforded to participants in actions filed in the courts of this state.

[**History:** Am. effective January 8, 1979; Am. effective May 1, 1999.]

Rule 609
INVESTIGATION

An investigation by or under the direction of the examiner shall be made before formal proceedings are instituted. Such investigation may be made on a panel's own motion, and shall be made when a panel has received a complaint indicating that a judge has failed to comply with the Code of Judicial Conduct or has a disability that seriously interferes with the performance of judicial duties. The judge shall be contacted during the investigation, and shall be advised informally that an investigation is being made, and the subject thereof. A judge shall cooperate with the commission or a hearing panel. A judge shall, within such reasonable time as the commission or hearing panel may require, respond to any inquiry concerning the conduct of the judge. The failure or refusal of the judge to respond may be considered a failure to cooperate.

The failure or refusal of a judge to cooperate in an investigation, or the use of dilatory practices, frivolous or unfounded responses or argument, or other uncooperative behavior may be considered a violation of Canon 1 of the Code of Judicial Conduct.

[**History:** Previously Rules 609-610, Am. effective January 8, 1979; Am. effective May 1, 1999; Am. effective July 14, 2000.]

Case Annotations

1. Judge found to have violated Canons 1, 2, and 4A(2) of the Code of Judicial Conduct; Commission assigned panel to conduct investigation per Rule 609; since respondent failed to file exceptions, the Commission's findings and conclusions are conclusive per Rule 623; removal from office per Rule 620(a). *In re Robertson*, 280 Kan 266, 120 P.3d 790 (2005).

Law Review and Bar Journal References

1. Six, *A Judge's Conduct: The Kansas Commission on Judicial Qualifications*, 48 J.K.B.A. 237 (1979).

Rule 610
DISMISSAL--NOTICE; LETTERS OF CAUTION AND INFORMAL ADVICE

If the investigation does not disclose sufficient cause to warrant further proceedings, the judge and the complaining party, if any, shall be notified, and other interested persons may be notified at the discretion of the panel. The panel may, in its discretion, issue to the judge a letter

of caution or of informal advice with copies to the complaining party or other interested persons as deemed appropriate.

[**History:** Previously Rule 611, Am. effective January 8, 1979; Am. effective July 15, 1996; Am. effective May 1, 1999.]

Rule 611

CEASE AND DESIST--FORMAL PROCEEDINGS

(a) **CEASE AND DESIST.** A panel may, at any stage of the investigation, when there is no factual dispute, issue an order directed to the judge to cease and desist. The judge shall within twenty days after service of the order either: (1) agree to comply by accepting the order by written acknowledgment directed to the secretary of the commission or (2) refuse to accept the order. The order is deemed to have been refused if the panel receives no communication from the judge within twenty days after service of the order. If the judge accepts the order: (1) the complainant and other interested persons may be notified of such order and acceptance at the discretion of the panel or (2) the order may be made public if the text of the order so specifies. If the judge refuses to accept the order, formal proceedings shall be instituted before the other panel.

(b) **FORMAL PROCEEDINGS.** (1) After the investigation has been completed, if a panel concludes formal proceedings should be instituted, or after a judge refuses to accept a cease and desist order, the panel shall forthwith issue a written notice to the judge advising him or her of the filing of a formal complaint and the institution of formal proceedings before the other panel to hear the complaint against the judge. Such notice shall be sent by certified mail, return receipt requested. Such proceeding shall be entitled:

"BEFORE A HEARING PANEL FOR FORMAL JUDICIAL COMPLAINTS
Inquiry Concerning a Judge, No. ___."

(2) The formal complaint shall specify in ordinary language the charges against the judge and the alleged facts upon which such charges are based, and shall advise the judge of his or her right to file a written answer to the charges within twenty days after service of the formal complaint.

(3) Unless service is waived in writing, the judge or the judge's guardian shall be sent a copy of the formal complaint.

[**History:** Previously Rule 612, Am. effective January 8, 1979; Am. effective March 31, 1994; Am. effective May 1, 1999.]

Case Annotations

1. Judge resigned after commission found violations of Canons 1, 2, and 3A(3) and recommended removal from bench per Rule 620. *In re Moroney*, 259 Kan. 636, 914 P.2d 570 (1996).

2. Judge found to have violated Canons 1, 2A, 3B, 3C, 3E, and 3F; by signing the cease and desist order, judge agreed to accept the Commission's conclusions that he violated the Canons per Rule 611; public censure per rule 620. *In re Platt*, 269 Kan. 509, 8 P.3d 686 (2000).

Rule 612
ANSWER

Within twenty days after mailing of the formal complaint, the judge shall file an answer with the hearing panel.

[**History:** Previously Rule 613, Am. effective January 8, 1979; Am. effective May 1, 1999; Am. effective July 14, 2000.]

Rule 613
SETTING FOR HEARING

Upon the filing of an answer or upon the expiration of the time for its filing, the panel shall set a time and place for a hearing and serve notice of the hearing upon the judge, and his or her counsel, stating the date and place of hearing, at least twenty days in advance thereof.

[**History:** Previously Rule 614, Am. effective January 8, 1979; Am. effective May 1, 1999.]

Rule 614
HEARING

(a) At the time and place set for hearing the panel shall proceed with the hearing whether or not the judge has filed an answer or appears at the hearing. The examiner shall present the case in support of the charges in the formal complaint.

(b) The failure of the judge to answer or appear at the hearing shall not be taken as evidence of the truth of the facts alleged to constitute grounds for discipline, suspension, removal or compulsory retirement. The failure of the judge to submit to a medical examination requested by a panel may be considered unless it appears that the failure was due to circumstances beyond the judge's control.

(c) The proceedings at the hearing shall be recorded verbatim.

(d) At the hearing before a hearing panel not less than five members shall be present when evidence is introduced.

[**History:** Previously Rule 615, Am. effective January 8, 1979; Am. effective March 31, 1994; Am. effective May 1, 1999.]

Case Annotations

1. No right to jury trial in judicial discipline case. *In re Rome*, 218 Kan. 198, 542 P.2d 676 (1975).

Rule 615
EVIDENCE

Rules of evidence applicable to civil cases shall apply at formal hearings before a hearing panel.

Procedural and other interlocutory rulings shall be made by the person chairing the panel or his or her designee from the hearing panel, and shall be taken as consented to by the other members unless one or more calls for a vote, in which latter event such ruling shall be made by majority vote of those present.

[**History:** Previously Rule 616, Am. effective January 8, 1979; Am. effective May 1, 1999.]

Case Annotations

1. "Prior term" rule is inappropriate shield in judicial discipline case. *In re Rome*, 218 Kan. 198, 542 P.2d 676 (1975).
2. "Prior term" rule does not bar consideration of events occurring during prior judicial term; retention by voters considered in mitigation; removal from office. *In re Yandell*, 244 Kan. 709, 772 P.2d 807 (1989).

Law Review and Bar Journal References

1. Six, *A Judge's Conduct: The Kansas Commission on Judicial Qualifications*, 48 J.K.B.A. 237 (1979).

Rule 616
PROCEDURAL RIGHTS OF JUDGE

(a) TO OFFER EVIDENCE, COUNSEL, SUBPOENAS. In formal proceedings a judge shall have the right and reasonable opportunity to defend against the charges by the introduction of evidence, to be represented by counsel and to examine and cross-examine witnesses. The judge shall also have the right to the issuance of subpoenas by a hearing panel for the attendance of witnesses or for the production of books, papers and other evidentiary matters.

(b) TRANSCRIPT OF TESTIMONY. The judge at his or her own expense shall have the right, without any order or approval, to be provided a copy of all or any portion of the transcript.

(c) SERVICE. (1) Service upon the judge of the formal complaint shall be made either by personal service or by certified mail return receipt requested as defined by then current postal regulations, at the judge's residence or chambers. Where service of the formal complaint cannot be made by either personal service or certified mail, notice shall be given in the official state paper by publication substantially in its form provided by K.S.A. 60-307.

(2) Service of any other papers or notices required by these rules shall unless otherwise provided be made in accordance with K.S.A. 60-205.

(d) INCOMPETENCY--GUARDIAN *AD LITEM*. If a judge is adjudged an incapacitated person, or if it appears to either the commission or a panel of the commission at any time during the proceedings that the judge is not competent to act, either the commission or a panel of the

commission shall appoint a guardian *ad litem* unless the judge has a guardian who will represent him or her. In the appointment of the guardian *ad litem*, consideration may be given to the wishes of members of the judge's immediate family. The guardian *ad litem* may claim and exercise any right and privilege and make any defense for the judge with the same force and effect as if claimed, exercised or made by the judge if competent. Whenever these rules provide for serving or giving notice or sending any matter to the judge, the notice or matter shall be served, given or sent to the guardian or guardian *ad litem*, if any.

[**History:** Previously Rule 617, Am. effective January 8, 1979; Am. effective May 1, 1999.]

Rule 617

AMENDMENTS TO NOTICE OR ANSWER

A hearing panel at any time prior to its determination may allow or require amendments to the formal complaint and may allow amendments to the answer. The formal complaint may be amended to conform to the proof or to set forth additional facts, whether occurring before or after the commencement of the hearing. In case such amendment is made the judge shall be given reasonable time both to answer the amendment and to prepare and present his or her defense against the matters charged thereby.

[**History:** Previously Rule 618, Am. effective January 8, 1979; Am. effective May 1, 1999.]

Case Annotations

1. Notice of Formal Proceeding amended under rule where testimony at disciplinary hearing revealed other potential violations. *State ex rel. Comm'n on Judicial Qualifications v. Rome*, 229 Kan. 195, 623 P.2d 1307 (1981).

Rule 618

EXTENSION OF TIME

At the request of the respondent judge a hearing panel may extend for periods not to exceed thirty days the time for filing an answer and the commencement of a hearing before a hearing panel. Requests for continuances of the hearing shall be filed at least seven days prior to the date set for hearing.

[**History:** Previously Rule 619, Am. effective January 8, 1979; Am. effective May 1, 1999.]

Rule 619

HEARING ADDITIONAL EVIDENCE

A hearing panel may order a hearing for the taking of additional evidence at any time while the matter is pending before it. The order shall set the time and place of hearing and shall indicate the matters on which the evidence is to be taken. A copy of such order shall be sent to the judge and counsel.

[**History:** Previously Rule 620, Am. effective January 8, 1979; Am. effective May 1, 1999.]

Rule 620
HEARING PANEL DISPOSITION OR RECOMMENDATIONS

(a) If a hearing panel finds the charges proven by clear and convincing evidence it shall (1) admonish the judge, (2) issue an order of cease and desist, or (3) recommend to the Supreme Court the discipline or compulsory retirement of the judge. "Discipline" means public censure, suspension, or removal. The affirmative vote of four members of a hearing panel is required for a finding that the charges have been proven and for a recommendation of discipline or compulsory retirement.

(b) In the absence of a finding that the charges have been proven, or if the charges have been proven but no recommendation is made to the Supreme Court, then the proceedings shall be terminated and the judge and the complainant, if any, shall be notified. Other interested persons may be notified at the discretion of a hearing panel.

[**History:** Previously Rule 621, Am. effective January 8, 1979; Am. effective June 3, 1993; Am. effective May 1, 1999.]

Case Annotations

1. Commission finds charges proven by clear and convincing evidence; recommends removal from office. *State ex rel. Comm'n on Judicial Qualifications v. Rome*, 229 Kan. 195, 623 P.2d 1307 (1981).

2. Supreme Court adopts commission recommendation for magistrate judge's violations of Canons 1 and 2; public censure. *In re Levans*, 242 Kan. 148, 744 P.2d 800 (1987).

3. Commission's findings and conclusions unanimous; two votes for discipline by commission admonishment; public censure. *In re Alvord*, 252 Kan. 705, 847 P.2d 1310 (1993).

4. Judge found to have violated Canons of Judicial Ethics in four of the six complaints filed; Commission, with five or more members voting in the affirmative, recommends public censure by the Supreme Court; dissenting members would discipline by public admonishment by the Commission; public censure. *In re Handy*, 254 Kan. 581, 867 P.2d 341 (1994).

5. Judge resigned after commission found violations of Canons 1, 2, and 3A(3) and recommended removal from bench per Rule 620. *In re Moroney*, 259 Kan. 636, 914 P.2d 570 (1996).

6. Judge found to have violated Canons 1, 2A, 3B, 3C, 3E, and 3F; by signing the cease and desist order, judge agreed to accept the Commission's conclusions that he violated the Canons per Rule 611; public censure per rule 620. *In re Platt*, 269 Kan. 509, 8 P.3d 686 (2000).

7. Judge found to have violated Canons 1, 2A, 2B, and 3C(1), (2), and (4); judge stipulated to evidence; Commission recommends public censure; public censure per Rule 620. *In re Groneman*, 272 Kan. 1345, 38 P.3d 735 (2002).

8. Judge found to have violated Canons 1, 2, and 4A(2) of the Code of Judicial Conduct; Commission assigned panel to conduct investigation per Rule 609; since respondent failed to file exceptions, the Commission's findings and conclusions are conclusive per Rule 623; removal from office per Rule 620(a). *In re Robertson*, 280 Kan 266, 120 P.3d 790 (2005).

Rule 621
TEMPORARY SUSPENSION

A panel of the commission for good cause may also recommend to the Supreme Court that a judge be temporarily suspended from performing judicial duties pending final disposition by the Supreme Court of a hearing panel recommendation for discipline or compulsory retirement. A recommendation for temporary suspension shall require the affirmative vote of four members of a

panel.

[**History:** Previously Rule 622, Am. effective January 8, 1979; Am. effective May 1, 1999.]

Rule 622

RECORD OF HEARING PANEL PROCEEDINGS

A hearing panel shall keep a record of all proceedings concerning the judge and its determination shall be entered therein. In all proceedings resulting in a recommendation to the Supreme Court for discipline or compulsory retirement, a hearing panel shall make written findings of fact, conclusions of law, and recommendations, which shall be filed and docketed by the clerk of the Supreme Court as a case. The complainant, if any, shall be notified; other interested persons may be notified at the discretion of a hearing panel.

[**History:** Previously Rule 623, Am. effective January 8, 1979; Am. effective May 1, 1999.]

Rule 623

PROCEEDINGS BEFORE THE SUPREME COURT

(a) All proceedings filed in the Supreme Court under this rule shall be conducted in the name of the State of Kansas by the examiner, or by special counsel appointed by the court.

(b) Fifteen copies of the hearing panel’s findings of fact, conclusions of law, and recommendations, shall be filed with the clerk of the Supreme Court; thereupon, the matter shall be docketed by the clerk as:

IN THE SUPREME COURT OF THE
STATE OF KANSAS

In re _____,

(Judge's name)

(Judge's judicial title)

No. ____

Original Proceeding
Relating to Judicial Conduct

(c) Upon docketing of the case the clerk shall mail a copy of the findings of fact, conclusions of law, and recommendations to the respondent, and shall issue a citation directing the respondent to file with the clerk either (1) a statement that respondent does not wish to file exceptions to the findings of fact, conclusions of law, and recommendations, (2) a statement that respondent does not wish to file exceptions to the findings of fact and conclusions of law but reserves the right to address the Supreme Court with respect to disposition of the case, or (3) respondent's exceptions thereto. If respondent's address is unknown and a copy of the findings of fact, conclusions of law, recommendations, and citation cannot be served upon him or her, the matter shall stand submitted on the merits upon the filing of a certificate by the clerk disclosing such facts.

(d) If the respondent fails to file exceptions within twenty days after receipt thereof or the respondent files a statement that respondent does not wish to file exceptions, the Supreme Court shall fix a time and place for the imposition of discipline and the clerk shall notify the respondent by certified mail return receipt requested of such time and place. A hearing panel's findings of fact and conclusions of law shall be conclusive and may not be challenged by respondent unless exceptions have been timely filed. The respondent shall appear in person and may be accompanied by counsel and may make a statement with respect to the disposition of the case. Thereafter, the court shall impose such discipline or make such other disposition as may be deemed proper and just.

(e) If the respondent files exceptions the following steps shall be taken:

- (1) The clerk shall immediately cause a transcript of the record of the proceedings before a hearing panel to be prepared and filed and a copy to be served upon respondent. Such transcript shall be part of the record and both the State and respondent may refer thereto in their respective briefs, setting forth with particularity the pages of the transcript where the material referred to may be found. The clerk shall also file as a part of the record the formal complaint, the answer (if any), any depositions which were before a hearing panel, the exhibits, and such other documents as the court may direct.
- (2) The respondent shall have thirty days from service of the transcript to file a brief.
- (3) Upon the filing of respondent's brief, the examiner shall have thirty days in which to file his or her brief, and respondent shall have ten days after filing of the brief of the examiner to file a reply brief. The briefs shall be of such number and form and be served in such manner as is provided by the rules relating to appeals in civil actions.
- (4) If after thirty days from the service of the transcript upon respondent, respondent fails to file a brief, respondent will be deemed to have conceded that the findings of fact made by the hearing panel are supported by the evidence.
- (5) The matter shall be set for hearing and heard on the merits.

(f) The court may refer the matter back to a hearing panel for such further proceedings as the court may direct, reject the recommendations, dismiss the proceedings, order discipline or compulsory retirement, or make such other disposition as justice may require. If the respondent is a Supreme Court justice, the discipline imposed shall be subject to the provisions of Article 3, Section 15, of the Constitution of the State of Kansas governing the removal and retirement of justices of the Supreme Court.

(g) The rules of appellate procedure shall apply to proceedings in the Supreme Court for review of a recommendation of a hearing panel, except where express provision is made to the contrary or where the application of a particular rule would be clearly impracticable, inappropriate, or inconsistent.

[**History:** Previously Rules 624-625, Am. effective January 8, 1979; Am. effective March 31, 1994; Am. effective May 1, 1999.]

Case Annotations

1. Standard of proof appropriate for Supreme Court adoption of commission findings is clear and convincing evidence. *In re Rome*, 218 Kan. 198, 542 P.2d 676 (1975).

2. Supreme Court concurs in Commission recommendation, citing 623(f); removal from office. *In re Yandell*, 244 Kan. 709, 772 P.2d 807 (1989).

3. Commission's findings are supported by clear and convincing evidence; public censure. *In re Long*, 244 Kan. 719, 772 P.2d 814 (1989).

4. Commission findings and conclusions conclusive absent timely filed exceptions, per Rule 623(d); respondent duty to appear and opportunity to make statement as to discipline. *In re Alvord*, 252 Kan. 705, 847 P.2d 1310 (1993).

5. Judge found to have violated Canons 1, 2, and 4A(2) of the Code of Judicial Conduct; Commission assigned panel to conduct investigation per Rule 609; since respondent failed to file exceptions, the Commission's findings and conclusions are conclusive per Rule 623; removal from office per Rule 620(a). *In re Robertson*, 280 Kan 266, 120 P.3d 790 (2005).

Rule 624 COSTS

No costs shall be assessed against a judge who is exonerated. In cases where admonition, cease and desist, or discipline is adjudged, costs shall be equitably assessed. Costs may include charges of the court reporter for the recording and preparation of transcripts for depositions used in evidence or for other proceedings before the Commission, witness fees and expenses, and the docket fee.

[**History:** Previously Rule 626, Am. effective January 8, 1979; Am. effective July 14, 2000.]

Rule 625 COMPENSATION AND EXPENSES--COMMISSION

Members of the commission and panels shall be reimbursed their actual and necessary expenses incurred in the discharge of their official duties. Members who are not active judges shall receive compensation for their services as may be determined by the Supreme Court.

[**History:** Previously Rule 627, Am. effective December 21, 1977; Am. effective January 8, 1979; Am. effective May 1, 1999.]

Rule 626
OTHER FEES AND EXPENSES

The Supreme Court shall cause to be paid out of funds available for this purpose all reasonable costs, fees and expenses incurred in administering these rules.
[History: Previously Rule 628, Am. effective January 8, 1979.]

Rule 627
ADDITIONAL RULES

Subject to approval of the Supreme Court the commission shall have authority to make rules relating to its function, which rules shall be filed with the clerk of the court.
[History: Previously Rule 629, Am. effective January 8, 1979.]

Rule 640
IMPAIRED JUDGES ASSISTANCE COMMITTEE

(a) Pursuant to Article 3, Section 15 of the Constitution of the State of Kansas and the inherent power of the Supreme Court, there is hereby created an impaired judges assistance committee to provide assistance to any Kansas judge needing help by reason of a mental or physical disability or an addiction to or excessive use of drugs or intoxicants.

(b) The committee shall consist of seven judges and shall always include at least two active district judges and two active district magistrate judges. The other three members may be active or retired judges. Population and geographical representation shall be considered in the appointment process.

All members shall be appointed to staggered four-year terms; however, initial appointments following this amendment may be for less than four years. The members may be re-appointed at the pleasure of the Supreme Court.

(c) The Supreme Court shall designate one member as chair of the committee, which shall meet when the need arises and as called by the chair.

(d) The purpose of the committee is to aid Kansas judges who are, or may potentially become, impaired in the performance of their duties by reason of alcohol or substance abuse or other physical or mental infirmity. The objectives of the committee are to:

1. identify judges who are impaired from responsibly performing their duties by virtue of addiction or abuse of alcohol or other chemicals or due to senility, psychiatric disorders or other reasons;
2. arrange intervention in those identified cases in such a manner that the judges involved will recognize their impairment, accept help from the committee and

medical professionals, and be treated and monitored for a period of time so that they may return to their duties when able;

3. recommend avenues of treatment and provide a program of peer support where possible;
4. act as an advocate of judges who are ill and assist them in recognizing their impairment in obtaining effective treatment when possible, and in returning to the responsible performance of their profession;
5. educate the public and the legal community about the nature of impairments and develop a program which will generate confidence to warrant early referrals and self-referrals to the committee so that impairments may be avoided, limited or reversed.

(e) A judge may communicate with the committee or one of its members directly on his or her own behalf or any person may suggest the need to intervene on a judge's behalf. The judge's interaction with the committee, however, shall be voluntary. The Office of the Clerk of the Appellate Courts is authorized to assist judges and other persons wishing to contact the Impaired Judges Assistance Committee.

(f) The committee is authorized to designate persons to assist the committee in its work.

(g) The committee members, designees, and all other participants shall be entitled to the immunities of Rule 608 and shall be relieved from the provisions of Rule 8.3 of the Kansas Rules of Professional Conduct, Canon 3D(1) of the Kansas Code of Judicial Conduct, and Rule 207 as to work done for and information obtained in carrying out the work of the committee.

(h) All proceedings, information, meetings, reports, and records of the committee pertaining to individual judges shall be privileged and not be divulged in whole or in part except:

1. when the judge fails or refuses to address the issues of concern, the committee, upon a vote of the majority, may refer the matter to the Commission on Judicial Qualifications;
2. when a judge has been referred to the committee by the Commission on Judicial Qualifications, the committee shall provide progress reports and recommendations to the Commission;
3. when the judge consents to the release of information;
4. or by order of the Supreme Court.

(i) Annually, and at such additional times as the Supreme Court may order, the committee shall file a statistical report of its activities with the Court and the Commission on Judicial Qualifications.

(j) The committee may adopt rules of procedure consistent with this rule.

(k) Members and designees of the committee shall be reimbursed their actual and necessary expenses, including the use of professional intervention assistance, incurred in the discharge of their official duties. Any psychological, medical, or rehabilitative programs undertaken shall not be the financial responsibility of the Impaired Judges Assistance Committee.

(l) A judge's cooperation, or failure to cooperate, with the committee may be considered by the Commission on Judicial Qualifications and/or the Supreme Court in any disciplinary proceeding.

(m) For purposes of this rule "judge" shall mean any Supreme Court Justice, Court of Appeals Judge, District Judge, District Magistrate Judge, Municipal Court Judge, or any retired judge or justice accepting judicial assignments.

[**History:** New rule effective April 19, 1994; (g) Am. effective May 11, 1995; Am. effective November 10, 1998.]

Case Annotations

1. Rule mentioned in commission's minority recommendation of three-year probation. *In re Moroney*, 259 Kan. 636, 914 P.2d 570 (1996).

Rule 650

JUDICIAL ETHICS ADVISORY PANEL

(a) Pursuant to Article 3, Section 15 of the Constitution of the State of Kansas and the inherent power of the Supreme Court, there is hereby created a judicial ethics advisory panel to serve as an advisory committee for judges seeking opinions concerning the compliance of an intended, future course of conduct with the Code of Judicial Conduct. The panel shall consist of no more than three retired justices or judges who shall serve at the pleasure of the Supreme Court. Members of the advisory panel shall be reimbursed their actual and necessary expenses incurred in the discharge of their official duties and shall be compensated in the manner determined by the Supreme Court.

(b) A request for a judicial ethics advisory opinion shall be directed to the Clerk of the Appellate Courts, who shall forward the request to the panel if the requirements of this rule are satisfied. Requests will be accepted only from persons subject to Supreme Court Rule 601A *et seq.*

(c) Requests for judicial ethics advisory opinions shall relate to prospective conduct only and shall contain a complete statement of all facts pertaining to the intended conduct together with a clear, concise question of judicial ethics. The identity of the judge, whose proposed

conduct is the subject of the request, shall be disclosed to the panel. The requesting judge shall include with the request a concise memorandum setting forth the judge's own research and conclusions concerning the question. Requests shall not be accepted or referred for opinion unless accompanied by this memorandum.

(d) Advisory opinions shall address only whether an intended, future course of conduct violates the Code of Judicial Conduct and shall provide an interpretation of the Code with regard to the factual situation presented. The opinion shall not address issues of law nor shall it address the ethical propriety of past or present conduct. The identity of the requesting judge shall not be disclosed in the opinion.

(e) The Clerk shall provide a copy of each advisory opinion to the Chief Justice, the Commission on Judicial Qualifications and the requesting judge, and the state law library. The Clerk shall keep the original opinion in a permanent file.

(f) The fact that a judge or candidate for judicial office (as defined in the Terminology Section of this Code) has requested and relied upon an advisory opinion shall be taken into account by the Commission on Judicial Qualifications in its disposition of complaints and in determining whether to recommend to the Supreme Court discipline of a judge or judicial candidate. The advisory opinion, however, shall not be binding on the Commission on Judicial Qualifications, the hearing panel, or the Supreme Court in the exercise of their judicial discipline responsibilities.

[**History:** Am. effective March 6, 1984; Am. effective November 17, 1987; (f) Am. effective May 11, 1995; (b) and (f) Am. effective May 1, 1999.]

Advisory Opinion Annotations

<u>Year Issued</u>	<u>Advisory Opin. No.</u>	<u>Topic</u>
1984	JE-1	Soliciting funds for Nat'l Judges Education & Research Foundation, Inc.; judge's role as officer in such organization. Canon 5 and its Comment B(2).
1984	JE-2	Seeking election to different division than presently occupied in partisan, multi-division judicial district. Canons 2 and 7.
1984	JE-3	Participation of judge in spouse's political campaign for spouse's elective office.
1984	JE-4	Application of Canons to municipal court judges; resignation from judicial office upon candidacy for county attorney position. Canon 7A(3).
1984	JE-5	Judicial participation in debate surrounding the method for selection of district judges. Canons 4, 5, and 7.
1984	JE-5A	Solicitation of funds to support position on selection of district judges. Canons 4C, 5B(c), and 7B(2).

- 1984 JE-6 Involvement of members of the District Court Nominating Commission, the Supreme Court Nominating Commission, and the Commission on Judicial Qualifications in debate surrounding method for selection of district judges. S. Ct. Rule 650.
- 1984 JE-7 Receipt of award from special interest bar association. Canons 2 and 2A and S. Ct. Rule 650(d).
- 1984 JE-8 Involvement of judge in fellow judge's campaign for office. Canon 7A(1)(b).
- 1984 JE-9 Appearance of attorney who is judge's daughter before other judges in district. Canon 3C.
- 1984 JE-10 Participation in ABA's Network of Concerned Correspondents. Canon 5.
- 1984 JE-11 Appearance before or appointment of attorney/spouse by magistrate judge/spouse. Canon 2 and 3B(4).
- Preparation of tax returns by attorney who is newly-elected district magistrate judge. Canon 5F.
- Attorney's advice to clients upon being appointed to the bench; recommendation of spouse/attorney. Canon 2.
- Use of firm letterhead with name of attorney who is newly-appointed judge during interval before appointment is effective.
- 1984 JE-12 Appearance of firm members before former partner, now district judge, who is also owner/landlord of firm's office building and son of former partner who is retired and receiving an annuity from the firm and whose name remains on firm letterhead. Canons 2B and 3C.
- 1985 JE-13 Attendance of judge's spouse at political gatherings; political contributions by judge's spouse from spouse's business income maintained in separate account.
- 1985 JE-14 Judge as member of country club board of directors. Canon 5.
- 1986 JE-15 Judge as investor in abstract company. Canon 5C(1), (2), and (3).
- 1986 JE-16 Solicitation of funds from charitable foundations by judge as member of board of directors of private, not-for-profit corporation "_____ County Substance Abuse Services, Inc." Canon 5B(2).
- 1986 JE-17 Judge, legatee under father's will, acting as co-executor with mother and as attorney for executors. Canon 5D and Kan. Const. Art. 3, § 13.
- 1987 JE-18 Solicitation of funds from law school classmates to provide gift to law school; use of judicial stationery. Canon 5B(2).
- 1987 JE-19 Involvement of judge in cases handled by judge's former law firm; effect of "blind trust" set up by judge to administer proceeds due him upon his leaving practice. Canons 2; 3C(1), (2), and (3); and 3D.
- Judge as stockholder and director of abstract and title company. Canon 5C(1), (2), and (3).
- Judge as holder of tenant in common interest in 36-acre strip-pit used for recreational and not income-producing purposes. Canon 5C(2).

- 1987 JE-20 Fundraising for non-profit organization by submitting to mock arrest and soliciting "bail money" from family and acquaintances. Canon 5B(2).
- 1987 JE-21 Propriety of newly-appointed district judge remaining as co-trustee of former client's revocable trust. Canon 5D.
- 1987 JE-22 Judge's participation in medical/legal seminar at resort; degree of involvement/sponsorship. Canon 2B.
- 1987 JE-23 Judge as political party's precinct committeeman; "holding office." Canon 7A(1)(a); KSA 25-3801, -3802.
- 1988 JE-24 Participation of judge, in nonpartisan judicial district, in political party's presidential caucus. Canon 7A(3)(b).
- 1988 JE-25 Judicial candidate's continuation as weekend pastor. Canon 5A and 5B(2).
- 1988 JE-26 Recusal due to relationship disqualification under Canon 3C(1)(d)(iv); procedure for remittal of such relationship under Canon 3D.
- 1989 JE-27 Judge's endorsement of a candidate for public office. Canon 7A(1)(b).
- 1989 JE-28 Municipal judge's compliance with code; serving as indigent defense counsel. Canons 5C(2), D, E, F, G and 6C; Rule 601 compliance section A.
- 1989 JE-29 Retired judge, elected to nonjudicial office, sitting pro tempore. Canon 7A(4) and Rule 601 compliance section C and B(1).
- 1989 JE-30 Remittal of disqualification because of relationship. Canons 3C(d)(i) and 3D.
- 1989 JE-31 Effect of judge's spouse's appointment to professional teacher negotiating team. Canon 2.
- 1990 JE-32 Judge's business of writing and selling law-related computer programs. Canons 5C(1), (2), and 6(A).
- 1990 JE-33 Use of judge's home for political reception. Canons 2 and 7A(1)(b).
- 1990 JE-34 Political endorsement by judicial candidates in elective judicial district. Canon 7A(2) and A(3).
- 1990 JE-35 Judicial involvement in legislative appropriations to educational institutions. Canon 5B(2).
- 1991 JE-36 Listing of judge's name on for-profit legal publication's editorial advisory board. Canon 2B.
- 1992 JE-37 Judge's spouse as campaign manager in partisan county-wide election.
- 1992 JE-38 Judge as member of Kansas Commission on Governmental Standards and Conduct. Kan. Const., art. 3, § 13.
- 1992 JE-39 Application of Code of Judicial Conduct to unsuccessful judicial candidates. Rule 601 and Canon 7.
- 1992 JE-40 Propriety of judge's recommending nominees to appellate courts; distinguished from recommendation of candidates for public office. Canons 4 and 7.

- 1993 JE-41 Whether settlement conference is arbitration or mediation. Canon 5E.
- 1993 JE-42 Judge presiding at docket call wherein son or son's law firm represents a party. Canon 3C(1)(d)(i), (ii), (iii).
- 1993 JE-43 Newly-appointed judge presiding over case in which he had been representing a party.
- 1993 JE-44 Judge's participation in civic affairs. Canon 5B.
- 1993 JE-45 Endorsement by judge of federal nominee. Canon 7A(1)(b).
- 1993 JE-46 City council member serving as part-time municipal judge in nearby community. Canons 5C(2), D, E, F, G; 6C; 7(A)(4).
- 1994 JE-47 Judge as member of non-profit corporation board of directors. Canon 5B.
- 1994 JE-48 Judge, robed and in courtroom, as model for advertising purposes. Canon 2B.
- 1994 JE-49 Part-time city attorney serving as part-time municipal judge for a different city.
- 1994 JE-50 Judge as executor of estate of former legal secretary. Canon 5D.
- 1994 JE-51 Part-time judge as precinct committeeperson. Canon 7A(1)(a).
- 1994 JE-52 Judge serving as director of a not for profit corporation created to administer a CASA program in the district. Canon 4.
- 1994 JE-53 Newly-appointed municipal judge, who was an assistant city attorney handling civil cases, conducting arraignments for trials. Canon 2 and 3C(1)(b).
- 1995 JE-54 District Magistrate Judge serving as mediator in domestic relations cases. Canon 3 and 5E.
- 1995 JE-55 Effect of judge's spouse sharing office and overhead with other attorneys.
- 1995 JE-56 Full-time municipal court judge serving as a member of the local board of education. Canon 5A(2).
- All subsequent opinions arise under Rule 601A.
- 1995 JE-57 "Continuing part-time judge" and a "Periodic part-time judge," as defined in the terminology section of the Rules Relating to Judicial Conduct, Rule 601A.
- 1995 JE-58 "Substitute judge" as "periodic part-time judge" defined in terminology section of Rule 601A.
- 1995 JE-59 Judge serving on advisory committee for proposed justice center. Canon 4C(1) and (2).
- 1995 JE-60 Judge appointed as special administrator and executor of decedent's estate to serve temporarily. Canon 4E(1).
- 1996 JE-61 Judge's spouse in nonpartisan district as campaign manager for candidate for office in congressional district. Canons 2, 5A(1) and 5D.
- 1996 JE-62 Judge's participation in spouse's political campaign for county office. Canons 2, 5A(1) and

- 5C(1)(a).
- 1996 JE-63 Judge or judicial candidate serving as precinct committeeperson. Canons 5A(1), 5B(2) and 5C(1); terminology section of Rule 601A; and K.S.A. 25-3801 and 25-3902.
- 1996 JE-64 Judicial candidate's comments and reference during campaign to former public statements and records in public office. Canon 5A(3)(d) and (e).
- 1996 JE-65 Judicial candidate serving as own campaign treasurer. Canon 5C(2).
- 1996 JE-66 Candidate for judge and also candidate for precinct committeeperson. Canon 5A(1)(a) and (3).
- 1996 JE-67 Judge may serve as chairman, co-chairman, or member of committees of bar associations. Canon 4C(3).
- 1996 JE-68 Campaign committee may solicit funds for 90 days after election and contributions may be used to pay expenses and indebtedness incurred in the primary election. Canon 5C(2). Judge-elect may enter into agreement with another lawyer but fee-splitting arrangement is not appropriate. Judge-elect may not arrange to route the calls generated by advertisement to another lawyer. Canon 2.
- 1996 JE-69 Canon 3E applies to Administrative Hearing Officer (AHO). AHO would be disqualified as to all cases he or she actually handled. "Matter in controversy" in Canon 3E(1)(b) refers to whole case. Canon 3F can be utilized.
- 1996 JE-70 District judge may not serve on police department community advisory board.
- 1996 JE-71 Judge may not refer cases and accept referral fees. Canon 4G.
- 1997 JE-72 Municipal judge who is also assistant county attorney may serve as prosecutor under certain conditions.
- 1997 JE-73 Judge may not serve as trustee for community organization which aims to improve quality of life for children and youth. Canon 4A(1), 4C(4).
- 1997 JE-74 Judge may lecture or serve as panelist without compensation at CLE seminar sponsored by law firms and/or corporations. Canon 4B, 2B.
- 1997 JE-75 Law student summer intern in county attorney's office may live with judge and his wife. Canon 3E(1)(a).
- 1997 JE-76 Judge may not contribute a dinner to be auctioned for national charitable organization. Canon 4C(4)(b). [Vacated by JE-78.]
- 1997 JE-77 Judge may serve as elder of church as long as judge does not solicit funds. Canon 4C(4)(b).
- 1997 JE-78 Judge may contribute a dinner to be auctioned for charity. [vacates JE-76.]¹
- 1998 JE-79 Judge may send official comments per K.S.A. 1997 Supp. 22-3717(h) to the Kansas Parole Board without violation of Canon 2B.
- 1998 JE-80 Judge may be a candidate in a contested election and serve as an officer of KBA. Canon 4B, 4C(3).

- 1998 JE-81 Judge should not purchase property from an estate pending in the judge's court even though the transaction was at arm's length and in good faith. Canons 1, 2A, 4A(1) and 4D(1).
- 1998 JE-82 Judge may attend a political reception and contribute to campaign committee of a fellow judge who is up for election. Canon 5C(1)(a).
- 1998 JE-83 Candidate for judge in an elective district may not serve as campaign treasurer; 1996 JE-65 followed.
- 1998 JE-84 Judge may serve on a land purchase committee for his church if he will do no legal work or fund raising.
- 1998 JE-85 Certain provisions of city's proposed contract of employment for its municipal judges attempt to limit the independence of the individual judge and thus violate Canon 1.
- 1999 JE-86 Municipal judge may accept criminal appointment and represent other defendants in the district court; other lawyers housed in the municipal judge's building may practice before the judge; municipal judge may serve as district judge pro tempore; judge pro tempore may appear as a lawyer in the district court. Canons 3E(1) and 3E(b).
- 1999 JE-87 Judge may appear before local civic and religious groups to promote the passage of sales tax for the construction of a new judicial center. Canons 4B and 4C(c).
- 1999 JE-88 Part-time municipal judge may permit charitable solicitations to be made from his private office over his private telephone lines as long as he does not make the calls and is not identified with the solicitations. Canons 2B and 4C(4)(b).
- 1999 JE-89 Part-time municipal judge may serve as judge in a case in which the judge represented an adverse party more than a year ago in an unrelated civil case. Canon 3E(1)(a).
- 1999 JE-90 Newly appointed judge may complete a term on a local school board; better practice of voluntary resignation suggested. Canon 5A(2).
- 2000 JE-91 Judge may be honored by private donation to public school to fund classroom to bear the judge's name. Canon 2B.
- 2000 JE-92 Retired judge may serve as an executor of the estate of a person to whom the judge is not related. Canon 4E(1).
- 2000 JE-93 Judge must disqualify himself or herself whenever the judge's ex-spouse or another member of the firm appears before the judge. Canon 2.
- 2000 JE-94 Judge may preside in the court where spouse of the judge's court reporter and members of the firm appear. Canon 2A.
- 2000 JE-95 Judge must cease all participation in ownership interest in a law firm building. Canon 4D(1)(6).
- 2000 JE-96 Judicial candidate may serve on governmental committee but must resign upon taking office. Canon 4C(2).
- 2000 JE-97 Judge's article on dangers of underage drinking may be published under facts. Canons 2 and 4.

- 2000 JE-98 District judge who is also a municipal judge and tribal judge may hear and rule on request for temporary orders in the district court and in the tribal court; the same judge may attend the tribal court training programs and serve as tribal and municipal judge.
- 2000 JE-99 Retired judge may actively support a candidate for judicial office. Canon 5.
- 2000 JE-100 Split decision. Majority view: Judge up for retention without active opposition, should not respond to a questionnaire from local newspaper. Canon 5C(2).
Minority view disagreed: Judge up for retention without active opposition may respond to questionnaire from local newspaper. Canon 5.²
- 2001 JE-101 Judicial candidate should not submit unsubstantiated complaint or petition to the news media regarding the opposing judicial candidate. Canon 5A(3).
- 2001 JE-102 District magistrate judge may release log or written record of all closed cases to the media as long as the judge does not comment on pending cases. Canon 3B(9).
- 2001 JE-103 A judge should not write a letter of recommendation or testify on former client's behalf as character witness. Canon 2B.
- 2001 JE-104 A district judge may serve on the board of directors of the local United Way but should not solicit funds or use his/her office for fundraising purposes. Canon 4C(4).
- 2001 JE-105 A newly elected judge may continue to serve as Honorary Vice Consul of another nation as long as the position is not concerned with issues of fact or policy and there is no interference with performing regular judicial duties. Canon 4C(4).
- 2001 JE-106 A judicial candidate, subject to election, may contribute to his or her political party, subject to any limitations provided by law.
Canon 5C(1)(a)(iii).
- 2001 JE-107 A district magistrate judge may also serve as municipal judge on weekdays between 8 a.m. and 5 p.m.; as a district magistrate judge, no proceedings involving the city should be heard.
- 2001 JE-108 A judge may not permit a defendant convicted of a misdemeanor to make a charitable contribution in lieu of paying a fine. Canon 2A and B and Canon 4C(4)(b).
- 2002 JE-109 A judge in an elective district may place a "thank you" letter in the local newspaper.
- 2002 JE-110 A part-time municipal judge may serve as a precinct committee member and may serve as city council member if written in on the ballot and elected without his or her consent.
- 2003 JE-111 A judge may serve on a screening panel which will interview candidates and forward names to the Governor for consideration to fill a judicial position in an elective district. Canon 4C(3).
- 2003 JE-112 A judge may volunteer to cook and serve meals at a community soup kitchen sponsored by a local church and open to the public daily. Canon 4C(4).

²Reporter's Note: The Commission of Judicial Qualifications disagreed with the majority view.

- 2003 JE-113 A candidate for municipal judge, whose brother is the chief of police, if appointed and upon hearing cases, would be required to recuse himself under the canons, unless there is a remittal of disqualification in every case under Canon 3F. Canon 2A and Canon 3E.
- 2003 JE-114 Participation by a judge on an SRS advisory committee regarding contracts for adoption and foster care privatization is prohibited by Canon 4C, since these are policy matters and not matters involving the improvement of the law, the legal system, or the administration of justice.
- 2003 JE-115 The canons do not prohibit members of a district judge's re-election committee from making campaign contributions and under Canon 5C(2), the committee may solicit contributions no earlier than one year before an election.
- 2004 JE-116 The spouse of the chief district judge may not serve as a district magistrate judge in the same judicial district. Canon 3C(1) and Canon 2A. However, the spouse could serve as a district magistrate judge in the same judicial district so long as the district judge does not consider appeals of decisions made by the spouse as district magistrate judge.
- 2004 JE-117 A judge may retain the office of municipal judge while running for magistrate judge, but cannot solicit signatures to a nomination petition under Canon 5C(2) which prohibits a candidate for a judgeship from soliciting publicly stated support.
- 2004 JE-118 A candidate for judge may not personally solicit campaign contributions or publicly stated support; however, the candidate's election committee may send out campaign literature.
- 2004 JE-119 A judge may attend a program and have expenses paid by an agency whose attorneys regularly appear before the judge, since the program is an activity devoted to the administration of justice and, thus, allowable under Canon 4D(5)(a).
- 2004 JE-120 A part-time municipal judge may not be a candidate for a nonjudicial office under Canon 5A(2), but can resign as judge, be appointed as pro tem judge for certain court dates during the candidacy, and run for election to the nonjudicial position.
- 2004 JE-121 A judge shall not attend a conference sponsored by an agency whose agents and employees frequently appear before the court. Canon 2A and Canon 3B(7).
- 2004 JE-122 A judge who must run for office on a partisan ticket may attend political meetings at any time and may utilize a "calling tree" to area citizens as part of a campaign activity.
- 2004 JE-123 A judge may continue to serve as a part-time judge if he or she is elected County Commissioner.
- 2005 JE-124 A judge should not buy assets from an estate which is in court in which he or she is sitting, either directly or through an agent or whether it is a private sale or a public auction. Canons 1, 2A, 4A(1), and 4D(1).
- 2005 JE-125 A judge may appear and speak at zoning board and other governmental meetings if he or she is acting pro se in his or her own interests. The judge should be careful to comply with the provisions of Canon 2B. See Canon 4C(1).
- 2005 JE-126 Judges should not attend or participate in a conference sponsored or presented by a law enforcement agency which would in effect train judges to consider these matters in future cases. See JE-121. Canon 2A and Canon 3B(7).

- 2005 JE-127 Judge may attend a national symposium with transportation, meals, and lodging paid by a national foundation whose mission is to address legal policy issues affecting the law and civil justice system. The Code of Judicial Conduct does not prohibit the judge from attending the symposium.
- 2005 JE-128 A judge may not write a letter to a nominating committee regarding the qualifications of a candidate since a judge shall not publicly endorse or publicly oppose a candidate for public office. Canon 5A(1).
- 2005 JE-129 Appellate judges should not attend a national conference on education since it is not a bar-related function or an activity devoted to the improvement of law, legal system, or administration of justice; attendance would also violate Canon 2A. Canon 4D(5)(a).
- 2005 JE-130 An adverse ruling, standing alone, is not grounds for disqualification of a judge who is being sued by a pro se counterclaimant. Canon 3E.
- 2005 JE-131 A judge may attend an open house sponsored by a law firm; however, a judge should not accept a golf and poker invitation from a law firm since it would create a perception of impropriety due to the expense. Canon 2.
- 2005 JE-132 Judges may contribute to the Kansas for Impartial Courts Committee of the Kansas Appleseed Center for Law and Justice; however, judges may not solicit funds for the Committee. Canons 4C(1) and 5A(1) and C.
- 2005 JE-133 A judge may sell his law books to an attorney who occasionally appears before him since the transaction would be an isolated sale at market value, which would not be a violation of the Canons. Canon 4D(1)(b).
- 2005 JE-134 A judge may work as a volunteer at a concession stand at a sporting event since it is not a solicitation. Canon 4C(4)(b).
- 2005 JE-135 A judge may bid for land at a public auction arising out of a foreclosure action if the judge has nothing to do with the foreclosure action, since it would not exploit his position or give an appearance of impropriety. . Canon 4D(1) and Canon 2A.
- 2006 JE-136 A judge who owns real estate subject to a lease to the Department of Corrections may accept assignment to the criminal docket. Canon 3E.
- 2006 JE-137 A judge may make contributions to Kansans for Simple Justice since it is not a political organization. (2005 Kan. Ct. R. Annot. 558).
- 2006 JE-138 A judge may attend a national symposium with all costs paid by a national foundation without violating any Canons. See JE-127.
- 2006 JE-139 A candidate for judge may not respond to a questionnaire which seeks to address judicial issues as well as the constitutionality of the Code of Judicial Conduct. Canon 5A(3)(d)(i) and (ii).³
- 2006 JE-140 Designation of two volunteer awards in a judge's honor does not place a recipient in a position to influence the judge nor does it convey that impression. Canon 2B.
- 2006 JE-141 A sitting judge seeking a district court appointment should not ask attorneys who have appeared or may appear before him to write letters of support. Canon 2A

- 2006 JE-142 A judge can publicly encourage the voters to approve a bond issue to finance construction of a new jail in the judge's district. Canon 4B.
- 2006 JE-143 A judge may make contributions to charitable organizations and should support charitable activities. Canon 4A Commentary and 4C(4).
- 2006 JE-144 A judge's spouse may own and lease a building to another lawyer who may be before the court on which her husband serves without violating the Code of Judicial Conduct. Canon 4D.
- 2006 JE-145 A judge may allow a charitable organization to use her photograph and a biography to depict a positive role model for youths without conveying the impression that the organization is in a special position to influence the judge. Canon 2B.
- 2006 JE-146 Judges of a judicial district hosting a dinner at their personal expense for state representatives and county commissioners in that district are not violating the Canons as long as the discussions are limited to items of general local interest. Canon 2B and Canons 4A(1) and 4C(1).
- 2006 JE-147 The attendance of a judge being inducted into a hall of fame as a fundraiser for the education of youth through innovative programs offered by a charity would violate Canon 4C(4)(b); the judge should decline the honor. See JE-1.
- 2006 JE-148 A response by a judge to a request from Martindale-Hubbell for an opinion as to a local lawyer's legal ability and general ethical standards would not violate Canon 2B.
- 2006 JE-149 Service on the Kansas Wildlife and Parks Commission by a judge would violate Canon 4C(2), since it is a governmental commission that is concerned with issues of policy on matters other than the improvement of the law, the legal system, or the administration of justice. See JE-38.
- 2007 JE-150 It is inappropriate for a judge to serve on a committee formed by a school district to formulate a student drug testing policy since the committee would be concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice; a judge should not serve also if it is likely that the organization would be engaged regularly in adversary proceedings in any court. Canon 4C(2) and Canon 4C(4)(a). See JE-70, 73, and 114.
- 2007 JE-151 A district judge participating as a player and/or auctioneer in his or her country club's fundraising member guest tournament clearly violates Canon 4C(4)(b) which prohibits fundraising.
- 2007 JE-152 A judge may serve on an Alumni association Board of Directors so long as he does not solicit funds or offer legal advice. Canon 4C(4) and Canon 4G. See JE-77, 104, and 134.
- 2007 JE-153 K.S.A. 2006 Supp. 23-602(a) specifically allows a chief district judge to assign a district magistrate judge to mediate domestic cases as part of the judge's judicial duties in the judicial district in which they serve and the district magistrate judge may ethically conduct the mediations. Canon 4F.
- 2007 JE-154 A judge may serve on the Board of Trustees of the Kansas Bar Foundation so long as he does not solicit funds or offer legal advice. Canon 4C(4) and Canon 4G. JE-77, 104, 134, and 152.

- 2007 JE-155 A judge may accept an invitation from a former law partner and spouse to stay in their condo, without cost, since a judge may accept a favor from a close personal friend whose appearance or interest in a case would in any event require disqualification. Canon 3E and Canon 4D(5)(e).
- 2007 JE-156 A retired district judge is not prohibited from the practice of law under the Application of the Code of Judicial Conduct, paragraph B or Canon 4G and may assist his son-in-law in a criminal jury trial.

¹ **Judicial Qualifications Commission's Reporter's Note:** The Commission on Judicial Qualifications expresses concern that JE-78 may not be valid under all factual circumstances and notes that the Commission is not bound by advisory opinions.

² **Judicial Qualifications Commission's Reporter's Note:** The Commission on Judicial Qualifications respectfully rejects the majority view and adopts the minority view expressed in JE-100. The Commission is not bound by advisory opinions.

³ **Judicial Qualifications Commission's Reporter's Note:** The Commission on Judicial Qualifications respectfully rejects the panel's conclusion in JE-139. Under *Republican Party of Minnesota v. White*, 536 U.S. 765, 153 L.Ed.2d 694, 122 S. Ct. 2528 (2002), judges and judicial candidates are allowed to publicly announce their views on legal, political, or other issues. The Commission is not bound by advisory opinions.

4. Judicial Qualifications Commission's Reporter's Note: The Commission on Judicial Qualifications respectfully disagrees with the Panel's conclusion in JE-141. Canon 5B(2)(a)(ii) states that a candidate for appointment to judicial office may "seek support or endorsement for the appointment from organizations that regularly make recommendations for reappointment or appointment to the office, and from individuals to the extent requested or required by those specified in Section 5B(2)(a)." The Commission is not bound by advisory opinions.

Rule 651

LIMITATIONS ON JUDICIAL SERVICE

No general jurisdiction district judge shall serve as a municipal court judge at any time during the term of his or her office.

This rule does not apply to judges serving as such only on a *pro tempore* basis under K.S.A. 20-310a and amendments thereto.

[**History:** New Rule effective July 1, 1993.]

Case Annotations

1. District judge, also authorized by Supreme Court to seek a concurrent position as municipal judge, violated Canon 2A, Canon 3C(1), and Canon 5C(1) by handling district court cases that involved his municipal employer; Rule 651 enacted subsequently to avoid such conflict; other violations; public censure. *In re Handy*, 254 Kan. 581, 867 P.2d 341 (1994).

STATE OF KANSAS



STANTON A. HAZLETT
Disciplinary Administrator

FRANK D. DIEHL
ALEXANDER M. WALCZAK
JANITH A. DAVIS
Deputy Disciplinary Administrators

GAYLE B. LARKIN
Admissions Attorney

701 Jackson St.
1st Floor
Topeka, Kansas 66603-3729
Telephone: (785) 296-2486
Fax: (785) 296-6049

OFFICE OF
THE DISCIPLINARY ADMINISTRATOR

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.

II. WHERE COMPLAINTS COME FROM -- RULE 209

A. Clients -- over 60% - some of which are forwarded by a local bar association Grievance committee -- RULE 207(a) and 209.

B. Citizens -- around 25% -- attorney-client relationship NOT prerequisite for filing a complaint -- State v. Freeman, 229 Kan. 639 (1981).

C. Judges or attorneys -- about 15% -- duty to report -- primary rule is RULE 207(c) -- secondary rule is KRPC 8.3 which has not been used by the court.

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 rule: -- no written opinion -- not binding -- KBA Ethics Advisory Committee, Box 1037, Topeka, Kansas 66601 -- issues non binding written ethics opinions

IV. WRITTEN COMPLAINT OR REPORT OF MISCONDUCT

RULE 209 AND 226 AND ATTORNEY OATH OF OFFICE RULE 704(i)

A. Cognizable under Kansas Rules of Professional Conduct, case law or oath of office -- individual lawyers NOT firms -- in our out of attorney-client relationship -- RULES 202, 226 and 704(i) -- State v. Phelps, 226 Kan. 371 (1979); State v. Russell, 227 Kan. 897 (1980); State v. Freeman, 229 Kan. 639 (1981).

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B. Informal procedure – attorney’s side obtained by letter without docketing complaint – 50% 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 of 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 7 days In re Wood, 247 Kan. 219 (1990) – RULE 207(b).

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

A. All by Disciplinary Administrator – RULE 210 and 205(c)(2) – directly by use of in-house investigator or by supervision of any other person used an investigator - In re Pringle, 248 Kan. 498 (1991).

B. Disciplinary Administrator can and does in every case call directly upon the responding lawyer for assistance in investigating the case – RULE 207(b) and (c) – Kansas v. Savaiano, 234 Kan. 268 (1983); KRPC 8.3; and In re Price, 241 Kan. 836 (1997); In re Pringle, 248 Kan. 498 (1991); In re Wood, 247 Kan. 219 (1990).

C. Disciplinary Administrator may use state or local bar grievance and ethics committees – all investigations under supervision of Disciplinary Administrator – RULE 210 – Barton County (20th Judicial District), Douglas County, Johnson County, Reno County, Sedgwick County, Shawnee County, Wyandotte County, KBA Ethics and Grievance Committee for rest of state – RULE 207(a) and 210(b) – over 200 lawyers are on these committees and do almost all of the investigative work.

D. Any individual member of the bar or judiciary can be called upon for Assistance – RULE 207(b) and (d) and 210(b).

E. Report of investigation received by Disciplinary Administrator and then sent to review committee with complaint, attorney’s response and recommendation of the Disciplinary Administrator – investigation time 2 to 12 months.

F. 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) – always done in preparation for hearings.

VI. MISCELLANEOUS CONCEPTS

RULES 213, 214, 203(b), 222, 203(a)(4) and (5), 217, 204, 223

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

B. RULE 214 – Related civil or criminal litigation does not necessarily abate Complaint - State v. Rome, 235 Kan. 642 (1984).

C. 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).

D. 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).

E. Informal Admonition – RULE 203(a)(4) and (5) – done by Disciplinary Administrator in person – always public information – private disciplinary Sanctions do not exist and never have under the rules – RULE 210(c) and 222(d) – majority of sanctions are informal admonitions.

- 1. Given on order of Review Committee after probable cause is found - appealable by the respondent to a formal hearing – RULE 210(c) and (d)
- 2. Given on report of hearing panel after hearing – RULE 212 – no appeal
- 3. Given on order of Supreme Court after hearing arguments – RULE 203(5)

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) – most disbarments occur this way.

G. Kansas Board for Discipline of Attorneys – RULE 204 – 20 lawyers appointed by the Supreme Court – decision makers within the disciplinary system by sitting on Review Committee and Hearing Panels – no action by board as a whole.

H. Immunity – deemed a judicial proceeding – all participants in disciplinary proceedings are granted judicial immunity and public official immunity – RULE 223 – Jarvis v. Drake, 250 Kan. 645 (1992).

VII. 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

B. Review Committee – three members – two of whom must be members of

E. Formal evidentiary hearing – RULE 211

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- 1. Rules of evidence and rules of civil procedure apply – RULE 211(d) and (e) and 224.
- 2. Disciplinary Administrator has burden of proof by clear and convincing evidence – RULE 211(f); In re Matney, 241 Kan. 789 (1987).
- 3. Disciplinary Administrator prosecutes case – RULE 205(c)(6).
- 4. RULE 202 requires that criminal convictions and civil judgments based on clear and convincing evidence shall be conclusive evidence of commission of that crime or wrong – a diversion agreement is not a conviction – other civil judgments are prima facie evidence requiring respondent to disprove the findings.
- 5. Adjudication of attorney misconduct in another jurisdiction is not binding in Kansas – only issue is discipline – RULE 202.
- 6. Deviation from rules or procedures are not a defense or ground for dismissal absent actual prejudice – RULE 224(d).
- 7. Any suggested plan of probation should be submitted in writing to the hearing panel – In re Jantz, 243 Kan. 770 (1988).

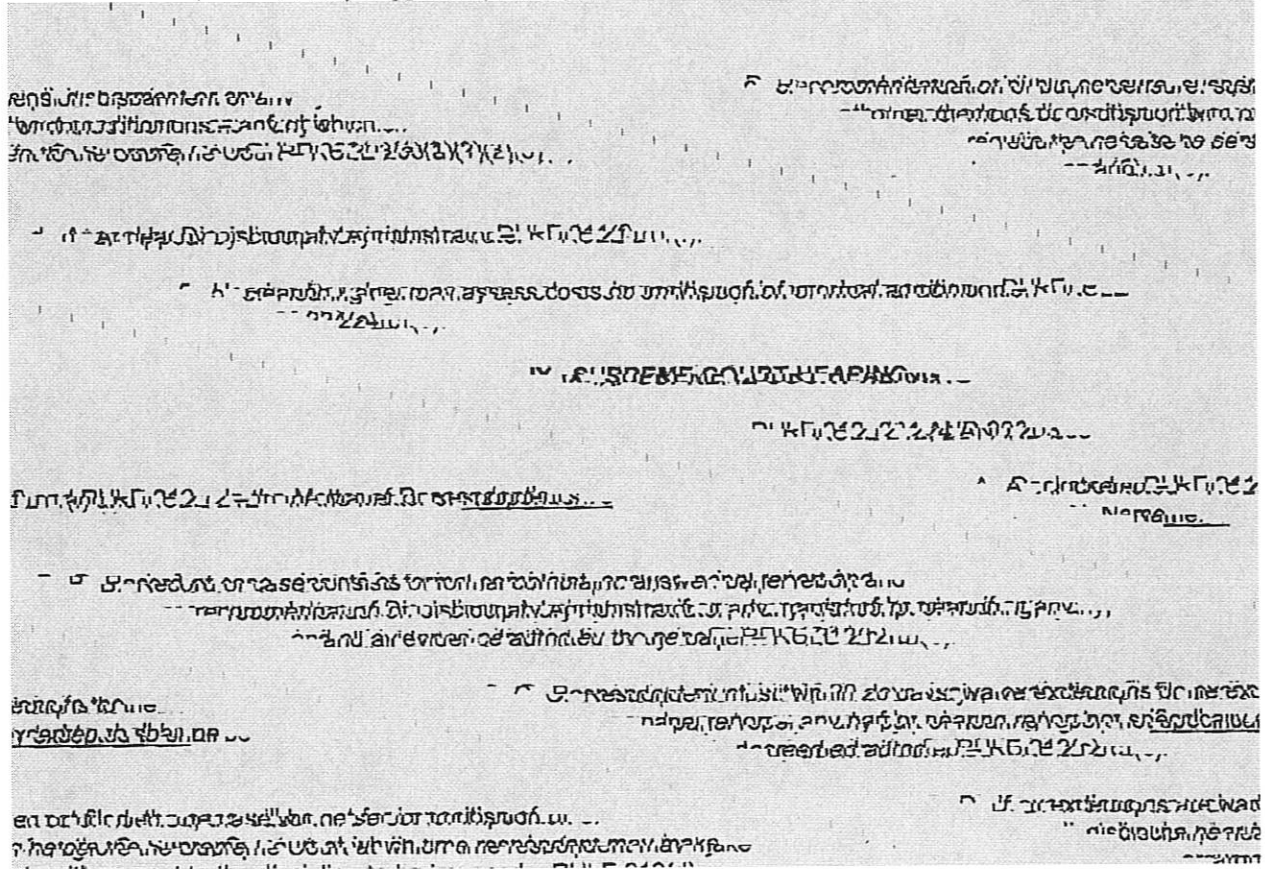
F. Final Hearing Report – Rule 211(f).

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- 1. Findings of fact and recommendations of discipline by way of a unanimous report or a majority and a minority report.
- 2. Hearing Panel may consider prior record of respondent and mitigating or aggravating circumstances – which must be set forth in the Final Hearing Report – RULE 211(f).
- 3. American Bar Association Center for Professional Responsibility published Standards for Lawyer Sanctions – 1991 Edition – extensively used by hearing panels and the Supreme Court.
- 4. Possible actions by Hearing Panel:
 - a. Dismissal.

E. Formal Evidentiary hearing – RULE 211

- 1. Rules of evidence and rules of civil procedure apply – RULE 211(d) and (e) and 224.
- 2. Disciplinary Administrator has burden of proof by clear and convincing evidence – RULE 211(f); In re Matney, 241 Kan. 789 (1987).
- 3. Disciplinary Administrator prosecutes case – RULE 205(c)(6).
- 4. RULE 202 requires that criminal convictions and civil judgments based on clear and convincing evidence shall be conclusive evidence of the commission of that crime or wrong – a diversion agreement is deemed a conviction – other civil judgments are prima facie evidence requiring respondent to disprove the findings.
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- 7. Any suggested plan of probation should be submitted in writing to the



c. Recommendation of public censure, suspension, disbarment or any other methods of disposition with or without conditions – any of which require the case to be sent to the Supreme Court – RULE 203(a)(1)(2)(3) and (5).

d. Appeal by Disciplinary Administrator – RULE 211(f).

5. Hearing Panel may assess costs on imposition of informal admonition – RULE 224(c).

IX. SUPREME COURT HEARING

RULE 212, 224 AND 203

A. Docketed – RULE 211(f) and RULE 212 – In the Matter of Respondent's Name.

B. Record of case consists of formal complaint, answer, panel report and recommendation of Disciplinary Administrator, if any, transcript of hearing, if any; and all evidence admitted by the panel – RULE 212(b).

C. Respondent must, within 20 days, waive exceptions or file exceptions to the panel report – any part of hearing report not specifically excepted to shall be deemed admitted – RULE 212(c).

D. If exceptions are waived or not filed, the case will be set for imposition of discipline hearing before the Supreme Court at which time respondent may make arguments with respect to the discipline to be imposed – RULE 212(d).

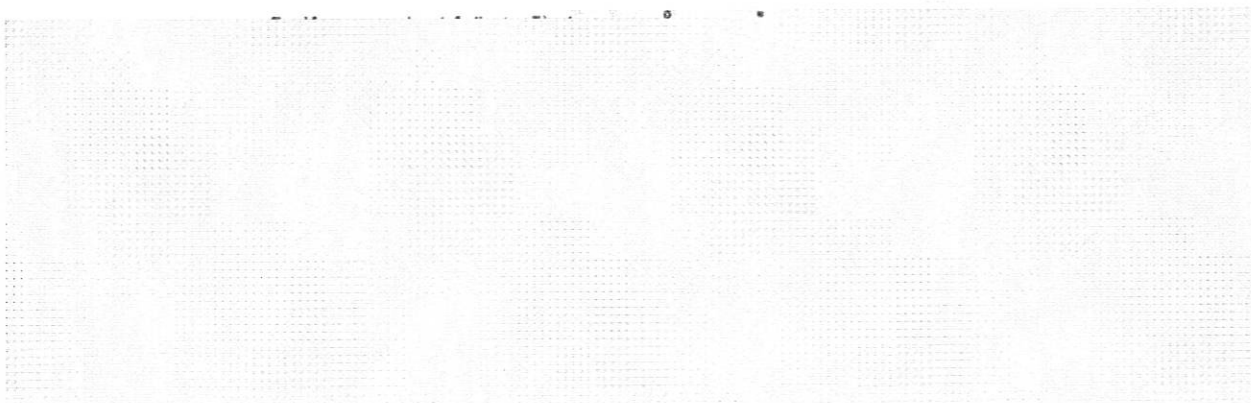
E. If respondent takes exceptions with 20 days then:

1. Transcript ordered and served by the clerk – RULE 212(e)(1).

2. Respondent's brief due 30 days after service of transcript – RULE 212(e)(2).

3. Disciplinary Administrator's brief due 30 days after respondent's brief – RULE 212(e)(3).

4. Ten days for respondent to file reply brief.



F. Disposition – recommended sanction of hearing panel or Disciplinary Administrator is only a recommendation – Supreme Court can do any of the following – RULE 212 and 203:

- 1. Dismiss.
- 2. Disbarment.
- 3. Suspension – indefinite or definite.
- 4. Public Censure – published or unpublished.
- 5. Informal Admonition.
- 6. Any other sanction, discipline or condition deemed appropriate by the Supreme court – probation cases fit here; In re Jantz, 243 Kan. 770 (1988).

G. Sanction of disbarment or suspension is effective immediately upon the filing of the opinion – opinions are filed on Friday of court week following arguments – a known date.

H. Imposition of costs by Supreme Court if discipline is imposed – RULE 224(c).

I. Direct appeal by way of certiorari to U.S. Supreme Court – only remedy.

X. ACTION AFTER DISCIPLINE OF SUSPENSION OR DISBARMENT

RULE 218

A. Respondent must notify all clients in writing of suspension or disbarment and respondent must notify courts and opposing counsel in writing and withdraw as counsel of record – RULE 218 – respondent must pay costs assessed – RULE 224 and 218 – violation of any suspension order is grounds for disbarment – RULE 218(c).

B. Proof of compliance with RULE 218 is condition precedent to filing Petition of Reinstatement – RULE 218(b).

XI. REINSTATEMENT OF SUSPENDED OR DISBARRED ATTORNEYS

RULE 219

A. Petition for Reinstatement to Supreme Court after proof of compliance with RULE 218(b) – RULE 219(a).

B. Payment of \$ 150 and any outstanding costs before any action by court – RULE 219(b).

C. Determination by Supreme Court of whether sufficient time has elapsed considering the gravity of the acts leading to suspension or disbarment to justify reconsideration of prior order – RULE 219(c).

D. If petition not dismissed it is then referred to Disciplinary Board panel for consideration and hearing – RULE 219(c).

E. Investigation by Disciplinary Administrator – Petitioner must cooperate with the investigation – In re Pringle, 248 Kan. 498 (1991).

F. Full evidentiary hearing before hearing panel – respondent must prove his case by clear and convincing evidence – Kansas v. Russo, 230 Kan. 5 (1981) – ABA Standards for Imposing Lawyer Sanctions, 1991 Edition.

G. If hearing panel report recommends reinstatement the matter is then submitted to the Supreme Court – if hearing panel report recommends denial of reinstatement petitioner has 15 days to file written exceptions with the court.

H. Supreme Court after consideration may grant the petition with or without appropriate conditions or deny the petition – In re Elmborg, 241 Kan. 425 (1987) and RULE 219(c) – No briefs or oral argument unless ordered by court – RULE 219(d).

I. Disbarred attorney not eligible to apply for reinstatement for 5 years nor suspended attorney for 3 years – RULE 219(e).

XII. INCAPACITY OF ATTORNEY – RULE 220 – AND APPOINTMENT OF COUNSEL TO PROTECT CLIENTS’ INTEREST – RULE 211 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.

XIII. 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.

FISCAL YEAR JULY 1, 2006 TO JUNE 30, 2007
IX. COMPLAINT, CASE AND STAFF STATISTICS
MONTHLY AND FISCAL YEAR TO DATE

NUMBER OF CASES	YEAR
1. <u>Non-Docket Complaints</u>	
(A) Opened for Attorney Response	224
(B) Closed b Dismissal after Attorney Response	237
(C) Summarily Dismissed or Referred Elsewhere	359
(D) Fee Dispute Letters	8
(E) <u>Total</u> of New Informally Handled Cases (A) + (C) + (D)	592
2, <u>Docketed Complaints</u>	
(A) Docketed Complaints Opened	301
(B) <u>Total</u> of New Non-Docket and Docketed Cases [1.(E) + [2.(A)]	893
(C) Docketed Complaints Closed by Dismissal	174
(D) Docketed Complaints Closed by Imposition of Discipline	78
3. <u>Panel Hearings by Number of Cases</u>	
(A) Cases Heard by Hearing Panels	63
(B) Cases Dismissed by Hearing Panels	1
(C) Cases where Informal Admonition was Imposed by Hearing Panel	1
(D) Cases Forwarded to Supreme Court by Hearing Panel with Findings of Ethical violations and Recommending Imposition of Discipline	39
4. <u>Staff – Speeches Given and Seminars Presentations</u>	
(A) Number of Seminar Presentations Given	25
5. <u>Discipline - Recommendations and Impositions by Cases</u>	
(A) <u>Informal Admonition [Rule 203(a)(4)] by cases</u>	
(1) Imposed by Review Committee	28
(2) Imposed by Hearing Panel	1
(3) Imposed by Supreme Court	0
(4) <u>Total</u> Number of Informal Admonitions Imposed	29
(B) <u>Censure – Published and Not Published [Rule 203(a)(3)] by Case</u>	
(1) Published in the Kansas Reports by Cases	
(a) Recommended by Hearing Panel	8
(b) Imposed by Supreme Court	7
(2) Not Published in the Kansas Reports by Cases	
(a) Recommended by Hearing Panel	0
(b) Imposed by Supreme Court	1

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		YEAR
(C) Suspension by Case [Rule 203(a)(2)]		
(1)	Suspension for an Indefinite Period of Time by Cases	
	(a) Recommended by Hearing Panel	20
	(b) Imposed by Supreme Court	19
(2)	Suspension for a Definite Period of Time by Cases	
	(a) Recommended by Hearing Panel	2
	(b) Imposed by Supreme Court	4
(D) Disbarment by Case [Rule 203(a)(1)]		
(1)	Recommended by hearing Panel	4
(2)	Total Number of Disbarments Imposed by Supreme Court	16
	(a) Because of Surrender of License Pursuant to Rule 217	15
	(b) On Supreme Court's Deliberation and Consideration	1
	(c) On Supreme Court's Order to Show Cause	0
(E) Probation by Cases [Rule 203(a)(5)]		
(1)	Recommended by Hearing Panel	5
(2)	Total Number Imposed by Supreme Court	5
(F) Other Discipline by Case [Rule 203(a)(5)]		
(1)	Recommended by hearing Panel	0
(2)	Total Number Imposed by Supreme Court	0
5. <u>Disciplinary Statistics by Number of Respondents</u>		
(A)	Number of Separate Panel Hearings Held	37
(B)	Number of Persons Informally Admonished	27
(C)	Number of Persons Censured	8
(D)	Number of Persons Indefinitely Suspended	8
(E)	Number of Persons Definitely Suspended	4
(F)	Number of Persons Disbarred	5
(G)	Number of Persons Placed on Probation	1
(H)	Total Number of Persons Disciplined	53
6. <u>Reinstatement Petitions [Rule 219]</u>		
(A)	Number of Petitions Filed	1
(B)	Number of Petitions Granted	1
(C)	Number of Petitions Denied	0

X. ATTORNEY STATISTICS FOR FISCAL YEAR 2007

<u>Attorney's Name</u>	<u>Body Imposing Discipline</u>	<u>Date Imposed</u>	<u>Discipline Imposed</u>	<u>Number of Cases If More Than One</u>
Albin, Barry G.	Review Committee	6-14-07	Informal Admonition	
Allen, Douglas J.	Supreme Court	12-13-06	Disbarment	8 Cases
Arabia, Paul	Supreme Court	4-27-07	Disbarment	
Arbuckle, Barry L.	Supreme Court	4-17-07	Published Censure	
Ayesh, Mark G.	Review Committee	11-9-06	Informal Admonition	
Barta, Ronald D.	Review Committee	3-5-07	Informal Admonition	
Betts, Wendell	Review Committee	5-2-07	Informal Admonition	
Bigus, Kenneth	Review Committee	9-27-06	Informal Admonition	
Black, Thomas V.	Supreme Court	4-27-07	Published Censure	
Brady, Michael	Review Committee	9-27-06	Informal Admonition	
Brooks, Mary Yelen	Review Committee	11-9-06	Informal Admonition	
Barta, Ronald D.	Review Committee	3-5-07	Informal Admonition	
Chappas, James G.	Review Committee	3-20-07	Informal Admonition	
Comfort, C. Richard	Supreme Court	6-8-07	Published Censure	
Daniels, James Lee	Supreme Court	6-8-07	1 Yr. Suspension	
Docking, Kent O.	Supreme Court	2-8-06	90 Day Suspension	
Eckelman, Linda L.	Supreme Court	10-27-06	Published Censure	
Ediger, Steven L.	Supreme Court	12-8-06	Published Censure	
Gackle, Thomas E.	Supreme Court	3-16-07	Indefinite Suspension	
Garcia, Vincent	Supreme Court	12-8-06	Published Censure	
Grauberger, Albert E.	Review Committee	3-20-07	Informal Admonition	
Green, Tommy L.	Supreme Court	4-27-07	Indefinite Suspension	7 Cases
Gregory, Gilbert	Review Committee	3-20-07	Informal Admonition	
Hasenbank, Russell	Supreme Court	2-2-07	4 yr Supervised Prob	5 Cases
Hayes, Michael C.	Review Committee	6-14-07	Informal Admonition	
Holmes, David F.	Review Committee	2-14-07	Informal Admonition	
Kaufman, Colin	Supreme Court	8-30-06	Disbarment	
Kennard, Carlton	Supreme Court	3-12-07	Disbarment	3 Cases
Kjorlie, Eric	Review Committee	5-30-07	Informal Admonition	
Knox, John	Review Committee	7-18-06	Informal Admonition	
Lampson, Daniel H.	Review Committee	10-27-06	Informal Admonition	
Lampson, Daniel H.	Supreme Court	12-8-06	Indefinite Suspension	5 Cases
Laskowski, Joseph	Supreme Court	12-8-06	Indefinite Suspension	
Lazzo, Michael E.	Supreme Court	2-2-07	Published Censure	
Levy, Robert	Review Committee	4-19-07	Informal Admonition	
Markowitz, Daniel J.	Supreme Court	8-30-06	Disbarment	3 Cases
McClintock, Kenneth	Hearing Panel	7-27-06	Informal Admonition	
McPherson, Boyd R.	Review Committee	9-8-06	Informal Admonition	
McPherson, Brock	Review Committee	5-15-07	Informal Admonition	
Meigs, Eldon L.	Review Committee	8-8-06	Informal Admonition	

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Miller, Christopher	Supreme Court	12-8-06	2 Year Suspension	
Mitchell, Amy R.	Review Committee	7-21-06	Informal Admonition	
Mosier, Daniel D.	Review Committee	10-13-06	Informal Admonition	
Pattison, James B.	Supreme Court	6-8-07	Indefinite Suspension	
Purinton, Troy W.	Supreme Court	4-27-07	Indefinite Suspension	
Pyle, E. Thomas III	Supreme Court	4-27-07	3 Month Suspension	
Russo, Anthony R.	Review Committee	6-22-07	Informal Admonition	
Sylvester, Bradley P	Supreme Court	10-27-06	Published Censure	
Vernon, Kirby	Review Committee	3-28-07	Informal Admonition	
Waite, Michael	Supreme Court	3-16-07	Indefinite Suspension	
Waite, Michael J.	Review Committee	6-14-07	Informal Admonition	3 Cases
Webb, Alexander	Review Committee	7-6-06	Informal Admonition	
Wiles, Stanley L.	Supreme Court	2-2-07	Indefinite Suspension	2
Cases				
Wise, Jean W.	Review Committee	12-7-06	Informal Admonition	