

MEMORANDUM

TO: The Honorable Fred Patton, Chair
and Members of the House Judiciary Committee

FROM: Stanton A. Hazlett
Kansas Disciplinary Administrator

DATE: January 28, 2019

RE: House Bill 2020

Chairman Patton, members of the committee, thank you for the opportunity to testify concerning HB 2020. I have been the Disciplinary Administrator for the State of Kansas for 20 years, and have worked in that office for 30 years. My office is tasked with the investigation and prosecution of lawyers who violate the Kansas Rules of Professional Conduct. My testimony is limited to addressing how the attorney discipline system is sufficient to ensure the accuracy and integrity of the information Kansas licensed attorneys provide to the Kansas Supreme Court and the Clerk of the Appellate Courts.

Under Article 3, Section 1 of the Kansas Constitution, the power to regulate the bar, including the power to discipline its members, rests inherently and exclusively with the Kansas Supreme Court. *State ex rel Stephan v. Smith*, 242 Kan. 336, 747 P.2d 816 (1987). In accordance with that authority, the Kansas Supreme Court adopted the Kansas Rules of Professional Conduct (KRPC). The KRPC contains several rules specifically prohibiting dishonest conduct, including false statements. Moreover, dishonest conduct is considered serious misconduct.

Under Rule 208(c), attorneys are required to notify the Clerk of the Appellate Courts of any change of address within 30-days. Attorneys who failed to do so are subject to discipline. See *In re Harris*, 292 Kan. 521, 257 P.2d 1231 (2011).

If an attorney submitted false residency information on the attorney's registration form and/or on the ballot certificate submitted for voting in nominating commission elections, the attorney would have violated KRPC 8.4(c), which states that it is misconduct for a lawyer to "engage in conduct involving dishonesty, fraud, deceit or misrepresentation." It would also likely violate KRPC 8.4(g), which states it is misconduct for a lawyer to "engage in any other conduct that adversely reflects on the lawyer's fitness to practice law."

An attorney who is found to have submitted false information to the Kansas Supreme Court for the purpose of participating in a nominating commission election would face serious disciplinary consequences. Although I did not find a case in Kansas or elsewhere where such a thing occurred, there are somewhat analogous situations that provide examples of the severity of the discipline an attorney could face.

Recently, an attorney who submitted false *pro hac vice* applications and Johnson County District Court was suspended for 60-days. That attorney was licensed in both Kansas and Missouri. His Kansas license had been suspended for many years for failure to pay the annual registration fees and complete the required continuing legal education courses. The attorney attempted to represent a couple of Kansas clients in a Kansas matter. He submitted applications to be temporarily admitted in Kansas. The application form required the attorney to list the states in which he had a license to practice law. The attorney did not list Kansas. The Supreme Court found that conduct violated KRPC 8.4(c). See *In re Hall*, 304 Kan. 999 (2016).

Attorneys in other states have been suspended for submitting false continuing legal education certifications to the CLE commission or bar office. See *In re Diggs*, 544 S.E.2d 628 (S.C. 2001) (90-day suspension); *In re Wyllie*, 957 P.2d 1222 (Or. 1998) (2-year suspension). Another somewhat analogous situation would be submitting a false payment voucher for legal services on court-appointed cases. See *In re Cleaver-Bascombe*, 986 A.2d 1191 (D.C. Ct. of App. 2010 (disbarment)).

Thank you again for the opportunity to testify on this bill.