

## PROPOSED AMENDED RULES 602 - 627

The Kansas Supreme Court is considering proposed changes to Supreme Court Rules 602 – 627 to create a clearer and more comprehensive complaint process for both complainants and judges. With such extensive revision, a red-line version of the changes is not feasible and an amended copy is, therefore, provided.

The Supreme Court will accept comment on the proposed rule changes until 5 p.m. Monday, December 17, 2018. Comment may be submitted by email to [rulenotice@kscourts.org](mailto:rulenotice@kscourts.org) with "Rules 602-627" in the subject line.

---

### RULES RELATING TO THE COMMISSION ON JUDICIAL CONDUCT

#### PREFATORY RULE

- (a) **Rules Adopted.** The following Rules of the Supreme Court numbered 602-621 are effective \_\_\_\_\_.
- (b) **Repeal of Former Rules.** The Supreme Court rules relating to judicial conduct numbered 602-627 that were in effect immediately prior to the effective date of these rules are repealed as of \_\_\_\_\_.
- (c) **Statutory References.** In these rules, a reference to a statute includes any subsequent amendment to the statute.

#### RULE 602

##### COMMISSION ON JUDICIAL CONDUCT

- (a) **Creation and Purpose.** Under authority granted by Article 3, §§ 1 and 15 of the Kansas Constitution, the Commission on Judicial Conduct (formally known as the Commission on Judicial Qualifications) is created. The Commission on Judicial Conduct is subject to the Supreme Court's direction and approval and assists the court in the exercise of its responsibility in judicial disciplinary matters.

- (b) **Members and Terms.** The Commission consists of 14 members appointed by the Supreme Court, including 6 active or retired judges, 4 nonlawyers, and 4 lawyers. Each appointment is for a term of 4 years. The Supreme Court will appoint a new member to fill a vacancy. A new member appointed to fill a vacancy serves the unexpired term of the previous member. No member may serve more than 3 consecutive 4-year terms, except a member initially appointed to serve an unexpired term may serve 3 consecutive 4-year terms thereafter. A vacancy occurs when the qualifications for the appointment of any member are no longer met.
- (c) **Panels.** The Commission is divided into two 7-person panels, one designated Panel A and the other Panel B. Each panel consists of 3 judges, 2 nonlawyers, and 2 lawyers. The chair of the Commission will chair one panel, and the vice-chair of the Commission will chair the other panel.
- (d) **Meetings.** The Commission must meet each June; the Commission will also meet when directed by the Supreme Court, upon call by a panel chair, or in accordance with Commission rules. Panel A or Panel B will meet alternating months. A Hearing Panel meets as needed.
- (e) **Officers.** The Commission will elect officers at the annual June meeting to serve a 1-year term beginning July 1. The officers include a chair and vice-chair of the Commission and a vice-chair for Panel A and a vice-chair for Panel B.
- (f) **Quorum.** A quorum for transacting business by the Commission is 9 members. A quorum for transacting business by an Inquiry Panel is 4 members. A quorum for transacting business by a Hearing Panel is 5 members.
- (g) **Temporary Commission or Panel Members.** 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 Commission chair or vice-chair, may appoint temporary Commission members to serve as specified.
- (h) **Compensation and Expenses.** Commission members will be reimbursed their actual and necessary expenses incurred in discharging their official duties. Members who are not active judges will receive compensation for their services as determined by the Supreme Court.
- (i) **Other Fees and Expenses.** The Supreme Court will pay from available funds all reasonable costs, fees, and expenses incurred in administering these rules.

## RULE 603

### DEFINITIONS

In the Rules Relating to the Commission on Judicial Conduct, unless the context or subject matter otherwise requires, the following definitions apply.

- (a) **"Commission"** means Commission on Judicial Conduct.
- (b) **"Judge"** has the same meaning as used in Rule 601B. Except as provided in Rules 614 and 619, "judge" means any judicial officer who performs the functions of a judge in Kansas courts, including Supreme Court Justice, Court of Appeals Judge, District Judge, District Magistrate Judge, Senior Judge, Retired Judge accepting judicial appointments, and Municipal Court Judge. Where applicable, the term "judge" includes Master, Referee, Judicial Hearing Officer, Temporary Judge, Pro Tempore Judge, Part-time Judge, and Commissioner who performs 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 an attorney retained by the Kansas Judicial Branch to take assignments as needed; to investigate a complaint, gather evidence, and report to an Inquiry Panel; to present evidence, argument, and recommendations to the Hearing Panel; and to present argument and authority to the Supreme Court.
- (d) **"Panel"** means either Panel A or Panel B serving as either the Inquiry Panel or Hearing Panel.
- (e) **"Inquiry Panel"** is the panel that considers and investigates a complaint. The Inquiry Panel handles the complaint until conclusion by either dismissal, panel disposition, or referral for formal proceedings.
- (f) **"Hearing Panel"** is the panel not assigned as the Inquiry Panel that handles a matter after formal proceedings are instituted. The Hearing Panel must have no member who has served on the Inquiry Panel for the same complaint.
- (g) **"Complainant"** means a person or entity who has made a complaint against a judge.

## RULE 604

### POWERS OF THE COMMISSION

- (a) **Generally.** In addition to the powers expressly granted by these rules, the Commission on Judicial Conduct has all powers necessary to institute, conduct, and dispose of proceedings.
- (b) **Jurisdiction.** The Commission has jurisdiction to receive and investigate a complaint against a judge and to resolve the complaint as provided in these rules if the complaint is based on one or more violations of the Code of Judicial Conduct.
- (c) **Disposing of a Complaint.** The Inquiry Panel has the power to dispose of a complaint as set out in Rule 614. The Hearing Panel has the power to dispose of a complaint as set out in Rule 619.
- (d) **Oaths.** The chair, vice-chair, or any Commission member, acting under these rules, may administer oaths and affirmations.
- (e) **Subpoena Power.** Under Rule 610, the Commission or a panel has the authority to compel by subpoena the attendance of witnesses and the production of documents, electronically stored information, or tangible things.
- (f) **Rule Changes.** The Commission, on its own motion or at the Supreme Court's request, will study and recommend changes in either the Code of Judicial Conduct or the Rules Relating to the Commission on Judicial Conduct.
- (g) **Internal Operating Rules.** The Commission has authority to adopt internal operating rules necessary to carry out its function.

## RULE 605

### SECRETARY OF THE COMMISSION AND PANELS

- (a) **Secretary and Staff.** The clerk of the appellate courts serves as Secretary of the Commission and each panel. The Secretary is not a member of the Commission or a panel. The Secretary may delegate specific tasks to a staff member who acts at the Secretary's direction.
  
- (b) **Office Files and Records.** The Secretary is the custodian of official Commission and panel files and records. All papers and pleadings must be filed with the Secretary of the Commission.
  
- (c) **Duties of the Secretary.** The Secretary's duties and responsibilities include the following:
  - (1) receiving a complaint and considering information regarding judicial misconduct;
  - (2) performing an initial review, screening, and evaluation of a complaint;
  - (3) assigning a number to a complaint;
  - (4) assigning a complaint to either Panel A or Panel B to act as the Inquiry Panel;
  - (5) directing and supervising the Secretary's staff who are assisting the Commission or a panel;
  - (6) keeping minutes of Commission and panel meetings;
  - (7) attending all meetings and hearings of the Commission and panels;
  - (8) preparing and filing documents as needed by the Commission or a panel;
  - (9) maintaining the Commission and panel records;
  - (10) maintaining statistics concerning the Commission's operation;
  - (11) preparing an annual report;
  - (12) referring a matter to the Examiner or an investigator at a panel's discretion; and
  - (13) performing other duties at the direction of the Commission, chair, or vice-chair.
  
- (d) **Powers of the Secretary.** The Secretary may administer oaths and affirmations and, subject to the Rules of Civil Procedure, issue subpoenas to compel the attendance of witnesses and the production of documents, electronically stored information, or tangible things. Under Rule 610(e), all subpoenas must be issued by and returned to the Secretary.

## RULE 606

### EXAMINER FOR THE COMMISSION

- (a) **Role of the Examiner.** The Examiner acts in a dual capacity as follows:
- (1) when an Inquiry Panel is considering a complaint against a judge, the Examiner assists the Inquiry Panel, when requested, in investigating the complaint; and
  - (2) after formal proceedings are instituted, the Examiner prosecutes the formal complaint before a Hearing Panel and in any proceedings before the Supreme Court.
- (b) **Powers and Duties of the Examiner.** The Examiner's duties and responsibilities include the following:
- (1) conducting or directing an investigation of matters referred by an Inquiry Panel;
  - (2) administering oaths during investigation;
  - (3) requesting the issuance of subpoenas by the Secretary;
  - (4) employing others to assist with investigations;
  - (5) notifying the judge, during the investigation, of the investigation and the general nature of the complaint;
  - (6) allowing the judge to respond and present information or evidence;
  - (7) making interim reports to the Inquiry Panel as needed or requested;
  - (8) making a final report to the Inquiry Panel at the conclusion of an investigation;
  - (9) preparing a formal complaint as directed and approved by the Inquiry Panel;
  - (10) presenting the case to the Hearing Panel in support of charges in the formal complaint;
  - (11) handling all proceedings filed in the Supreme Court under Rule 620;
  - (12) entering into settlement discussions with a judge and presenting settlement proposals to a Hearing Panel after formal proceedings are instituted; and
  - (13) performing other duties at the direction of the Commission.

## RULE 607

### COMPLAINTS RELATING TO JUDICIAL CONDUCT

- (a) **Form of a Complaint.** A complaint must be in writing, contain the complainant's name and address, and be signed by the complainant. A complaint must be submitted on a form provided by the Commission, and each complaint must be against only one judge.
- (b) **Other Complaints.** The Commission may consider referrals from the Office of Judicial Administration and the Office of the Disciplinary Administrator. The Commission may consider matters of judicial misconduct on its own motion or on the motion of one of its members.
- (c) **Complaint Number.** The Secretary will assign each complaint a number used to identify the complaint at all steps in the Commission process.
- (d) **Initial Review.** The Secretary will acknowledge in writing the receipt of a complaint to the complainant. The Secretary will make an initial review of the complaint. The Secretary is authorized to return the complaint if it is illegible or does not conform to the requirements of subsection (a). If the complaint fails to state a violation of the Code of Judicial Conduct or does not state a matter within the Commission's jurisdiction, the Secretary will notify the complainant. Panel A and Panel B must review the Secretary's decision. If either panel disagrees with the Secretary's decision, the complaint will be assigned to an Inquiry Panel. If both panels agree with the Secretary's decision, the complaint is considered closed.
- (e) **Assignment to an Inquiry Panel.**
  - (1) Any complaint not resolved by the initial review process in subsection (d) will be assigned to an Inquiry Panel.
  - (2) The complaint will be distributed to the Inquiry Panel for consideration at its next monthly meeting. Supporting documents and additional materials may also be distributed to the Inquiry Panel. All supporting documents submitted by a complainant will be available for review by Inquiry Panel members.
- (f) **Request for Additional Information.** The Secretary may request or assemble additional documents or information for the Inquiry Panel. The Secretary may obtain case specific documents or records, ask a judge for information, or ask the complainant to provide additional information.
- (g) **Sufficiency of a Complaint.**
  - (1) An Inquiry Panel will determine whether the complaint states sufficient credible facts that cause a reasonable person to believe that a violation of the Code of Judicial Conduct may have been committed.

- (2) Statements of opinion, speculative assertions, and conclusory allegations do not constitute facts and are not sufficient to warrant further investigation or a finding that there is reason to believe a violation of the Code of Judicial Conduct has occurred.
  - (3) A complaint or objection related to a judge's rulings on legal issues or matters involving a judge's discretion are ordinarily insufficient. Such matters are subject to review and correction on appeal and do not constitute a violation of the Code of Judicial Conduct.
- (h) **Notice of Disposition.** Upon disposition of a complaint by either a finding of violation or no violation, the complainant will be notified of the Inquiry Panel's action. If there is a finding of a violation, the judge or other interested persons will be notified. If there is a finding of no violation, the judge or other interested persons may be notified within the Inquiry Panel's discretion.

**RULES APPLICABLE TO BOTH PANELS AND PROCEDURES BEFORE EITHER  
PANEL OF THE COMMISSION**

**RULE 608**

**COOPERATION**

A judge must cooperate with the Commission, an Inquiry Panel, or a Hearing Panel. A judge must respond to any inquiry concerning the judge's conduct within the time required by a panel. A judge's failure or refusal to respond may be considered a failure to cooperate. A judge's failure or refusal to cooperate in an investigation, 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.

## RULE 609

### DISQUALIFICATION OR RECUSAL

- (a) **Complaint against a Judge Member.** A judge who is a Commission member is disqualified from participation as a member in all proceedings involving a complaint against the judge. A proceeding against a judge who is a Commission member will be conducted in the same manner as a proceeding against any other judge.
- (b) **Motion to Disqualify a Panel Member.** A judge who is the subject of a complaint may file a written motion to disqualify a panel member, stating with particularity the grounds for disqualification. If formal proceedings have been commenced, a motion to disqualify must be filed no later than 20 days after the formal complaint is served. The panel member may, within 14 days after a motion to disqualify is filed, file a response. A motion to disqualify must be determined by majority vote of the panel if the member does not voluntarily recuse. The panel member whose disqualification is requested is not eligible to vote on the motion for disqualification.
- (c) **Voluntary Recusal.** Any Commission or panel member may voluntarily recuse at any time. If a member recuses, he or she must not be present when the matter is discussed.

## **RULE 610**

### **SUBPOENAS**

- (a) **Subpoena for Investigation.** After a complaint is referred to the Examiner, the Examiner may compel by subpoena for purposes of investigation the attendance of the judge or witnesses and the production of documents, electronically stored information, or tangible things. Subpoenas issued before formal proceedings should clearly state they are issued in connection with a confidential investigation under these rules. A person subpoenaed may consult with his or her attorney without committing a breach of confidentiality.
- (b) **Subpoena for Deposition or Hearing.** After formal proceedings are filed, the Examiner and the respondent may compel by subpoena for a deposition or a hearing the attendance of witnesses and the production of documents, electronically stored information, or tangible things.
- (c) **Enforcement of Subpoena.** Upon application, a district court judge of any judicial district where the attendance or production is required must enforce the attendance and testimony of any witness and the production of any documents or materials subpoenaed.
- (d) **Quashing or Modifying Subpoenas.** The Inquiry or Hearing Panel handling the matter must consider and decide any motion to quash or modify a subpoena.
- (e) **Issuance of Subpoenas.** The Secretary issues all subpoenas.
- (f) **Fees and Costs.** Subpoena and witness fees and costs are the same as those provided for in proceedings in civil matters in Kansas district courts.
- (g) **Service.** K.S.A. 60-245(b) controls service of any subpoena permitted by these rules.

## **RULE 611**

### **CONFIDENTIALITY**

- (a) All complaints, investigations, reports, correspondence, proceedings, and Commission records are private and confidential and must not be divulged except as provided in these rules or by Supreme Court order.
- (b) This rule does not prohibit:
  - (1) an Inquiry Panel from disclosing a complaint to a judge when a response is requested from the judge;
  - (2) an Inquiry Panel from disclosing a copy of a judge's response to the complainant; or
  - (3) the complainant or the judge from disclosing the existence of a complaint or from disclosing any documents or correspondence filed by, served on, or provided to that person.
- (c) The confidentiality provisions of this rule do not apply to the following:
  - (1) a formal complaint under Rule 615 or any document filed with or issued by the Hearing Panel;
  - (2) any hearing held before a Hearing Panel;
  - (3) any information the Commission or a panel submits for use in any current or future criminal prosecution or ouster proceeding against a judge; and
  - (4) the final disposition of a formal proceeding.
- (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 following:
  - (1) the disciplinary administrator for use and consideration in investigating or prosecuting alleged violations of the Kansas Rules of Professional Conduct; and
  - (2) the Judges Assistance Committee.
- (e) Upon written request, the Commission will disclose complaint dispositions that find a violation of the Code of Judicial Conduct to the Supreme Court Nominating Commission, District Judicial Nominating Commissions, and the Governor for use and consideration in evaluating any person being considered for judicial appointment.
- (f) The Examiner's work product, Hearing Panel deliberations, and records of the Hearing Panel's deliberations are confidential and not subject to disclosure.

## **RULE 612**

### **IMMUNITY**

Complaints, reports, or testimony in the course of proceedings under these rules are deemed to be made in the course of judicial proceedings. Commission and panel members, the Examiner, the Secretary, and the Secretary's staff are absolutely immune from suit for all conduct in the course of their official duties. As to all other participants, any complaint, report, or testimony in the course of proceedings under these rules is deemed to be made in the course of judicial proceedings.

## RULES APPLICABLE TO AN INQUIRY PANEL

### Rule 613

#### PROCEDURES OF AN INQUIRY PANEL

- (a) **Generally.** In addition to the powers expressly granted by these rules, an Inquiry Panel has all powers necessary to institute, conduct, and dispose of proceedings.
- (b) **Inquiry Panel Meetings.** An Inquiry Panel (either Panel A or Panel B) meets every month if there are complaints or other matters to be considered.
  - (1) The Inquiry Panel will:
    - (A) consider all complaints assigned to the panel;
    - (B) consider all actions taken by the Secretary;
    - (C) take action on all complaints assigned to the panel; and
    - (D) provide a copy of the complaint to the judge when a response is requested from the judge.
  - (2) The Inquiry Panel may:
    - (A) direct the Secretary to request a response from the judge;
    - (B) ask the Secretary to obtain additional documents or information from the complainant or other sources;
    - (C) direct the Secretary to refer the matter to the Examiner; or
    - (D) stay a complaint.
  - (3) The Inquiry Panel will not:
    - (A) hold a public hearing;
    - (B) interview or take testimony from complainants or other interested persons or witnesses; or
    - (C) discuss its proceedings with Hearing Panel members.
- (c) **Decisions by an Inquiry Panel.** An Inquiry Panel may make one of the dispositions set forth in Rule 614(b) or 614A.
- (d) **Copies or Notice Provided by an Inquiry Panel.** Notice of disposition will be provided under Rule 607(h). In the panel's discretion, it may provide a copy of a judge's response to the complainant.
- (e) **Requests for Reconsideration.** Initial requests for reconsideration will be submitted to the Inquiry Panel assigned the complaint. The panel will reconsider the matter. After reconsideration, the panel may affirm a prior decision or request further information or additional investigation. The Inquiry Panel has no duty to consider subsequent requests for reconsideration.

## RULE 614

### DISPOSITIONS OF AN INQUIRY PANEL; JUDGE

- (a) **Judge.** "Judge," as used in this rule, means any Court of Appeals Judge, District Judge, District Magistrate Judge, Senior Judge, Retired Judge accepting judicial appointments, Municipal Court Judge, Master, Referee, Judicial Hearing Officer, Temporary Judge, Pro Tempore Judge, Part-time Judge, or Commissioner who performs any functions of a judge in any court of this state. A "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.
- (b) **Dispositions.** An Inquiry Panel may make one of the following dispositions by a majority vote of the panel members voting.
- (1) If no violation is found, the Inquiry Panel may:
    - (A) dismiss the complaint; or
    - (B) issue a letter of informal advice to the judge.
  - (2) If a violation is found, the Inquiry Panel may:
    - (A) issue a letter of caution to the judge;
    - (B) issue a cease-and-desist order as set forth in subsection (b) below; or
    - (C) refer the matter for formal proceedings under Rule 615.
- (c) **Cease-and-Desist Order.** A cease-and-desist order must specify if it is private or public. If the Inquiry Panel issues an order directing a judge to cease and desist, the Secretary must serve a copy of the order on the judge. K.S.A. 60-303(c) controls service of any papers or notices, unless otherwise provided in these rules. Within 20 days after service of the order, the judge must either (1) agree to comply with the order by accepting the order in writing where indicated and returning a signed copy of the order to the Secretary, or (2) refuse to accept the order by notifying the Secretary it is not accepted. The order is deemed to have been refused if the Secretary receives no response from the judge within 20 days after service of the order. If a judge accepts a public cease-and-desist order, the complainant will be provided a copy of the order. If the judge refuses to accept the order, the Inquiry Panel may refer the matter to the Examiner and may institute formal proceedings.

## **RULE 614A**

### **DISPOSITIONS OF AN INQUIRY PANEL; JUSTICE**

When a complaint is made against a Kansas Supreme Court Justice, an Inquiry Panel may make the following dispositions by a majority vote of the panel members voting. If no violation is found, the Inquiry Panel must dismiss the complaint. If a violation is found, the Inquiry Panel may issue a letter of caution to the Justice or refer the matter for formal proceedings under Rule 615, consistent with Article 3, §§ 1 and 15 of the Kansas Constitution.

## RULE 615

### FORMAL PROCEEDINGS

- (a) **Generally.** If the Inquiry Panel concludes formal proceedings should be instituted, the panel will direct the Examiner to prepare a formal complaint for approval by the Inquiry Panel.
- (b) **Title of Proceeding.** The formal proceeding is entitled:  
  
"BEFORE A HEARING PANEL FOR FORMAL JUDICIAL COMPLAINTS  
Inquiry Concerning Judge \_\_\_\_\_, No. \_\_\_\_\_."
- (c) **Formal Complaint.** The formal complaint must specify in ordinary language the charges against the judge and the alleged facts that are the basis for the charges. The formal complaint must advise the judge of the right to file a written answer to the charges within 20 days after service of the formal complaint.
- (d) **Service.** Unless service is waived in writing, the Secretary must serve the formal complaint on the judge. K.S.A. 60-303(c) controls service of any papers or notices, unless otherwise provided in these rules.
- (e) **Referral to Hearing Panel.** After the Secretary serves the formal complaint, all matters relating to the formal proceedings are referred to the Hearing Panel.

## **RULES RELATING TO FORMAL PROCEEDINGS AND A HEARING PANEL**

### **RULE 616**

#### **PROCEDURES OF A HEARING PANEL**

- (a) **Generally.** In addition to the powers expressly granted by these rules, a Hearing Panel has all powers necessary to institute, conduct, and dispose of proceedings.
- (b) **Chair.** The chair of the assigned panel chairs the Hearing Panel or designates a panel member to serve as chair of the Hearing Panel. The Hearing Panel chair, acting under these rules, may administer oaths and affirmations and has the authority to rule on motions and evidentiary objections.
- (c) **Computation and Extension of Time.** The provisions of K.S.A. 60-206 apply to the computation of any time period specified by these rules. At the respondent's request, a Hearing Panel may extend for periods not to exceed 30 days the time for filing an answer and the commencement of a hearing. A request for continuance of the hearing must be filed at least 7 days before the hearing date.
- (d) **Answer.** The respondent's answer is due 20 days after service of the formal complaint.
- (e) **Prehearing Conference.** After the time for filing an answer has expired, the Hearing Panel chair will conduct a prehearing conference. The conference may be conducted in person, by telephone, or by other electronic means. A written order reflecting the matters determined at the conference must be entered. The purpose of the conference is to address the following matters:
  - (1) identify and state the issues of fact or law in controversy;
  - (2) establish a deadline and procedure for the exchange of information required to be disclosed by the parties under subsection (f);
  - (3) establish of record the admission of any facts or stipulations between the parties;
  - (4) determine requests for discovery under subsection (g);
  - (5) establish the time, place, and estimated duration of the formal hearing; and
  - (6) determine any other matters the panel chair deems necessary to ensure the fair and orderly resolution of the hearing.
- (f) **Disclosure.** Upon request, the Examiner must disclose to the respondent or the respondent's attorney all statements, including those in writing and stenographically or electronically taken. Both the Examiner and the respondent or the respondent's attorney must disclose and serve the following information:
  - (1) the name, address, and a brief summary of the testimony for each proposed witness at the hearing; and
  - (2) the documents and/or other exhibits proposed for use or as evidence at the hearing.

- (g) **Discovery.** Requests for authority to conduct discovery allowed by the Kansas Code of Civil Procedure must be presented and determined at the Prehearing Conference.
- (h) **Setting for Hearing.** A time and place for hearing will be set at the Prehearing Conference, after consultation with the Hearing Panel members to determine availability. If the respondent or the respondent's attorney does not appear or participate in the Prehearing Conference, the Secretary will provide notice of the date, time, and place of hearing. This notice must be given at least 20 days prior to the hearing.
- (i) **Service.** Unless otherwise provided in these rules, K.S.A. 60-205 controls service of any papers or notices required by these rules.
- (j) **Amendments to Complaint or Answer.** At any time before disposition, a Hearing Panel may allow or require amendments to the formal complaint and may allow amendments to the answer. The formal complaint may be amended to set forth additional facts or charges that were unknown either at the time the formal complaint was filed or before the commencement of the hearing or to conform to the evidence presented at the hearing. If the formal complaint is amended, a respondent must be given reasonable time to answer the amendment and to prepare and present a defense against the matters charged.
- (k) **Record of Proceedings.** A Hearing Panel must keep a record of all proceedings.

## RULE 617

### PROCEDURAL RIGHTS OF A RESPONDENT IN FORMAL PROCEEDINGS

- (a) **Right to Counsel, Defend, and Offer Evidence.** A respondent has the following rights:
  - (1) a right to be represented by counsel;
  - (2) a right and reasonable opportunity to defend against the charges by the introduction of evidence and examination and cross-examination of witnesses; and
  - (3) a right to the issuance of subpoenas for the attendance of witnesses or for the production of documents, electronically stored information, or tangible things.
  
- (b) **Transcript of Formal Hearing.** A respondent has the right, at the respondent's expense, without any order or approval, to a copy of all or any portion of the formal hearing transcript.
  
- (c) **Guardian Ad Litem if Incompetent.** If a respondent is adjudged an incapacitated person, or if it appears to the Hearing Panel at any time during the proceedings that the respondent is not competent to act, the Hearing Panel may appoint a guardian ad litem. The guardian ad litem may claim and exercise any right and privilege and make any defense for the respondent with the same force and effect as if claimed, exercised, or made by the respondent if competent. When these rules provide for service or notice to the respondent, the service or notice must be to the guardian ad litem.

## **RULE 618**

### **FORMAL HEARING PROCEDURE**

- (a) At the time and place set for hearing, the Examiner will present the case in support of the charges in the formal complaint. The respondent may present any evidence or testimony in defense of the formal complaint.
- (b) The respondent's failure to answer or appear at the hearing will not stay the formal proceeding or be taken as evidence of the truth of the facts alleged in the formal complaint.
- (c) The proceedings at the hearing must be recorded verbatim.
- (d) No fewer than 5 members of the Hearing Panel must be present when evidence is introduced.
- (e) Rules of evidence applicable to civil cases apply at the formal hearing.
- (f) Procedural and other interlocutory rulings will be made by the Hearing Panel chair.
- (g) While the matter is pending before the Hearing Panel and upon application of the Examiner or the respondent, the Hearing Panel may reopen the hearing and take additional evidence related to the pending matter. The order must set the time and place of the reopened hearing and must indicate the matters on which the Panel will hear additional evidence.
- (h) The Hearing Panel's deliberations are not public.

## RULE 619

### DISPOSITIONS OF A HEARING PANEL; JUDGE

- (a) **Judge.** "Judge," as used in this rule, means a Court of Appeals Judge, District Judge, District Magistrate Judge, Senior Judge, Retired Judge accepting judicial appointments, Municipal Court Judge, Master, Referee, Judicial Hearing Officer, Temporary Judge, Pro Tempore Judge, Part-time Judge, or Commissioner who performs any functions of a judge in any court of this state. A "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.
- (b) **Burden of Proof; Dispositions.** To sustain the charges against a judge, at least four Hearing Panel members must find the charges have been proven by clear and convincing evidence. If the panel finds the charges have been proven, it must make one of the following dispositions:
- (1) admonish the respondent;
  - (2) issue a cease-and-desist order;
  - (3) recommend to the Supreme Court a discipline of public censure, suspension, or removal; or
  - (4) recommend to the Supreme Court compulsory retirement of the respondent.
- (c) **No Recommendation to the Supreme Court.** If the panel finds the charges have not been proven or its disposition is admonishment or issuance of a cease-and-desist order, the proceedings will terminate and the respondent or the respondent's attorney and any complainant will be notified.
- (d) **Recommendation to the Supreme Court.** If the panel's disposition is a recommendation to the Supreme Court, then the matter is referred for proceedings before the Supreme Court. In its referral to the Supreme Court, a Hearing Panel, for good cause, may recommend that a respondent be temporarily suspended from performing judicial duties pending final decision by the Supreme Court.
- (e) **Factors Considered for Disposition.** In making a disposition, a Hearing Panel may consider the following:
- (1) the extent of the misconduct;
  - (2) the nature of the misconduct;
  - (3) the respondent's conduct in response to the Commission's proceedings;
  - (4) the respondent's discipline record and reputation;
  - (5) the effect the misconduct had on the integrity of and respect for the judiciary; and
  - (6) any other relevant factors.
- (f) **Written Findings, Conclusions, and Recommendations.** In all proceedings resulting in a recommendation to the Supreme Court for discipline or compulsory retirement, a Hearing Panel must submit in writing findings of fact, conclusions of law, and the basis for the recommendation.

## RULE 619A

### DISPOSITIONS OF A HEARING PANEL; JUSTICE

- (a) **Burden of Proof.** To sustain the charges against a Kansas Supreme Court Justice, at least four Hearing Panel members must find the charges have been proven by clear and convincing evidence.
- (b) **Dispositions.** If the panel finds the charges have not been proven, the proceedings will terminate and the respondent or the respondent's attorney and any complainant will be notified. If the panel finds the charges have been proven, it must forward the matter to the Supreme Court for proceedings under Rule 620, consistent with Article 3, §§ 1 and 15 of the Kansas Constitution.
- (c) **Written Findings and Conclusions.** In all proceedings resulting in a referral to the Supreme Court, a Hearing Panel will submit in writing findings of fact and conclusions of law. The panel will not make a recommendation of discipline.



- (e) **Exceptions by the Respondent.** A respondent must file exceptions within 20 days after receipt of citation. If the respondent files exceptions, the following steps are taken.
- (1) **Record.** The clerk immediately causes a transcript of the record of the Hearing Panel's proceedings to be prepared and filed and a copy to be served on the respondent. The transcript is part of the record, and the State and the respondent may cite it in the briefs. As part of the record, the clerk files the formal complaint, any answer submitted by the respondent, any depositions that were before a Hearing Panel, the exhibits, and other documents as the Supreme Court may direct. All facts included in the respondent's or Examiner's brief must be keyed to the record by volume and page number.
  - (2) **Brief Filing Schedule.**
    - (A) **Respondent's Brief.** The respondent's brief is due 30 days after the Hearing Panel's transcript is filed.
    - (B) **Examiner's Brief.** The Examiner's brief is due 30 days after the respondent's brief is filed.
    - (C) **Reply Brief.** A reply brief is due 14 days after the Examiner's brief is filed.
    - (D) **Failure to File Brief.** If the respondent fails to file a brief within 30 days from filing of the transcript, the respondent will be deemed to have conceded that the findings of fact made by the Hearing Panel are supported by the evidence.
  - (3) **Hearing.** The matter will be set for hearing after briefs are filed or the time for filing briefs has expired. The respondent must appear in person at the time and place designated by the Supreme Court, may be accompanied by counsel, and may make a statement with respect to the disposition of the case.
- (f) **Supreme Court Disposition.** The Supreme Court may enter any of the following dispositions:
- (1) refer the matter back to a Hearing Panel for any further proceedings as directed by the court;
  - (2) reject the Hearing Panel's recommendations;
  - (3) dismiss the proceedings;
  - (4) order discipline;
  - (5) order compulsory retirement; or
  - (6) make any other disposition as justice requires.
- (g) **Discipline against Supreme Court Justice.** If the respondent is a Supreme Court Justice, the Supreme Court must determine whether the charges were proven by clear and convincing evidence. The discipline imposed is subject to the limitations of Article 3, §§ 1 and 15 of the Kansas Constitution governing the removal and retirement of justices of the Supreme Court.
- (h) **Application of Appellate Procedure Rules.** Unless expressly provided otherwise or where the application of a particular rule would be clearly impracticable, inappropriate, or inconsistent, the rules of appellate procedure apply to proceedings in the Supreme Court for review of a recommendation of a Hearing Panel.

## **RULE 621**

### **COSTS**

No costs are assessed against a respondent who is exonerated. In cases where admonition, cease and desist, or discipline is adjudged, costs must be equitably assessed. Costs may include court reporter charges 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.

## **RULE 622**

### **PUBLICATION OF JUDICIAL DISCIPLINE**

A public cease-and-desist order issued by an inquiry panel that has been accepted by the judge and the final disposition of a hearing panel following formal proceedings must be published on the Kansas Judicial Branch website.