

Rule 217

SUBPOENA

- (a) **Investigation.** During an investigation conducted under these rules or a compliance examination conducted under Rule 236, the disciplinary administrator may issue a subpoena to compel the attendance of a witness or the production of pertinent books, papers, documents, and electronically stored information before the disciplinary administrator or an investigator.
- (b) **Formal Hearing.**
 - (1) **Disciplinary Administrator's Evidence.** The disciplinary administrator may compel the attendance of a witness or the production of pertinent books, papers, documents, and electronically stored information at a formal hearing by issuing a subpoena and serving it no later than 21 days before the hearing.
 - (2) **Respondent's Evidence.** A respondent may compel the attendance of a witness or the production of pertinent books, papers, documents, and electronically stored information at a formal hearing by obtaining a subpoena from the presiding officer. The respondent must request the subpoena in writing at least 30 days before the hearing. The respondent must serve the subpoena no later than 21 days before the hearing.
 - (3) **Service, Fees, and Mileage.**
 - (A) **Location.** Service of a subpoena may be made anywhere within Kansas.
 - (B) **Attendance Fee and Mileage.** If the subpoena requires attendance of a witness, the subpoena must be accompanied by the mileage allowed by law, unless waived by the witness.
 - (C) **Payment of Necessary Expenses.**
 - (i) The disciplinary administrator must pay from the disciplinary fee fund the expenses for necessary travel, meals, and lodging of a witness called by the disciplinary administrator.
 - (ii) The respondent must pay the expenses for necessary travel, meals, and lodging of a witness called by the respondent.
 - (4) **Quashing or Modifying Subpoena.**
 - (A) **When Required.** On motion filed no later than 14 days after service of a subpoena, the hearing panel will quash or modify the subpoena under the following circumstances:
 - (i) if it fails to allow a reasonable time for compliance;

- (ii) if it requires disclosure of privileged or other protected matter and no exception or waiver applies; or
 - (iii) if it subjects a person to undue burden.
- (B) **When Permitted.** On motion filed no later than 14 days after service of a subpoena, the hearing panel may quash or modify the subpoena if it requires disclosure of the following:
 - (i) a trade secret or other confidential research development or commercial information; or
 - (ii) an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party.
- (C) **Appearance by Telephone or Video.** On motion filed no later than 14 days after service of a subpoena on a witness, the hearing panel may permit the witness to appear by telephone or video.
- (c) **Enforcement of Subpoena.** In accordance with K.S.A. 20-1204a, the Supreme Court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena.
- (d) **Reciprocal Subpoena.** When a subpoena is sought in Kansas by a disciplinary authority of another jurisdiction for use in an attorney disciplinary investigation or proceeding and counsel for the disciplinary authority certifies that issuance of the subpoena has been approved under the law of the other jurisdiction, the Board chair, on petition for good cause, may issue a subpoena to compel the attendance of a witness or the production of pertinent books, papers, documents, and electronically stored information in the county where the witness or custodian resides or is employed, or elsewhere as agreed to by the witness or custodian. The person or entity seeking the subpoena must pay the witness' mileage expenses allowed by Kansas law and must pay the witness' actual and necessary expenses for travel, meals, and lodging.

[History: New rule adopted effective January 1, 2021.]