

Rule 227

PROBATION

- (a) **Proposed Probation Plan.** If a respondent seeks to be placed on probation for committing misconduct, the respondent must file and serve each hearing panel member and the disciplinary administrator with a copy of a probation plan at least 14 days before the hearing on the formal complaint.
- (b) **Plan Contents.** A probation plan under this rule must meet the following requirements:
 - (1) be workable, substantial, and detailed;
 - (2) contain adequate safeguards that address the professional misconduct committed, protect the public, and ensure the respondent's compliance with the Kansas Rules of Professional Conduct, the Rules Relating to Discipline of Attorneys, and the attorney's oath of office;
 - (3) include the name of a practice supervisor if practice supervision is proposed; and
 - (4) include a provision that the respondent will not commit misconduct.
- (c) **Compliance with Plan.** At the hearing on the formal complaint, the respondent must establish that the respondent has been complying with each condition in the probation plan for at least 14 days prior to the hearing.
- (d) **Restrictions on Recommendation of Probation.** A hearing panel may not recommend that the respondent be placed on probation unless the following requirements are met:
 - (1) the respondent complies with subsections (a) and (c) and the proposed probation plan satisfies the requirements in subsection (b);
 - (2) the misconduct can be corrected by probation; and
 - (3) placing the respondent on probation is in the best interests of the legal profession and the public.
- (e) **Inclusion of Specific Conditions.** If a hearing panel recommends to the Supreme Court that the respondent be placed on probation, the panel will include specific conditions of probation in the final hearing report.
- (f) **Procedure Following Hearing on Formal Complaint.** Regardless of whether the hearing panel recommends probation, the following provisions apply to a respondent who seeks to be placed on probation.
 - (1) The respondent must comply with each condition of the respondent's proposed probation plan.

- (2) At least 14 days before oral argument before the Supreme Court, the respondent must complete the following:
 - (A) file with the Supreme Court and serve the disciplinary administrator with a copy of an affidavit describing the respondent's compliance with each condition of the respondent's proposed probation plan; and
 - (B) serve the disciplinary administrator with a copy of all relevant reports from any medical, mental health, and drug and alcohol treatment provider, supervising attorney, and monitoring attorney, if applicable, that verify the statements in the affidavit.
- (g) **Successful Completion.**
 - (1) **Respondent's Motion for Discharge.** If a respondent placed on probation by the Supreme Court complies with each condition of probation contained in the Supreme Court's opinion, the respondent, at the end of the probation period, may file with the Supreme Court and serve the disciplinary administrator with a motion to be discharged from probation. The motion must include the following as an attachment:
 - (A) an affidavit describing the respondent's compliance with each condition of probation; and
 - (B) an affidavit from the supervising attorney, if applicable, describing the respondent's compliance with the conditions of probation.
 - (2) **Disciplinary Administrator's Duties.** When a respondent files a motion that complies with subsection (g)(1), the disciplinary administrator no later than seven days after service of the motion must file and serve the respondent with a response to the motion that addresses the respondent's compliance and eligibility for discharge from probation.
 - (3) **Court Action.** The Supreme Court may rule on the respondent's motion without oral argument.
- (h) **Remains on Probation.** The respondent remains on probation, subject to each condition of probation, until the Supreme Court discharges the respondent from probation, regardless of whether the ordered term of probation has expired.
- (i) **Procedure When a Violation Is Alleged.**
 - (1) **Respondent's Duty.** If a respondent fails to comply with a condition of probation, the respondent must immediately inform the disciplinary administrator and the supervising attorney, if applicable, of the failure.
 - (2) **Supervising Attorney's Duty.** The supervising attorney must immediately inform the disciplinary administrator when the

supervising attorney knows or reasonably believes that the respondent has failed to comply with a condition of probation.

- (3) **Disciplinary Administrator's Duty.** After receiving information that the respondent failed to comply with a condition of probation, the disciplinary administrator must determine whether to file a motion to revoke probation with the Board. The filing of a motion automatically suspends the running of the period of probation and continues the probation until the motion is resolved.
- (4) **Chair's Duty.** When the disciplinary administrator files a motion under subsection (i)(3) to revoke probation, the Board chair will do one of the following:
 - (A) appoint one Board member to conduct an expedited hearing to determine whether the respondent failed to comply with a condition of probation; or
 - (B) if another disciplinary matter concerning the respondent is pending, decide whether to consolidate the motion with the pending matter for hearing under Rule 222.
- (5) **Expedited Hearing Procedure.**
 - (A) At an expedited hearing on a motion to revoke probation, the disciplinary administrator has the burden to establish by clear and convincing evidence that the respondent failed to comply with a condition of probation.
 - (B) The respondent is entitled to be represented by counsel, to cross-examine witnesses, and to present evidence.
- (6) **Probation Violation; Final Hearing Report.**
 - (A) **Contents.** Following a hearing on a motion to revoke probation, the Board member or panel conducting the hearing will issue a final hearing report setting forth findings of fact and conclusions of law, including a conclusion regarding whether the respondent failed to comply with a condition of probation. If the respondent failed to comply with a condition of probation, the Board member or panel will include a recommendation regarding revocation and discipline.
 - (i) **Findings of Fact.** Each finding of fact must be established by clear and convincing evidence.
 - (ii) **Conclusions of Law.** Each conclusion of law must be set forth separately.
 - (iii) **Recommendation.** Any recommendation regarding revocation and discipline by the Board member or panel is advisory only. The Supreme Court is not prevented from allowing a respondent to remain on probation or from imposing discipline greater or lesser

than the Board member's or the panel's recommendation.

- (B) **Separate Final Hearing Reports.** If under subsection (i)(4) the chair consolidates a motion to revoke probation with a pending matter for hearing, the hearing panel will issue the following:
 - (i) a final hearing report concerning the motion to revoke probation; and
 - (ii) a separate final hearing report concerning the pending matter for hearing.
 - (C) **Distribution.** The Board member or panel will serve the disciplinary administrator and the respondent with a copy of the final hearing report.
- (7) **Finding of No Violation.** If the Board member or panel concludes that the respondent did not violate a condition of probation, the following provisions will apply:
- (A) the Board member or panel will deny the motion to revoke probation;
 - (B) the disciplinary administrator will not seek revocation of probation with the Supreme Court; and
 - (C) the respondent will remain on probation until discharged by the Supreme Court under subsection (h).
- (8) **Finding of a Violation.** If the Board member or panel concludes that the respondent violated a condition of probation, the following provisions will apply.
- (A) The disciplinary administrator must file the motion to revoke in the pending case before the Supreme Court.
 - (B) No later than 21 days after the disciplinary administrator files the motion in the pending case, the respondent may file with the Supreme Court an exception to any finding of fact or conclusion of law in the final hearing report. If the respondent files an exception, the respondent must serve the disciplinary administrator with a copy of the exception. Upon the filing of an exception or the expiration of the time to file an exception, the matter will be submitted for the Supreme Court's consideration. Neither briefs nor oral arguments are permitted unless requested by the Supreme Court.

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