

# ETHICS UPDATE

## (IN THREE PARTS)

1. ETHICS AND APPELLATE ADVOCACY
2. AN ATTORNEY'S DUTY TO EDUCATE
3. A DIGEST OF RECENT CASES

October 14, 2022

CHIEF JUSTICE MARLA LUCKERT  
KANSAS SUPREME COURT

### PART ONE: ETHICAL OBLIGATIONS IN APPELLATE ADVOCACY

#### *I. Implicated Provisions of Kansas Code of Professional Conduct*

- **KRPC 1.1 Competence**

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

- **KRPC 1.3 Diligence**

A lawyer shall act with reasonable diligence and promptness in representing a client.

- **KRPC 1.4 Communication**

(a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

- **KRPC 1.16 Declining or Terminating Representation**

(a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if: . . .

(3) the lawyer is discharged. . . .

...

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee that has not been earned. The lawyer may retain papers relating to the client to the extent permitted by other law.

- **KRPC 3.1 Meritorious Claims and Contentions**

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law. . . .

- **KRPC 3.2 Expediting Litigation**

A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.

- **Rule 3.3 Candor Toward the Tribunal**

(a) A lawyer shall not knowingly:

(1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;

(2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or

(3) offer evidence that the lawyer knows to be false. . . .

(c) The duties stated in paragraphs (a) and (b) continue to the conclusion of the proceeding and apply even if compliance requires disclosure of information otherwise protected by Rule 1.6.

- **KRPC 5.3 Responsibilities Regarding Nonlawyer Assistance**

With respect to a nonlawyer employed or retained by or associated with a lawyer: . . .

(b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; . . .

- **KRPC 8.4 Misconduct**

It is professional misconduct for a lawyer to:

...

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) engage in conduct that is prejudicial to the administration of justice;

...

(g) engage in any other conduct that adversely reflects on the lawyer's fitness to practice law.

## *II. Recent Disciplinary Cases Relating to Ethical Violations Arising from Appellate Advocacy<sup>1</sup>*

### **A. *In re Borich*, \_\_ Kan. \_\_, \_\_ P.3d \_\_, 2022 WL 3130768 (Aug. 5, 2022)**

The Kansas Supreme Court suspended Joseph R. Borich III for one year and ordered he repay \$46,910 to his former clients. A portion of the suspension would be stayed if Borich refunded paid attorneys' fees after 90 days and before the one-year period expired. Two clients retained Borich to represent them in claims against their homebuilder for defects in their new home construction. The clients lost their case in arbitration, and subsequent collateral attacks and appeals were unsuccessful. Six notices of appeal were filed for the clients, two of which were premature and three of which were never docketed with the Court of Appeals. Ultimately, the Court of Appeals dismissed the appeals for lack of jurisdiction. The hearing panel commented on significant deficiencies in Borich's appellate filings. The Kansas Supreme Court found clear and convincing evidence supported the charged misconduct, which included violations of:

- **KRPC Rule 1.1**, failing to provide competent representation by failing to timely and properly file appeals, filing documents with deficiencies sufficiently significant to attract comment by the Court of Appeals, failing to appropriately respond to the Court of Appeals show case order, filing a brief containing "convoluted arguments" that were "nearly impossible to square . . . with the record on appeal," and failing to address the Court of Appeals order to address

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<sup>1</sup> These descriptions focus on disciplinary issues arising from appellate representation; some cases involve other disciplinary issues.

jurisdiction in the appellate brief, eventually only briefly addressing the issue on reply; and

- **KRPC Rule 8.4 (d)**, engaging in conduct prejudicial to the administration of justice by filing pleadings in federal court and the Court of Appeals that ignored court orders and were notably deficient.

**B. *In re Huffman*, 315 Kan. 641, 509 P.3d 1253 (2022)**

The Kansas Supreme Court imposed a two-year suspension with the possibility of probation after 90 days on Donna L. Huffman. Huffman's suspension resulted from her representation of homeowners in multiple lawsuits over the mortgage on the residence. On appeal to the United States Court of Appeals for the Tenth Circuit, Huffman failed to properly cite the record, included factual assertions outside the statement of facts, and made factual assertions without citing the record. During argument, a Tenth Circuit Judge commented, "I've never seen a case as poorly put together as this one," after a colloquy with Huffman questioning certain facts alleged in the case. The Tenth Circuit affirmed the district court, concluding Huffman failed to establish error or her arguments were supported by inadequate explanation or lacked legal support. Huffman initiated another lawsuit alleging the same and additional claims while the Tenth Circuit case was pending. The case was removed to federal district court, which dismissed that case based on *res judicata*. The defendant moved for and received a sanctions award against Huffman. Huffman appealed eight separate district court orders. The Tenth Circuit rejected her first appellate brief as deficient. Ultimately, the Tenth Circuit ruled against her clients, commenting that her argument "made no sense and was hard to follow", "unsupported by the record", "meritless", and "woefully inadequate".

- **KRPC Rule 1.1**, failing to provide competent representation by failing to follow rules governing the form and content of appellate briefs and making arguments to the Tenth Circuit that were "unsupported by the record", "meritless", "woefully inadequate", and that "made no sense and was hard to follow;" and
- **KRPC Rule 3.1**, pursuing meritless claims, including filing a new action while an appeal was pending that was ultimately dismissed for *res judicata*.

**C. *In re Spradling*, 315 Kan. 552, 509 P.3d 483 (2022)**

The Kansas Supreme Court disbarred Jaqueline J. Spradling. The court found clear and convincing evidence supported the panel's conclusions that Spradling violated various rules of professional conduct in her appellate advocacy, including:

- **KRPC Rule 3.1**, making a frivolous claim during trial and again during the direct appeal, by representing a murder defendant learned of her ex-husband's engagement during a telephone call, when no evidence supported that claim;

- **KRPC Rule 3.3(a)(1)**, knowingly making a false statement of fact at trial and again in the State's initial appellate brief and during oral argument to the Kansas Supreme Court, by representing the defendant's ex-husband obtained a protection from abuse of order that was in effect at the time of the murders;
- **KRPC Rule 8.4(a)**, engaging in conduct involving dishonesty by arguing the existence of a protection from abuse order before the jury and repeating the argument in appellate briefing and oral argument, even though she later admitted no such document existed after persistent questioning by the Kansas Supreme Court; and
- **KRPC Rule 8.4(d)**, engaging in conduct prejudicial to the administration of justice by engaging in repeated instances of misconduct, including misrepresenting the existence of a protection from abuse order.

**D. *In re Christians*, 314 Kan. 266, 497 P.3d 560 (2021)**

The Kansas Supreme Court imposed a 90-day suspension on Mitchell B. Christians based on his failure to file a timely brief with the Court of Appeals. Christians filed a timely notice of appeal, but he failed to file a timely docketing statement. He later requested and received leave to file the docketing statement. Christians then failed to file a brief when first due or within the extended period permitted by court order. The Court of Appeals dismissed his client's appeal, and the court's motions attorney reported the missed filings to the Disciplinary Administrator's Office. During the investigation, Christians reported he did not know the appeal had been dismissed. Christians relied on staff to monitor his email addresses and calendar deadlines, and they had failed to monitor the email inbox and calendar the deadlines here. The Kansas Supreme Court found clear and convincing evidence supported the charged misconduct, which included violations of:

- **KRPC Rule 1.1**, failing to provide competent representation by failing to properly calendar deadlines, failing to prepare and file an appellate brief, and failing to keep track of the appeal's status;
- **KRPC Rule 1.3**, failing to act with reasonable diligence and promptness by failing to timely docket the appeal, file an appellate brief, and respond to the Court of appeals' order to file a brief;
- **KRPC Rule 1.4**, failing to keep the client reasonably informed; and
- **KRPC Rule 5.3**, failing to supervise staff by failing to make reasonable efforts to assure his firm had effective measures compatible with his professional obligation and his staff's conduct complied with his professional obligations, i.e., monitoring court communications and calendaring deadlines.

**E. *In re Kepfield*, 309 Kan. 425, 437 P.3d 939 (2019)**

The Kansas Supreme Court revoked Sam S. Kepfield's disciplinary probation, ordered he serve his underlying one-year suspension, and imposed an additional three-year suspension. Kepfield would be placed on probation after serving six months of the second suspension. Reno County District Court appointed Kepfield to represent a client in a criminal appeal. After receiving the Court of Appeals decision, Kepfield forwarded the decision to the client and instructed the client that a petition for review must be filed within 30 days of the decision. Kepfield did not communicate to the client whether Kepfield would file the petition, awaited the client's instruction on whether to file, or what would happen if the client did not instruct Kepfield whether to file. The client sent a notice to the court informing it he intended to petition for review and criticizing Kepfield's performance. Kepfield received the client's notice to the court three days before the petition for review deadline. Kepfield mailed the client a termination letter. The appellate court clerk could not file the client's petition because court rules limited the filings a represented party could make with the court and Kepfield remained counsel of record. The Kansas Supreme Court found clear and convincing evidence supported the hearing panel majority's conclusion that Kepfield's appellate representation violated:

- **KRPC Rule 1.3**, failing to act with reasonable diligence by not filing a motion to withdraw after the client clearly communicated that he wanted to end the representation; and
- **KRPC Rule 1.16(a)(3) & (d)**, by failing to withdraw or move to withdraw from the representation after discharge by the client or to preserve the client's interest by filing a petition for review.

**F. *In re Shepherd*, 310 Kan. 739, 448 P.3d 1049 (2019)**

The Kansas Supreme Court imposed a two-year suspension on Kevin P. Shepherd. Shepherd represented a client in a trial for driving under the influence of alcohol (second offense). Shepherd filed a timely notice of appeal but failed to timely docket the appeal. Shepherd moved to docket the appeal out of time, which the Court of Appeals granted. The Court of Appeals ordered Shepherd to file a brief after he missed the filing deadline. Shepherd failed to comply with the court's order, and the court dismissed the appeal for lack of prosecution. The chief deputy clerk of the appellate courts notified the Disciplinary Administrator of the failure and dismissal, leading to an investigation. Shepherd initially told the investigator the client did not want to pursue the appeal, but later told the investigator he had not informed the client. Shepherd explained what happened to the client, assisted the client in finding new counsel, and paid the attorney fees and costs associated with reinstating the appeal. The Kansas Supreme Court found

clear and convincing evidence supported this and other charged misconduct, which included violations of:

- **KRPC Rule 1.1**, duty to provide competent representation, by failing to timely docket the appeal and file an appellate brief;
- **KRPC Rule 1.3**, duty to act with reasonable diligence and promptness, by failing to timely docket the appeal and file an appellate brief;
- **KRPC Rule 1.4**, duty to keep the client reasonably informed;
- **KRPC Rule 1.16**, duty to end the representation due to a conflict of interest, which developed after the appeal was dismissed due to Shepherd's misconduct;
- **KRPC Rule 8.1(a)**, when he misrepresented to the investigator that his client did not want to not proceed with the appeal; and
- **KRPC Rule 8.4(a) and (d)**, (1) he was dishonest by omission by not telling his client the appeal had been dismissed; (2) he was dishonest when he told the investigator his client did not want to proceed with his appeal; and (3) he committed conduct prejudicial to the administration of justice by failing to timely docket the appeal and failing to file an appellate brief, causing unnecessary consideration by the court, dismissal of the appeal, and delaying the appellate process.

**G. *In re Deines*, 308 Kan. 1576, 430 P.3d 437 (2018)**

The Kansas Supreme Court imposed indefinite suspension on Brandon W. Deines. The Court of Appeals appointed Deines to represent a client in an appeal of a motion to correct an illegal sentence. Deines failed to file a brief when scheduled. The Court of Appeals noted the brief was past due and warned Deines the appeal would be dismissed without further notice if he failed to file a brief by a set date. Deines failed to file a brief or otherwise respond to the court. The chief deputy clerk of the appellate courts notified the Disciplinary Administrator of the failure and dismissal of the appeal, leading to an investigation. The Kansas Supreme Court found clear and convincing evidence supported this (and other) charged misconduct. Violations related to Deines' appellate representation included violations of:

- **KRPC Rule 1.1**, when he failed to provide competent representation by failing to file an appellate brief;
- **KRPC Rule 1.3**, when he failed to act with reasonable diligence and promptness by failing to file an appellate brief;

- **KRPC Rule 3.2**, when he failed to expedite litigation consistent with the interests of his client by failing to take action on behalf of his client, unnecessarily delaying the appeal; and
- **KRPC Rule 8.4(d)**, when he engaged in conduct prejudicial to the administration of justice by failing to file an appellate brief, causing the appeal to be dismissed.

### *III. Practical Considerations in Appellate Advocacy to Avoid Claims of Incompetence and Ineffectiveness*

- Mistake vs. Incompetence
- Basics
  - Responsibility
  - Finish the work in Trial Court (Preservation)
  - Timeliness
  - Notice of Appeal, Docketing Statement
  - Record
- Skeleton of Appeal
  - Name each *and every* issue or abandoned
  - Supporting facts, law or abandoned
  - Preservation
    - Jurisdiction – What, Who
    - Raised below
    - Sufficiently litigated below
    - Preservation exception if not raised or sufficiently litigated below
  - Standard of Review
    - Factual Sufficiency (Record as whole in light favorable to winning party)
    - Abuse of Discretion (Unreasonable; Fact error – substantial competent evidence; Legal error – plenary review)
    - Instruction Error (Legally & Factually Appropriate, prejudicial; record as a whole)
    - Evidence Error (timely, specific objection)
    - Prosecutorial Error (Wide latitude in context; Prejudice)]
  - Merits
- Request for Relief

**PART TWO: ETHICAL OBLIGATIONS IN FURTHERING UNDERSTANDING OF FAIR  
AND IMPARTIAL COURTS, SEPARATION OF POWERS, AND THE RULE OF LAW**

IV. Implicated Provisions of Kansas Code of Professional Conduct

- A. Kansas Supreme Court Rule 226, Preamble [6] (2015 Kan. Ct. R. Annot. 434): "As a member of a learned profession, a lawyer should . . . further the public's understanding of and confidence in the rule of law and the justice system because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority."
- B. Kansas Rules of Professional Conduct 8.2, Comment [3] (2015 Kan. Ct. R. Annot. 669): "To maintain the fair and independent administration of justice, lawyers are encouraged to continue traditional efforts to defend judges and courts unjustly criticized."

V. Need for Education

- A. How much confidence does the public have in the justice system?

The Gallup polling organization's annual Confidence in Institutions survey doesn't track public confidence in courts as a whole, but since 1973 the share of the public holding a "great deal" or "quite a lot" of confidence in the Supreme Court has ranged from a high of 56 percent (two years in the mid-1980s) to a low of 30 percent in 2014. The figure was 25 percent in 2022. This poll was conducted before the United States Supreme Court issued *Dobbs v. Jackson Women's Health Organization*, No. 19-1392, 597 U.S. \_\_\_\_ (2022), but after it was believed the Court would overrule *Roe v. Wade*.

- B. Annenberg Civics Knowledge Survey

The Annenberg Civics Knowledge Survey, conducted since 2006, focuses on the public's understanding of the Constitution of the United States. Since 2013, the civics knowledge survey has been conducted annually for Constitution Day (Sept. 17) as the Annenberg Constitution Day Civics Survey. Among the most recent 2021 findings:

- In 2021, 56% of U.S. adults could name all three branches of government – the highest level seen in this survey. In 2006 only 33% could name all the branches.

- Asked to name the five rights protected by the First Amendment, more Americans could name most of those rights. In 2021, freedom of speech was named by 74% (up from 48% in 2017).
- A. Disinformation. Many express concern that the declining confidence in our judicial system is attributable in part to disinformation. Judges and attorneys have an ethical obligation to respond.
1. Courts and judges are often the targets of criticism, so it's important to understand that not all criticism amounts to disinformation. It's also important to note that disinformation often includes an element of truth—but it's being exploited or taken out of context. Consider the following definitions:
    - Disinformation – *false or inaccurate information that is spread deliberately, most often by adversaries. This includes technically factual information purposely presented in a misleading way and may include amplification by a bot or other inauthentic account.*
    - Misinformation – *false, inaccurate, or incomplete information that is spread mistakenly or unintentionally, often by American citizens.*
  2. Resources for Learning More about Disinformation
    - October 1, 2020, ABA Journal story
    - Arizona Task Force on Disinformation resource page
    - October 2020 Report from the Arizona Task Force on Disinformation
    - Aldana, *Taking Fire from Many Directions: The Threats to Judicial Independence Are Myriad and Multiplying*, The Judge's Journal (Fall 2021)
    - *Beyond the Ballot* (Center for Strategic & International Studies).

## VI. Educating the Public about Separation of Powers

A.

[T]he doctrine of separation of powers is an inherent and integral element of the republican form of government, and separation of powers, as an element of the republican form of government, is expressly guaranteed to the states by Article IV, Section 4 of the Constitution of the United States." *VanSickle v. Shanahan*, 212 Kan. 426, 447, 511 P.2d 223 (1973).

B. "Like the Constitution of Kansas, the United States Constitution contained no express provision requiring the separation of powers, . . . but the separation is accomplished by the establishment of the three branches of government and the distribution of the various sovereign powers to each of them." *VanSickle v. Shanahan*, 212 Kan. 426, 440, 511 P.2d 223 (1973).

C. "The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny." James Madison, Federalist 47.

D. George Washington, "Farewell Address"

- "Liberty itself will find in such a Government, with powers properly distributed and adjusted, its surest Guardian."
- "The spirit of encroachment tends to consolidate the powers of all the departments in one, and thus to create whatever the form of government, a real despotism."

E. Justice Scalia—What does our Constitution have that is different from Russia's? "The Constitution, though it dates from the founding of the Republic, has powerful meaning and vital relevance to our own times. The constitutional protections that this case involves are protections of structure. Structural protections—notably, the restraints imposed by federalism and separation of powers—are less romantic and have less obvious a connection to personal freedom than the provisions of the Bill of Rights or the Civil War Amendments. Hence they tend to be undervalued or even forgotten by our citizens. It should be the responsibility of the Court to teach otherwise, to remind our people that the Framers considered structural protections of freedom the most important ones, for which reason they alone were embodied in the original Constitution and not left to later amendment. The fragmentation of power produced by the structure of our Government is central to liberty, and when we destroy it, we place liberty at peril." *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 707, 132 S. Ct. 2566,

183 L. Ed. 2d 450 (2012) (Scalia, J., Kennedy, J., Thomas, J., Alito, J., dissenting).

## *VII. Educating the Public about the Federal Constitutional Text*

- A. Article III, Section 1 of the United States Constitution includes three provisions central to the establishment of federal judicial independence.
  - 1. The judicial power clause provides: "The Judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish."
  - 2. The good behavior clause provides: "The Judges, both of the supreme and inferior Courts, shall hold their offices during good Behaviour," which assures Article III federal judges life tenure.
  - 3. The compensation clause provides that "judges of the supreme and inferior Courts shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office."
- B. The independence guaranteed by Article III, Section 1 is offset to an uncertain degree by powers given by the Constitution to political branches to hold the judiciary accountable for its behavior. The Constitution:
  - 1. Delegates to the House and Senate the power to impeach and remove members of their respective body (Article 1, § 5) and provides that "all civil Officers" may be impeached for "high Crimes and Misdemeanors" (Article II, § 4; see Article 1, § 3);
  - 2. Gives Congress the power "To constitute Tribunals inferior to the supreme Court" (Article I, § 8, Clause 9) (such as the U.S. Courts of Appeals and U.S. District Courts, and also including Article I courts for agency review);
  - 3. Subjects the Supreme Court's appellate jurisdiction to "such Exceptions, and under such Regulations as the Congress shall make" (Article III, § 2, Clause 2);
  - 4. Grants to the President, the "Power, by and with the Advice and Consent of the Senate," to appoint "Judges of the supreme Court, and all other Officers of the United States" (Article II, § 2, Clause 2); and
  - 5. Authorizes Congress to "make all Laws which shall be necessary and proper for carrying into Execution . . . all . . . Powers vested by this Constitution in the Government of the United States." (Article 1, § 8, Clause 18).

### *VIII. Educating the Public about the Kansas Constitutional Text*

#### A. Two provisions parallel the Federal Constitution:

1. Article III of the Kansas Constitution includes the judicial power clause: "The judicial power of this state shall be vested exclusively in one court of justice, which shall be divided into one supreme court, district courts, and such other courts as are provided by law: and all courts of record shall have a seal. The supreme court shall have general administrative authority over all courts in this state." Section 1.
2. Article III, § 13 (Kansas' judicial compensation clause) provides compensation as "may be provided by law, which shall not be diminished during their terms of office, unless by general law applicable to all salaried officers of the state."

#### B. As with the federal constitution there are other provisions which offset the clauses providing for judicial independence.

2. As opposed to lifetime appointments for federal judges, Kansas Justices stand for a retention election at the end of the initial term which ends "on the second Monday in January following the first general election that occurs after the expiration of twelve months in office" and after each term thereafter. Justices serve six-year terms. Voters are asked: "Shall [insert name of justice] [insert name of court] be retained in office?" Article III, § 5.
3. Article III, § 15 provides removal terms. "Justices of the supreme court may be removed from office by impeachment and conviction as prescribed in article 2 of this constitution." Provision is also made for removing a justice for incapacity. "Other judges shall be subject to retirement for incapacity, and to discipline, suspension and removal for cause by the supreme court after appropriate hearing."
4. Article III, § 5 grants to the Governor the power to appoint "one of three persons possessing the qualifications of office who shall be nominated and whose names shall be submitted to the governor by the supreme court nominating commission." Under Kansas Constitution Article III, § 6, each district can determine whether judges of the district court will be elected or selected by the governor after a nominating commission submits two or more names to the governor. Judges of the Court of Appeals and district judges appointed by the governor after a nominating committee process stand for retention elections at the end of four-year terms. (The Constitution does not address the appointment of members of the Court of Appeals.)

5. Article III, § 3 provides: "The supreme court shall have original jurisdiction in proceedings in quo warranto, mandamus, and habeas corpus: and such appellate jurisdiction as may be provided by law."
6. Vests the Legislature with all legislative powers (Article I, § 1).

*IX. Educating the Public about the Judicial Power Under the Kansas Constitution*

- A. From days of the Kansas territory, courts recognized the power of judicial review—i.e., the power to declare a statute unconstitutional. See *Shawnee Cty. Comm'rs v. Carter*, 2 Kan. 115, 125 (1863). This power was recognized in *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 170, 2 L. Ed. 60 (1803).
- B. Judges, obligated by their oath of office, have a duty to enforce the Constitution, even if that means declaring a statute to be unconstitutional:

"The judiciary interprets, explains and applies the law to controversies concerning rights, wrongs, duties and obligations arising under the law and has imposed upon it the obligation of interpreting the Constitution and of safeguarding the basic rights reserved thereby to the people. In this sphere of responsibility courts have no power to overturn a law enacted by the legislature within constitutional limitations, even though the law may be unwise, impolitic or unjust. The remedy in such a case lies with the people. But when legislative action exceeds the boundaries of authority limited by our Constitution, and transgresses a sacred right guaranteed or reserved to a citizen, final decision as to invalidity of such action must rest exclusively with the courts. In the final analysis, this court is the sole arbiter of the question whether an act of the legislature is invalid under the Constitution of Kansas. (*Quality Oil Co. v. E. I. Du Pont De Nemours & Co.*, 182 Kan. 488, 493, 322 P.2d 731.) However delicate that duty may be, we are not at liberty to surrender, or to ignore, or to waive it." *Harris v. Shanahan*, 192 Kan. 183, 206-07, 387 P.2d 771 (1963).

- B. In addition, only nine years of statehood, the Kansas Supreme Court recognized: "It is emphatically the province and duty of the judicial department to say what the law is." *Auditor of State v. A.T. & S.F. Railroad Co.*, 6 Kan. 500, 506 (1870)(quoting *Marbury v. Madison*, 5 U.S. [1 Cranch] 137 [1803]).

*X. Recent Case Examples Illustrating Constitutional Principles*

***City of Wichita v. Trotter* No. 122,007, \_\_ Kan. \_\_, \_\_ P.3d \_\_, 2022 WL 3330383 (Aug. 12, 2022) (Wilson, J.)**

The district court dismissed criminal charges, agreeing with the defendant that Wichita's ordinance prohibiting the operation of after-hours establishments, those operating between midnight and 6:00 a.m., without a license were unconstitutionally overbroad because they infringed on several examples of constitutionally protected behaviors protected by the First Amendment's right of assembly. Supreme Court agreed. The ordinance as drafted applied to nearly all gathering unless specifically exempted. The City's legitimate governmental interest in regulation of late-night commercial activity did not justify regulatory intrusion into noncommercial activity vis-à-vis the right of assembly in or around private homes.

***Rivera v. Schwab*, 315 Kan. 877, 512 P.3d 168 (June 21, 2022)**

Voters challenged the Legislature's reapportionment legislation as constitutionally deficient partisan and racial gerrymandering. Supreme Court disagreed. The United States Constitution, Article 1, section 4, the Elections Clause, does not bar the Kansas Supreme Court from reviewing reapportionment legislation for compliance with the Kansas Constitution. Supreme Court's review of the legislation revealed no constitutional violation on the record before the district court. The Kansas Constitution, Bill of Rights, section 2, guarantees equal protection to all citizens, a guarantee that is coextensive with federal constitutional equal protection guarantees. Equal protection guarantees guard against two kinds of racial discrimination: (1) racial gerrymandering using race as a predominant factor in choosing where to draw district lines and (2) targeted minority voter dilution. Neither the federal nor state constitution prohibits partisan factors used in drawing district lines.

***Butler v. Shawnee Mission School District Board of Education*, 314 Kan. 553, 502 P.3d 89 (January 7, 2022) (Biles, J.)**

Parents filed claims against school district concerning mask mandates. District Court sua sponte raised constitutional issues and Attorney General intervened in the lawsuit. District court dismissed parents' claims but also found that the statute which allowed parents' claims was unconstitutional. Attorney General appealed the constitutional issue only.

Supreme Court reversed. Constitutional avoidance is a long-standing doctrine of judicial procedure that strongly counsels against a court deciding a case on a constitutional question if the case can be resolved in some other fashion, especially when the question concerns the validity of a statute enacted by our coordinate branches of state government.

***State v. Arnett*, 314 Kan. 183 (2021) (Wilson, J.)**

***State v. Robison*, 314 Kan. 285 (2021) (Wilson, J.)**

Sentences in both cases included judge-determined restitution. Defendants appealed. Supreme Court held that judge-ordered restitution as part of sentence or condition of probation does not violate defendant's right to jury trial under *Apprendi*, Sixth Amendment to U.S. Constitution, or Kansas Constitution Bill of Rights. However, Kansas restitution statutes do violate defendant's right to jury trial under Kansas Constitution Bill of Rights to extent that they require restitution order to be filed, recorded, and enforced *as civil judgment*.

***Herington v. City of Wichita*, 314 Kan. 447 (2021) (Standridge, J.)**

Mother, on behalf of herself and as special administrator of her deceased son's estate, filed tort claims in federal court against city and police officer who fatally shot her son following high-speed car chase and foot pursuit. After resolving the federal claims, federal court declined to exercise discretionary supplemental jurisdiction over state court claims. Mother filed state court claims in state court. State district court granted officer and city summary judgment based on doctrine of res judicata because they had been filed and dismissed in federal court. Mother appealed.

Supreme Court reversed and ordered that the state court claims, which had not been determined on the merits, could be raised in state court and adjudicated on the merits, disapproving prior caselaw holding otherwise. State preclusion laws, not federal preclusion laws, are determinative when federal court elects not to exercise supplemental jurisdiction; state res judicata law determines on a case-by-case basis whether a cause of action was previously determined on the merits.

## *XI. Responding to Disinformation About the Justice System*

Every misinformation or disinformation scenario is different and requires creative thinking to counteract. Several best practices for dealing with disinformation have emerged, however. These include:

- Be accurate. At the state level, disinformation related to the court system feeds off exploiting any inaccuracy or mistake to cast the court or the judge in the worst possible light. Be sure you are operating from a factual position.
- Lead with facts. Focus on providing accurate facts first and do not lead or repeat false messages. For example, in a situation where fake court documents are released on the internet the response should focus first on where accurate and verifiable information can be found, not repeating or reshaping the forgeries.
- Respond quickly. Disinformation can spread rapidly. Your counter-message should be ready to disseminate as soon as possible. Always take the opportunity to direct your audience to where they can find verified information online.
- Develop a simple, accurate, short counter-message. Avoid complex messages and legalese. Speak plainly and use values-based messages.
- Be visual. False information on social media is often compelling because it is paired with engaging images. Judicial procedure explained through an infographic or flow chart will be more accessible to the public than through legal jargon.
- Establish your verified voice. Use your social media platforms, like Facebook and Twitter, to regularly point people to where they can find reliable information on court operations.

### **PART THREE: A DIGEST OF RECENT CASES**

#### *X. Disciplinary Cases Decided in the Last 12 Months*

The attached spreadsheet catalogues the last 12 months of following disciplinary cases by rule and tallies the frequency of rule violations.

***In re Borich*, \_\_\_ Kan. \_\_\_, \_\_ P.3d \_\_, 2022 WL 3130768 (2022).**

One year-suspension and repayment of over \$46,000 in fees warranted after clear and convincing evidence established attorney violated KRPC Rules 1.1 (competence), 1.2 (scope of representation), 1.5(contingent fee arrangement); 1.15 (safekeeping property); 1.16 (withdrawing from representation and keeping time records); 8.4 (professional misconduct). Original complaint arose from representation of two clients in dispute with home builder for defects in new home construction.

***In re Whinery*, \_\_\_ Kan. \_\_\_, 512 P.3d 1162, 2022 WL 2761052 (2022).**

One year suspension imposed, stayed in favor of 18-month probation, after clear and convincing evidence established attorney violated KRPC Rules 1.2 (scope of representation), 1.3 (diligence), 8.4(d) (conduct prejudicial to the administration of justice), and 8.4(g) (conduct adversely reflecting on lawyer's fitness to practice). Disciplinary Administrator's office received complaint that attorney was verbally and possibly physically aggressive with an incarcerated client.

***In re Pistotnik*, \_\_\_ Kan. \_\_\_, 512 P.3d 729, 2022 WL 2542254 (2022).**

One year suspension imposed following attorney's conviction on charges of Class A misdemeanors for accessory after the fact, clear and convincing evidence established violations of KRPC Rules 8.4 (b) (criminal act reflecting on lawyer's honesty, trustworthiness, or fitness as lawyer), (c) (conduct involving dishonesty, fraud, deceit, or misrepresentation), and (g) (conduct adversely reflecting on lawyer's fitness to practice).

***In re Beye*, 315 Kan. 857, 511 P.3d 963 (2022).**

Public censure imposed after clear and convincing evidence established that attorney failed to act with reasonable diligence and promptness in representing client in contract-related litigation in violation of KRPC Rules 1.3 (diligence), 1.4 (communication), 1.15(a) and (b) (safekeeping property).

***In re Long*, 315 Kan. 842, 511 P.3d 952 (2022).**

Indefinite suspension was appropriate discipline for attorney who reviolated rules of professional conduct after reinstatement from prior disbarment. Violations included KRPC Rules 1.3 (diligence), 1.4 (communication), 8.1 (cooperation), 8.4 (professional misconduct), and former Rule 207 (cooperation). Client complaints related to quiet title action and representation of an inmate in a motion to correct an illegal sentence in which inmate paid most, but not all, of initial fee.

***In re Huffman*, 315 Kan. 641, 509 P.3d 1253 (2022).**

Two-year suspension with possibility of probation after 90 days was warranted for misconduct including incompetence in multiple suits about mortgage. Violations included KRPC Rules 1.1 (competence); 3.1(meritorious claims and contentions); 8.4(d) (conduct prejudicial to the administration of justice).

***In re Spradling, 315 Kan. 552, 509 P.3d 483 (2022).***

Disbarment based on violations of KRPC Rules 3.1(meritorious claims and contentions), 3.3(a)(1) (candor toward the tribunal), 3.4(c) & (e) (fairness to opposing party and counsel), 8.1 (cooperation), 8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation), and 8.4(d) (conduct prejudicial to the administration of justice) arising out of attorney's knowing false statements of fact to tribunal during murder trial and subsequent appeal.

***In re Jahn, 315 Kan. 625, 509 P.3d 552 (2022).***

Six-month suspension imposed, stayed after three months provided probation plan entered and approved by Disciplinary Administrator's office. Violations included KRPC Rules 1.2(a) and (e) (scope of representation); KRPC 1.7(a)(2) (conflict of interest); KRPC 4.1(a) (truthfulness); KRPC 4.2 (communication with person represented by counsel); KRPC 8.4(a), (c), and (d) (misconduct); and KRPC 8.5 (jurisdiction). Opposing counsel filed a complaint over Jahn's conduct in representing some he lived with and was contemplating marrying in a dispute with her employer.

***In re Johnson, 315 Kan. 402, 508 P.3d 869 (2022).***

Censure was appropriate sanction for attorney who pleaded guilty in Colorado to third degree assault, as act of domestic violence, which violated KRPC 8.4(b) (criminal act reflecting on lawyer's honesty, trustworthiness, or fitness as lawyer) and Rule 221 (discipline imposed in another jurisdiction; duty to report).

***In re Martinez, 315 Kan. 245, 506 P.3d 909 (2022).***

Three-year suspension of law license, with suspension stayed and attorney placed on probation, was appropriate sanction for violations of KRPC 1.1 (competence); 1.4 (communication); 1.5 (fees); 1.15 (safekeeping property); 1.16 (terminating representation); KRPC 7.1 (communications concerning a lawyer's services); and 8.4 (professional misconduct). Discipline arose from misdemeanor battery against his wife, failure to file taxes for certain tax years, failure to pay court-ordered attorney fees on time, and fees and fee handling in a criminal case in which the fee agreement provided all money paid is earned immediately.

***In re McFall, 315 Kan. 184, 505 P.3d 744 (2022)***

Attorney's license to practice law was suspended for six months for violating Rules of Professional Conduct and not cooperating with investigation. Clear and convincing evidence supported finding violations of KRPC 1.3 (diligence), 1.4(a) (communication), 8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation), 8.4(d) (conduct

prejudicial to the administration of justice), and Supreme Court Rule 210(a) (duty to assist).

***In re Spiegel*, 315 Kan. 143, 504 P.3d 1057 (2022).**

One-year suspension was appropriate sanction for attorney who had sexual relations with a client. Clear and convincing evidence supported finding violations of KRPC 1.7(a)(2) (conflict of interest), 1.8(k) (conflict of interest: current clients: specific rules), and 8.4(d) (conduct prejudicial to the administration of justice).

***In re Sweet*, 314 Kan. 602, 501 P.3d 890 (2022)**

Disbarment was appropriate sanction for attorney who falsely informed clients that default judgments had not been entered against them. Attorney failed to respond or appear, violations were deemed admitted and nonappearance constituted an additional violation. Clear and convincing evidence supported finding violations of KRPC 1.1 (competence); 1.2 (scope of representation); 1.3 (diligence); 1.4 (communication); 1.16 (termination of representation); 3.2 (expediting litigation); 8.1 (cooperation); 8.4 (professional misconduct); and former Rule 207 (cooperation) and current Rule 228(i) (requiring respondent appear at oral argument).

***In re Winterberg*, 314 Kan. 486, 500 P.3d 535 (2021).**

Sixth-month suspension imposed for rule violations arising from attorney's failure to timely prepare and file qualified domestic relations order (QDRO) in divorce proceeding. Clear and convincing evidence supported finding violations of KRPC 1.3 (diligence); 1.4 (communication); 8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation); and 8.4(d) (conduct prejudicial to the administration of justice).

***In re Leon*, 314 Kan. 419, 499 P.3d 467 (2021).**

Indefinite suspension imposed for rule violations arising from attorney's representation of clients in criminal defense matters. Clear and convincing evidence supported finding violations of KRPC 1.1 (competence); 1.3 (diligence); 1.5(fees); 1.15 (safekeeping property); 3.2 (expediting litigation); 8.1 (cooperation); 8.4 (professional misconduct); and former Rules 207 (cooperation) and 211 (answer).

***In re Swischer*, 314 Kan. 439, 499 P.3d 1130 (2021).**

One-year suspension imposed after summary submission and stipulations established by clear and convincing evidence that attorney violated KRPC 1.1 (competence); 1.3 (diligence); 1.4(a) (communication); 3.2 (expediting litigation); 3.3 (candor toward the tribunal); 8.1(b) (cooperation); 8.3(a)(reporting professional misconduct); 8.4(a) (rule violation or attempted violation); 8.4(d) (conduct prejudicial to the administration of

justice); 8.4(g) (conduct adversely reflecting on lawyer's fitness to practice); Rule 210 (duty to assist); Rule 211 (answer). Original complaint arose out of attorney's representation in a partition action and probate action in Missouri.

***In re Starosta*, 314 Kan. 378, 499 P.3d 458 (2021)**

Suspension of law license for one year, and imposition of conditions, was appropriate sanction for attorney who failed to respond to clients. Clear and convincing evidence established that attorney violated KRPC 1.1 (competence); 1.3 (diligence); 1.4 (communication); 1.15 (safekeeping property); 3.2 (expediting litigation); 5.5 (unauthorized practice of law); 8.1 (cooperation); former Rule 207 (cooperation).

***In re Pingel*, 314 Kan. 347, 498 P.3d 744 (2021)**

One-year suspension, stayed pending successful completion of agreed 12-month probation plan, after summary submission and parties' stipulations presented clear and convincing evidence established attorney violated KRPC 1.5(a) (fees), 3.1 (meritorious claims and contentions), 4.4(a) (respect for rights of third persons), 8.4(d) (conduct prejudicial to the administration of justice), 8.4(g) (conduct adversely reflecting on lawyer's fitness to practice), and Rule 221(b) (discipline imposed in another jurisdiction; duty to report). Discipline case arose from attorney's self-report of pending complaint in Missouri.

***In re Christians*, 314 Kan. 266, 497 P.3d 560 (2021)**

Ninety-day suspension imposed after clear and convincing evidence established violations of KRPC 1.1 (competence), 1.3 (diligence), 1.4 (communication), and 5.3 (responsibilities regarding nonlawyer assistance), arising from attorney's failure to file appellate briefing.

### Disciplinary Rule Violations in the Past 12 Months (by Rule Number)

<b>KRPC/Supreme Court Rule</b>	<b>Citation</b>	<b>Number of violations</b>	<b>Cases</b>
1.1 (competence)	2022 Kan. S. Ct. R. at 327	8	Borich; Huffman; Martinez; Sweet; Leon; Swischer; Starosta; Christians
1.2 (scope of representation)	2022 Kan. S. Ct. R. at 329	4	Borich; Whinery; Jahn; Sweet
1.3 (diligence)	2022 Kan. S. Ct. R. at 331	10	Whinery; Long; Beye; McFall; Sweet; Leon; Swischer; Starosta; Christians; Winterberg
1.4 (communication)	2022 Kan. S. Ct. R. at 332	9	Long; Beye; Martinez; McFall; Sweet; Swischer; Starosta; Christians; Winterberg
1.5 (fees)	2022 Kan. S. Ct. R. at 333	4	Borich; Leon; Martinez; Pingel
1.7 (conflict of interest)	2022 Kan. S. Ct. R. at 342	2	Jahn; Spiegel
1.8 (conflict of interest: current clients: specific rules)	2022 Kan. S. Ct. R. at 350	1	Spiegel
1.15 (safekeeping property)	2022 Kan. S. Ct. R. at 372	6	Borich; Long; Beye; Martinez; Leon; Starosta
1.16 (terminating representation)	2022 Kan. S. Ct. R. at 378	3	Borich; Martinez; Sweet
3.1 (meritorious claims and contentions)	2022 Kan. S. Ct. R. at 390	3	Huffman; Spradling; Pingel
3.2 (expediting litigation)	2022 Kan. S. Ct. R. at 390	4	Sweet; Leon; Swischer; Starosta
3.3 (candor toward the tribunal)	2022 Kan. S. Ct. R. at 391	2	Spradling; Swischer
3.4 (fairness to opposing party and counsel)	2022 Kan. S. Ct. R. at 395	1	Spradling
4.1 (truthfulness)	2022 Kan. S. Ct. R. at 403	1	Jahn
4.2 (communication with persons represented by counsel)	2022 Kan. S. Ct. R. at 404	1	Jahn
4.4 (respect for rights of third persons)	2022 Kan. S. Ct. R. at 406	1	Pingel
5.3 (responsibilities regarding nonlawyer assistance)	2022 Kan. S. Ct. R. at 409	1	Christians
5.5 (unauthorized practice of law)	2022 Kan. S. Ct. R. at 412	1	Starosta
7.1 (communications concerning lawyer's services)	2022 Kan. S. Ct. R. at 424	1	Martinez
8.1 (cooperation)	2022 Kan. S. Ct. R. at 432	5	Spradling; Sweet; Leon; Starosta; Swischer
8.3 (reporting professional misconduct)	2022 Kan. S. Ct. R. at 433	1	Swischer
8.4 (professional misconduct)	2022 Kan. S. Ct. R. at 434	5	Borich; Long; Martinez; Sweet; Leon

**Disciplinary Rule Violations in the Past 12 Months (by Rule Number)**

<b>KRPC/Supreme Court Rule</b>	<b>Citation</b>	<b>Number of violations</b>	<b>Cases</b>
8.4(a) (rule violation or attempted violation)	2022 Kan. S. Ct. R. at 434	2	Jahn; Swischer
8.4(b) (criminal act reflecting on lawyer's honesty, trustworthiness, or fitness as lawyer)	2022 Kan. S. Ct. R. at 434	2	Pistotnik; Johnson
8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation)	2022 Kan. S. Ct. R. at 434	5	Pistotnik; Jahn; Spradling; McFall; Winterberg
8.4(d) (conduct prejudicial to the administration of justice)	2022 Kan. S. Ct. R. at 434	9	Whinery; Huffman; Jahn; Spradling; McFall; Spiegel; Swischer; Pingel; Winterberg
8.4(g) (conduct adversely reflecting on lawyer's fitness to practice)	2022 Kan. S. Ct. R. at 434	4	Whinery; Pistotnik; Swischer; Pingel
8.5(jurisdiction)	2022 Kan. S. Ct. R. at 435	1	Jahn
Former Rule 207 (cooperation)	2020 Kan. S. Ct. R. at 246	3	Sweet; Leon; Starosta
Rule 210 (duty to assist)	2022 Kan. S. Ct. R. at 263	2	McFall; Swischer
Former Rule 211 (answer)	2020 Kan. S. Ct. R. at 254	1	Leon
Rule 221 (discipline imposed in another jurisdiction; duty to report)	2022 Kan. S. Ct. R. at 276	2	Johnson; Pingel
Rule 228(i) (appear at oral argument)	2022 Kan. S. Ct. R. at 287	1	Sweet

### Disciplinary Rule Violations in the Past 12 Months (by Number of Violations)

KRPC/Supreme Court Rule	Citation	Number of violations	Cases
1.3 (diligence)	2022 Kan. S. Ct. R. at 331	10	Whinery; Long; Beye; McFall; Sweet; Leon; Swischer; Starosta; Christians; Winterberg
1.4 (communication)	2022 Kan. S. Ct. R. at 332	9	Long; Beye; Martinez; McFall; Sweet; Swischer; Starosta; Christians; Winterberg
8.4(d) (conduct prejudicial to the administration of justice)	2022 Kan. S. Ct. R. at 434	9	Whinery; Huffman; Jahn; Spradling; McFall; Spiegel; Swischer; Pingel; Winterberg
1.1 (competence)	2022 Kan. S. Ct. R. at 327	8	Borich; Huffman; Martinez; Sweet; Leon; Swischer; Starosta; Christians
1.15 (safekeeping property)	2022 Kan. S. Ct. R. at 372	6	Borich; Long; Beye; Martinez; Leon; Starosta
8.1 (cooperation)	2022 Kan. S. Ct. R. at 432	5	Spradling; Sweet; Leon; Starosta; Swischer
8.4 (professional misconduct)	2022 Kan. S. Ct. R. at 434	5	Borich; Long; Martinez; Sweet; Leon
8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation)	2022 Kan. S. Ct. R. at 434	5	Pistotnik; Jahn; Spradling; McFall; Winterberg
1.2 (scope of representation)	2022 Kan. S. Ct. R. at 329	4	Borich; Whinery; Jahn; Sweet
1.5 (fees)	2022 Kan. S. Ct. R. at 333	4	Borich; Leon; Martinez; Pingel
3.2 (expediting litigation)	2022 Kan. S. Ct. R. at 390	4	Sweet; Leon; Swischer; Starosta
8.4(g) (conduct adversely reflecting on lawyer's fitness to practice)	2022 Kan. S. Ct. R. at 434	4	Whinery; Pistotnik; Swischer; Pingel
1.16 (terminating representation)	2022 Kan. S. Ct. R. at 378	3	Borich; Martinez; Sweet
3.1 (meritorious claims and contentions)	2022 Kan. S. Ct. R. at 390	3	Huffman; Spradling; Pingel
Former Rule 207 (cooperation)	2020 Kan. S. Ct. R. at 246	3	Sweet; Leon; Starosta
1.7 (conflict of interest)	2022 Kan. S. Ct. R. at 342	2	Jahn; Spiegel
3.3 (candor toward the tribunal)	2022 Kan. S. Ct. R. at 391	2	Spradling; Swischer
8.4(a) (rule violation or attempted violation)	2022 Kan. S. Ct. R. at 434	2	Jahn; Swischer

### Disciplinary Rule Violations in the Past 12 Months (by Number of Violations)

KRPC/Supreme Court Rule	Citation	Number of violations	Cases
8.4(b) (criminal act reflecting on lawyer's honesty, trustworthiness, or fitness as lawyer)	2022 Kan. S. Ct. R. at 434	2	Pistotnik; Johnson
Rule 210 (duty to assist)	2022 Kan. S. Ct. R. at 263	2	McFall; Swischer
Rule 221 (discipline imposed in another jurisdiction; duty to report)	2022 Kan. S. Ct. R. at 276	2	Johnson; Pingel
1.8 (conflict of interest: current clients: specific rules)	2022 Kan. S. Ct. R. at 350	1	Spiegel
3.4 (fairness to opposing party and counsel)	2022 Kan. S. Ct. R. at 395	1	Spradling
4.1 (truthfulness)	2022 Kan. S. Ct. R. at 403	1	Jahn
4.2 (communication with persons represented by counsel)	2022 Kan. S. Ct. R. at 404	1	Jahn
4.4 (respect for rights of third persons)	2022 Kan. S. Ct. R. at 406	1	Pingel
5.3 (responsibilities regarding nonlawyer assistance)	2022 Kan. S. Ct. R. at 409	1	Christians
5.5 (unauthorized practice of law)	2022 Kan. S. Ct. R. at 412	1	Starosta
7.1 (communications concerning lawyer's services)	2022 Kan. S. Ct. R. at 424	1	Martinez
8.3 (reporting professional misconduct)	2022 Kan. S. Ct. R. at 433	1	Swischer
8.5(jurisdiction)	2022 Kan. S. Ct. R. at 435	1	Jahn
Former Rule 211 (answer)	2020 Kan. S. Ct. R. at 254	1	Leon
Rule 228(i) (appear at oral argument)	2022 Kan. S. Ct. R. at 287	1	Sweet