

**KANSAS BAR ASSOCIATION
UNAUTHORIZED PRACTICE OF LAW COMMITTEE**

**Committee Report Recommending
Adoption of Enforcement Rules by Kansas Supreme Court**

UNAUTHORIZED PRACTICE OF LAW RULES

Rule 1002

Jurisdiction

The Supreme Court of Kansas, in the exercise of its exclusive jurisdiction to define the practice of law and to prohibit the unauthorized practice of law within the State of Kansas, adopts the following rules, which shall govern proceedings concerning the unauthorized practice of law.

Rule 1003

**Appointment and Organization of
Unauthorized Practice of Law Committee**

(a) There is hereby established a committee to be known as the Unauthorized Practice of Law Committee of the Supreme Court of the State of Kansas (Committee) and which shall be an adjunct to the Supreme Court. The Committee shall be composed of nine members, six of whom shall be members of the Bar of Kansas and three of whom shall be lay members. The members of the Committee shall be appointed by the Supreme Court for terms of three years, beginning on the 1st day of January, and the terms of three members shall commence each year, provided, that terms may be for shorter periods to accommodate changes in the size of the Committee by amendments to this rule. Membership on the Committee may be terminated by the Supreme Court at its pleasure, and members may resign at any time. Any vacancies shall be filled by appointment by the Supreme Court for the unexpired term. The Committee and members thereof shall be entitled to reimbursement for reasonable travel, lodging, and other expenses incurred in the performance of their official duties

(b) The Supreme Court shall designate a member of the Committee as Chair.

(c) The Committee may adopt rules providing for the time and place of its meetings, the selection of a Vice-Chair and other officers, and such other rules not in conflict with the rules of the Supreme Court as may be deemed necessary or expedient for the conduct of the Committee's business. The Clerk of the Appellate Courts shall have copies of the rules for interested persons

(d) The Committee may enlist the assistance of other duly licensed members of the Bar of Kansas in the performance of the activities of the Committee.

Rule 1004

Committee Jurisdiction

(a) The Committee shall have jurisdiction over and inquire into and consider complaints or reports made by any person, including Regulation Counsel, or other entities

alleging the unauthorized practice of law. Moreover, the Committee, on its own motion, may inquire into any matter pertaining to the unauthorized practice of law.

(b) Nothing contained in these rules shall be construed as a limitation upon the authority or jurisdiction of any court or judge thereof to punish for contempt any person or legal entity not having a license from this court who practices law or attempts or purports to practice law in any matter which comes within the jurisdiction of that court nor shall these rules be construed as a limitation upon any civil remedy or criminal proceeding which may otherwise exist with respect to the unauthorized practice of law.

Rule 1005

Regulation Counsel; Duties and Powers

Regulation Counsel, means counsel designated by the Commission, and shall have the following duties and powers:

(a) To investigate and to assist with the investigation of all matters within the jurisdiction of the Committee, upon the request and at the direction of members of the Committee.

(b) To maintain records in the office of the Committee, in an appropriately cataloged manner, of all matters coming within the jurisdiction of the Committee.

(c) To provide facilities for the administration of proceedings under these rules and for receiving and filing all requests of investigation and all complaints concerning matters within the jurisdiction of the Committee.

(d) To employ such staff, including investigative and clerical personnel, subject to approval of the Committee, as may be necessary to carry out his duties under these rules.

(e) To perform such other duties as the Chair or the Commission may require.

Rule 1006

Investigations; General Subpoenas

(a) All matters within the jurisdiction of the Committee shall be referred to the Regulation Counsel who shall either conduct an investigation or, with the concurrence of the Chair, refer the matter to a member of the Committee pursuant to this rule or to an enlisted member of the bar pursuant to Rule 1003(d) for investigation. Upon completion of such investigation, the person who investigated the matter shall submit a written report of the investigation, findings, and recommendations to the Committee.

(b) The Committee, or a panel thereof consisting of no fewer than three Committee members, shall act upon said reports, findings and recommendations, and determine whether the matter shall be dismissed or disposed of informally as provided in Rule 1007(e), or whether civil injunction proceedings or contempt proceedings, as provided by these rules, shall be instituted against a respondent.

(c) In connection with an investigation of the unauthorized practice of law, the Chair of the Committee or the Regulation Counsel may issue subpoenas to compel the attendance of respondents and other witnesses and the production of pertinent books, papers document, or other evidence. All such subpoenas shall be subject to applicable provisions of the Kansas Code of Civil Procedure, and may be enforced by a Supreme Court Justice, a Judge of the Court of

Appeals, or a Judge of the District Court in the Judicial District where the witness resides or has an office.

(d) Any person subpoenaed to appear and give testimony or to produce books and records, or any person having been sworn to testify and who refuses to answer any proper questions, may be cited for contempt as provided by statute or Court Rule.

(e) Each person who investigates a matter, acting pursuant to and in conformity with these rules, shall have the power to administer oaths and affirmations and to take and have transcribed the testimony and evidence of witnesses.

Rule 1007

Investigation; Procedure

(a) When a matter comes to the attention of the Committee by way of a complaint, the complainant may state the complaint in writing. The Committee on its own motion may initiate a complaint.

(b) Promptly after receipt or initiation of a request for investigation or complaint, the Regulation Counsel shall determine whether to proceed with an investigation. In making a determination whether to proceed, the Regulation Counsel may make such inquiry regarding the underlying facts as the Regulation Counsel deems appropriate.

(c) If the Regulation Counsel determines to proceed with an investigation or refers the matter to a member of the Committee or to an enlistee for investigation pursuant to Rule 1006(a), the respondent shall be notified that the investigation is being conducted, shall be provided with a copy of the complaint and of the rules governing the investigation, and shall be asked to file with the Regulation Counsel or the person conducting the investigation a written answer to the complaint within 20 days after notice of the investigation is given.

(d) If the Committee, acting upon a report pursuant to Rule 1006, determines that it believes that the conduct in question does not constitute the unauthorized practice of law, the Committee shall dismiss the case and notify the complainant, if any, and the respondent.

(e) If the Committee, acting pursuant to Rule 1006, determines that it believes that the conduct constitutes the unauthorized practice of law, the Committee, prior to determining whether further proceedings shall be instituted against the respondent, may offer the respondent an opportunity to enter into a written agreement to refrain from the conduct in question, to refund any fees collected, and to make restitution.

(f) Informal disposition of matters, as provided by this rule, is to be encouraged. All proceedings pursuant to these rules shall be expeditiously conducted.

(g) When a matter comes to the attention of the Committee by way of a request for investigation or a complaint, which is later dismissed, the complainant may pursue the matter further by filing a petition, as provided in either Rule _____ or Rule _____, in the complainant's own name. If such a petition is filed, the Regulation Counsel shall not be required to prepare the petition or prosecute the matter. If the complainant files a petition in the complainant's own name pursuant to this provision, the complainant shall post with the Committee a \$500 deposit against which the costs of the proceedings may be assessed if at the conclusion of the proceedings it is determined that there was no reasonable cause to believe that an unauthorized practice of law occurred.

Rule 1008

Civil Injunction Proceedings; General

(a) If the Committee determines that civil injunction proceedings shall be instituted against a respondent, such proceedings may be commenced in the name of the State of Kansas by a petition filed in the Supreme Court by the Regulation Counsel or by a member of the Bar appointed by the Supreme Court for the purpose of conducting such proceedings.

(b) The petition shall be in writing and shall set forth the facts and charges in plain language and with sufficient particularity to inform the respondent of the acts complained of. The petition shall specify requested relief which may include, without limitation, injunction, refund, restitution, and assessment of costs of the proceeding.

(c) The Supreme Court, upon consideration of the petition so filed, may issue its order directed to the respondent commanding the respondent to show cause why the respondent should not be enjoined from the alleged unauthorized practice of law, and further requiring the respondent to file with the Supreme Court within 20 days after service of the petition and show cause order, a written answer admitting or denying the matter stated in the petition. The show cause order, together with a copy of the petition, shall be served upon the respondent. Service of process shall be sufficient when made either personally upon the respondent or by certified mail sent to the respondent's last known address.

(d) If no response or defense is filed within the time permitted, the Supreme Court, upon its motion or upon motion of any party, shall decide the case, granting such relief and issuing such other orders as may be appropriate.

(e) If a response or defense raises no genuine issue of material fact, any party by motion may request a judgment on the pleadings and the Supreme Court may decide the case as a matter of law, granting such relief and issuing such orders as may be appropriate.

(f) Upon the Supreme Court's motion or upon motion of any party, questions of fact raised in proceedings under this rule shall be referred to a District Court in any district designated by the Supreme Court, or to a hearing master for determination.

Rule 1009

Civil Injunction Proceedings; Hearing Master, Powers, Procedure

(a) Civil injunction proceedings before a hearing master shall be held in any county designated by the hearing master that is convenient to the participants.

(b) The State of Kansas may be represented in proceedings before the hearing master by the Regulation Counsel, or by a member of the Bar appointed pursuant to Rule 1008. Upon receipt of the order of reference, the hearing master shall set a date, time, and place for a first meeting of the parties which shall be within 30 days after the date notice thereof is given and notify the parties accordingly. At such meeting, a date, time, and place for hearing shall be set, and any matters which may expedite the proceedings shall be considered. A complete record of this meeting shall be made unless jointly waived by the parties. After the first meeting, the hearing master shall issue a notice of hearing to the parties. The notice shall be in writing and shall designate the date, time, and place of the hearing. The notice shall also advise the respondent that the respondent is entitled to be represented by counsel at the hearing, to cross-examine witnesses, and to present evidence in the respondent's own behalf. The giving of notice

shall be sufficient when made by certified mail sent to the respondent at the respondent's last known address.

(c) The parties may procure the attendance of witnesses before the hearing master by the issuance of subpoenas which shall run in the name of the Supreme Court and may be issued by the hearing master or Clerk of the Appellate Courts upon the request of a party. All such subpoenas shall be subject to the provisions of the Kansas Code of Civil Procedure. Failure or refusal, without adequate excuse, to comply with any such subpoena shall be a contempt of the Supreme Court and may be punished accordingly.

(d) The Kansas Rules of Civil Procedure shall be applicable when not inconsistent with these rules. Subject to any limitations in the order of reference, the hearing master shall have the powers generally reposed in a "Court" under the Kansas Rules of Civil Procedure. At all hearings before a hearing master witnesses shall be sworn and a complete record made of all proceedings had and testimony taken.

Rule 1010

Civil Injunction Proceedings; Report of Hearing Master; Objections

(a) After the hearing, the hearing master shall report in writing to the Supreme Court in accordance with the order of reference, setting forth findings of fact, conclusions of law, and recommendations for final disposition of the case. Promptly after the report is filed with the Supreme Court, the Clerk shall mail copies thereof to all parties.

(b) Objections to the report of the hearing master may be filed with the Supreme Court by any party, within 30 days after copies of the report have been mailed to the parties.

(c) If no objections are filed, the case shall stand submitted upon the hearing master's report.

(d) If objections are filed, the objecting party shall within 10 days thereafter request the reporter to prepare a transcript of the proceedings before the hearing master, or any portion of such transcript thereof as is deemed necessary for the consideration of the case. The objecting party shall file with the Supreme Court and serve on the opposing party a designation of those portions of the transcript and of the record before the hearing master which the party wishes added to the record before the Supreme Court.

The opposing party may within 10 days after service of the designation file and serve a cross-designation of any additional portions of the transcript and additional parts of the record before the hearing master as is deemed necessary for a proper consideration of the case. The objecting party is responsible for the expense of preparing the record, including the transcript or portions thereof.

The reporter shall prepare the transcript and file it, properly certified, with, the Supreme Court within 60 days after the filing of the objections.

(e) An objecting party shall have 30 days after the filing with the Supreme Court of the transcript and other additions to the record within which to file an opening brief. The opposing party shall have 30 days after the filing of the objecting party's opening brief within which to file an answer brief. The objecting party shall have 10 days after the filing of the answer brief within which to file a reply brief.

(f) A brief of an amicus curiae may be filed only by leave of the Supreme Court granted on motion or by the request of the Court. The brief may be conditionally filed with the

motion for leave. A motion for leave shall identify the interest of the applicant and shall state the reasons why a brief of an amicus curiae is desirable. Any amicus curiae shall file its brief within the time allowed the party whose position the amicus brief will support unless the Court for cause shown shall grant leave for later filing, in which event it shall specify within what period an opposing party may answer.

Rule 1011

Civil Injunction Proceedings; Determination by Court

(a) After review of the report of the hearing master, together with any objections and briefs, the Supreme Court may adopt the report or modify or reject it in whole or in part and shall determine as a matter of law whether the respondent has been engaged in the unauthorized practice of law. If the Supreme Court finds that the respondent was engaged in the unauthorized practice of law, the Supreme Court may enter an order enjoining the respondent from further conduct found to constitute the unauthorized practice of law, and make such further orders as it may deem appropriate, including restitution and the assessment of costs, which may include attorneys' fees expended or incurred before and throughout the proceeding.

(b) Nothing in this rule shall be construed to limit the power of the Supreme Court, upon proper application, to issue an injunction at any stage of the proceeding in order to prevent public harm.

Rule 1012

Contempt Proceedings; General

(a) The Committee through Regulation Counsel or through an enlistee obtained pursuant to 1003(d) shall investigate any reports of violations of orders made by the Supreme Court pursuant to Rule 1011.

(b) After receiving a report accomplished pursuant to Rule 1012(a), If the Committee determines that contempt proceedings shall be instituted against a respondent, such proceedings shall be commenced in the name of the People of the State of Kansas by a petition filed in the Supreme Court by the Regulation Counsel or by a member of the Bar appointed by the Supreme Court for the purpose of conducting such proceedings.

(c) The petition shall allege facts indicating that the respondent is engaged in the unauthorized practice of law and shall contain a prayer for the issuance of a contempt citation.

(d) Upon the filing of a petition, the Supreme Court may issue a citation directing the respondent to show cause why he should not be held in contempt of the Supreme Court for the unauthorized practice of law, or the Supreme Court may, in the alternative, issue a show cause order in civil injunctive proceedings which shall be governed by K.S.A. 20-1201-1206. If a citation is issued, the citation shall state that a fine or imprisonment may be imposed to vindicate the dignity of the Supreme Court.

(e) If a contempt citation is issued, it shall be served upon the respondent, together with a copy of the petition, as provided in K.S.A. 20-1201-1206, and the citation shall specify the time for response. If a response is filed, the Supreme Court shall appoint a hearing master who shall set a date, time, and place for the appearance of the respondent, and shall give notice

thereof. The notice shall be in writing. The notice shall designate the date, time, and place of the appearance. The notice shall also advise the respondent that the respondent is entitled to be represented by counsel at the appearance, to cross-examine witnesses, and to present evidence in the respondent's own behalf. The giving of notice to non-resident entities shall be sufficient when made by certified mail sent to respondent at the respondent's last known address.

(f) Proceedings for the hearing of a contempt citation before a hearing master shall be held in any county designated by the hearing master that is convenient to the participants.

(g) If the respondent has been served with a citation and fails to respond to the citation or appear before the hearing master at the time and place designated in the notice issued by the hearing master, a warrant for the arrest of the respondent may be issued by the hearing master without prior approval of the Supreme Court. The warrant shall fix the time and place for the production of the respondent before the hearing master. The hearing master shall direct by endorsement on the warrant the amount of bail required, and the respondent shall be discharged upon the delivery to and approval by the sheriff or the Clerk of the Appellate Courts of a written undertaking executed by a sufficient surety, to the effect that the respondent will appear at the time and place designated in the warrant and at any time thereafter to which the hearing on the citation may be continued, or pay the sum specified. Any funds surrendered as bail shall be deposited with the Clerk of the Appellate Courts or with the Clerk of the District court in the county where the proceedings are to be held. If the respondent fails to appear at the time designated in the warrant, or at any time to which the hearing may be continued, the undertaking may be forfeited upon order of the hearing master. If the respondent fails to make bond, the sheriff shall keep the respondent in custody and produce the respondent before the hearing master at the time and place fixed by the warrant.

(h) At all hearings before the hearing master, witnesses shall be sworn and a complete record made of all proceedings had and testimony taken. The citation shall be prosecuted by the Regulation Counsel of the State of Kansas or by such duly licensed and registered members of the Bar as may be designated by this Court.

(i) The Kansas Rules of Civil Procedure shall be applicable when not inconsistent with these rules. Subject to any limitations in the order of reference, the hearing master shall have the powers generally reposed in a "court" under the Kansas Rules of Civil Procedure.

(j) The parties may procure the attendance of witnesses before the hearing master by the issuance of subpoenas in the name of the Supreme Court, which may be issued by the hearing master or Clerk of the Appellate Courts upon the request of a party. All such subpoenas shall be subject to the provisions of the Kansas Code of Civil Procedure. Failure or refusal, without adequate excuse, to comply with any such subpoena shall be a contempt of the Supreme Court and may be punished accordingly. The parties shall have the right to be present at all times during the hearings before the hearing master and to examine and cross-examine witnesses.

Rule 1013

Contempt Determination by Court Proceedings; Report of Hearing Master; Objections

(a) After the conclusion of the hearing, the hearing master shall report in writing to the Supreme Court, setting forth the hearing master's findings of fact, conclusions of law, and,

upon a finding of contempt, recommendations for punishment. Promptly after the report is filed with the Supreme Court, the Clerk of the Supreme Court shall mail copies thereof to the parties.

(b) Objections to the report of the hearing master may be filed with the Supreme Court by either party within 30 days after the filing of the report.

(c) If no objections are filed, the case shall stand submitted upon the hearing master's report.

(d) If objections are filed, the objecting party shall within 10 days thereafter request the reporter to prepare a transcript of the proceedings before the hearing master, or any portion of such transcript thereof as is deemed necessary for the consideration of the case. The objecting party shall file with the Supreme Court and serve on the opposing party a designation of those portions of the transcript and of the record before the hearing master which the party wishes added to the record before the Supreme Court.

The opposing party may within 10 days after service of the designation file and serve a cross-designation of any additional portions of the transcript and additional parts of the record before the hearing master as is deemed necessary for a proper consideration of the case. The objecting party is responsible for the expense of preparing the record, including the transcript or portions thereof.

The reporter shall prepare the transcript and file it, properly certified, with the Supreme Court within 60 days after the filing of the objection.

(e) An objecting party shall have 30 days after the filing with the Supreme Court of the transcript and other additions to the record within which to file an opening brief. The opposing party shall have 30 days after the filing of the objecting party's opening brief within which to file an answer brief. The objecting party shall have 10 days after the filing of the answer brief within which to file a reply brief.

(f) A brief of an amicus curiae may be filed only by leave of the Supreme Court granted on motion or by the request of the Court. The brief may be conditionally filed with the motion for leave. A motion for leave shall identify the interest of the applicant and shall state the reasons why a brief of an amicus curiae is desirable. Any amicus curiae shall file its brief within the time allowed the party whose position the amicus brief will support unless the Court for cause shown shall grant leave for later filing, in which event it shall specify within what period an opposing party may answer.

(g) After review of the report of the hearing master any objections thereto and briefs, the Supreme Court may adopt the report or modify or reject it in whole or in part and shall determine whether the respondent is guilty of contempt of the Supreme Court and shall, by order, prescribe the punishment therefore, including the assessment of costs, expenses and reasonable attorney's fees, expended or incurred before and throughout the proceedings.

(h) Nothing in this rule shall be construed to limit the power of the Supreme Court, upon proper application, to issue an injunction at any stage of contempt proceedings in order to prevent public harm, or to limit the power of the Supreme Court to issue an injunction in lieu of or in addition to the imposition of a fine or any other remedy under these rules.

Rule 1014

General Provisions; Qualifications of Hearing Master; Access to Information Concerning Proceedings Under these Rules

(a) A hearing master to whom matters are referred pursuant to these rules shall be a person who is duly licensed to practice law in Kansas.

(b) All civil injunction proceedings and contempt proceedings filed in the Supreme Court or referred to a District Court, including proceedings before a hearing master, shall be public proceedings.

(c) Except as otherwise provided by these rules or by order of the Supreme Court, all proceedings conducted pursuant to these rules shall be confidential, and the files and records of the Committee shall be confidential and shall not be made public.

Except as otherwise provided by these rules, any person who wishes to disclose or to make public the pendency, subject matter, or status of proceedings which are otherwise confidential or to disclose or to make public the files and records of the Committee which are otherwise confidential or to gain access to the files and records of the Committee which are otherwise confidential shall file a petition with the Supreme Court setting forth the specific reasons why the existence of the particular proceedings should not remain confidential or the specific reasons why the disclosure of particular files and records or access to them should be permitted.

Upon final determination of any proceedings conducted pursuant to these rules notice of the disposition of the matter shall be given by Regulation Counsel or the Clerk of the Supreme Court to the respondent, the complainant, and their counsel of record. Any person having received notice that a written agreement has been entered pursuant to Rule 1007 shall treat such information as confidential and shall not disclose such information to anyone, except by order of the Supreme Court. Any person who makes a disclosure other than as permitted by these rules or by order of the Supreme Court may be subject to punishment for contempt of the Supreme Court.

(d) Exceptions to Confidentiality. The pendency, subject matter, and status of the proceedings conducted pursuant to these rules may be disclosed by the Committee or Regulation Counsel to:

- (1) An entity authorized to investigate the qualifications of persons for admission to practice law;
- (2) An entity authorized to investigate the qualifications of judicial candidates;
- (3) A lawyer discipline enforcement agency;
- (4) Any person or agency requesting such information, provided that the respondent has waived confidentiality and the request is within the scope of the waiver;
- (5) An enlistee who, pursuant to Rule 1003(d), was enlisted to assist the Committee;
- (6) An agency authorized to investigate violations of the criminal laws or the consumer protection laws of this state or any other state, or of the United States; or
- (7) Any person or agency, provided the proceeding is predicated either upon allegations that have become generally known to the public through printed or broadcast news accounts or upon acts of the respondent which are public or generally known.

Access to the files and records of the Committee may be granted by the Committee or the Regulation Counsel, provided a request for disclosure or access is made in writing by:

- (1) An entity authorized to investigate the qualifications of persons for admission to practice law;

- (2) An entity authorized to investigate the qualifications of persons for government employment;
- (3) An agency authorized to investigate allegations of unauthorized practice of law;
- (4) An entity authorized to investigate the qualifications of judicial candidates;
- (5) A lawyer discipline enforcement agency; or
- (6) An agency authorized to investigate violations of the criminal laws or the consumer protection laws of this state or any other state, or of the United States.

If the Regulation Counsel discloses confidential information to a judicial nominating commission of the State of Kansas or grants a judicial nominating commission access thereto, the Regulation Counsel shall give written notice to the respondent that specified confidential information has been so disclosed or that access has been granted.

(e) Any proceeding pursuant to this rule shall not preclude an appropriate party or entity from pursuing relief authorized by any other remedy, including the criminal law.

Rule 1015

Immunity

Persons performing official duties under the provisions of this chapter, including but not limited to members of the Committee and its staff; the Regulation Counsel and the Regulation Counsel's staff; the members of the Bar and enlistees working under the direction of the Committee; and the hearing masters, shall be immune from suit for all conduct in the course and scope of their official duties.