

# SUPREME COURT OF KANSAS

## In re Giardine

In re Giardine · No. No. 116,190 · Decided April 7, 2017

### SUMMARY

The Kansas Supreme Court considered attorney-discipline charges against Michael J. Giardine arising from false or misleading statements he made while campaigning for judicial office. The court addressed whether the attorney-discipline authorities had jurisdiction over alleged violations of the Kansas Code of Judicial Conduct by an attorney who was a judicial candidate. The hearing panel recommended published censure based on the violations and mitigating circumstances.

### CASE DETAILS

|                    |                                                                                                                                                                                                                                                                                         |
|--------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT              | Supreme Court of Kansas                                                                                                                                                                                                                                                                 |
| JURISDICTION       | Kansas                                                                                                                                                                                                                                                                                  |
| DECIDED            | April 7, 2017                                                                                                                                                                                                                                                                           |
| DOCKET             | No. 116,190                                                                                                                                                                                                                                                                             |
| DISPOSITION        | other                                                                                                                                                                                                                                                                                   |
| PROCEDURAL POSTURE | Original proceeding in attorney discipline before the Kansas Supreme Court following a formal complaint, stipulations, and a hearing panel recommendation of published censure.                                                                                                         |
| STANDARD OF REVIEW | The Supreme Court independently determines whether violations exist and what discipline should be imposed. Attorney misconduct must be established by clear and convincing evidence. Subject-matter jurisdiction is reviewed as a question of law under an unlimited, de novo standard. |
| PRECEDENTIAL VALUE | Published Kansas Supreme Court opinion; precedential.                                                                                                                                                                                                                                   |
| PARTIES            | Office of the Disciplinary Administrator v. Michael J. Giardine                                                                                                                                                                                                                         |

### TOPICS

- election law
- election administration

### PRACTICE AREAS

- legal ethics
- attorney discipline
- judicial ethics
- election law

## QUESTIONS PRESENTED

1. Whether the Kansas Board for Discipline of Attorneys and the Kansas Commission on Judicial Qualifications have concurrent jurisdiction over alleged violations of the Code of Judicial Conduct by an attorney who is a judicial candidate.
2. Whether the Kansas Supreme Court had jurisdiction to review and decide the disciplinary matter.
3. Whether clear and convincing evidence established violations of KRPC 8.2(b), Kansas Code of Judicial Conduct Rule 4.1(A)(4), and KRPC 8.4(c).
4. What discipline should be imposed for the violations.

## HOLDINGS

1. The Kansas Board for Discipline of Attorneys and the Kansas Commission on Judicial Qualifications have concurrent jurisdiction to investigate misconduct by an attorney acting as a judicial candidate when the conduct implicates both the Kansas Rules of Professional Conduct and the Code of Judicial Conduct.
2. The Kansas Supreme Court had jurisdiction to consider the hearing panel's report, and because Giardine filed no exceptions, the panel's factual findings were deemed admitted.
3. Clear and convincing evidence established that Giardine violated KRPC 8.2(b), Kansas Code of Judicial Conduct Rule 4.1(A)(4), and KRPC 8.4(c) by knowingly making false or misleading statements while campaigning for judicial office.
4. Published censure, rather than a one-year suspension, was the appropriate discipline.

## KEY QUOTATIONS

*“Under these principles, the Kansas Board for Discipline of Attorneys and the Commission on Judicial Qualifications have concurrent jurisdiction to investigate the misconduct involved in this case.” (19)*

*“We therefore adopt the panel's findings and conclusions.” (20)*

*“IT IS THEREFORE ORDERED that MICHAEL J. GIARDINE be and he is hereby disciplined by published censure in accordance with Supreme Court Rule 203(a)(3) (2017 Kan. S. Ct. R. 234).” (21)*

## FACTUAL BACKGROUND

While attending law school in Michigan, Giardine was stopped by police and marijuana was found in his pocket; a misdemeanor possession charge and arrest warrant were later issued without his knowledge. In 2014, while campaigning for a Kansas district court judgeship, he learned of the warrant and then made false statements to a newspaper, at a judicial candidate forum, and in an online forum denying that he was the person involved in the Michigan incident. He later admitted the material facts and violations during the disciplinary proceedings.

## PROCEDURAL HISTORY

The Disciplinary Administrator filed a formal complaint alleging violations of the Kansas Rules of Professional Conduct and the Kansas Code of Judicial Conduct. Giardine answered, entered stipulations admitting the material facts and violations, and received a hearing before a Kansas Board for Discipline of Attorneys panel.

The panel found violations and recommended published censure. The Kansas Supreme Court independently considered subject-matter jurisdiction, adopted the panel's findings and conclusions, and imposed published censure.

#### DISPOSITION

other

#### CASES CITED

- In re Foster, 292 Kan. 940, 945, 258 P.3d 375 (2011)
- In re Lober, 288 Kan. 498, 505, 204 P.3d 610 (2009)
- In re Dennis, 286 Kan. 708, 725, 188 P.3d 1 (2008)
- Ryser v. State, 295 Kan. 452, 456-57, 284 P.3d 337 (2012)
- Friedman v. Kansas State Bd. of Healing Arts, 287 Kan. 749, 752, 199 P.3d 781 (2009)
- State v. Russell, 229 Kan. 124, 131, 622 P.2d 658 (1981)
- Eudora v. Hartig, 68 Kan. 742, 747-48, 75 P. 1113 (1904)
- Shoemaker v. Brown, 10 Kan. 383, 392, 1872 WL 710 (1872)