

IN THE SUPREME COURT OF THE STATE OF KANSAS

No. 105,339

In the Matter of GILLIAN ROGERS SHAW
f/k/a GILLIAN LUTTRELL,
Petitioner.

ORDER OF REINSTATEMENT

On April 8, 2011, this court indefinitely suspended the Kansas law license of Gillian Luttrell, now known as Gillian Rogers Shaw. The court ordered that Shaw undergo a full reinstatement hearing prior to its consideration of any petition for reinstatement. See *In re Luttrell*, 292 Kan. 51, 252 P.3d 111 (2011); see also Supreme Court Rule 232 (2023 Kan. S. Ct. R. at 293) (procedure for reinstatement after attorney's indefinite suspension).

On June 2, 2022, Shaw filed a petition for reinstatement under Rule 232(b). Upon finding sufficient time had passed for reconsideration of the suspension, the court remanded the matter for further investigation by the Office of the Disciplinary Administrator (ODA) and a reinstatement hearing.

On March 9, 2023, a hearing panel of the Kansas Board for Discipline of Attorneys conducted a hearing on Shaw's petition for reinstatement. A month later, the court received the hearing panel's Reinstatement Final Hearing Report. In that report, the hearing panel recommends that the court grant Shaw's petition for reinstatement, subject to three years' probation under specific terms and conditions outlined in the parties' jointly proposed probation plan plus two additional terms and conditions suggested by the panel.

The court has adopted similar hearing panel recommendations for reinstatement to probation in the past. The court now determines, however, that the court should have been more precise in its terminology.

Under Supreme Court Rule 227 (2023 Kan. S. Ct. R. at 283), the court places an active-licensed respondent on "probation" as a form of discipline upon finding the respondent committed misconduct that can be corrected by probation. What happens after that is governed by Rule 227(g) (procedure following the respondent's successful completion of probation) or Rule 227(i) (procedure upon an alleged violation of the terms of probation).

In "reinstatement" proceedings under Rule 232, the court does not impose discipline; rather, it decides whether the court should reconsider the petitioner's suspension or disbarment based on various circumstances that have occurred (or have not) since the court suspended or disbarred the petitioner. See generally Rule 232(b)-(e) (outlining the initial procedures for reinstatement in this court). Where, as here, the court determines sufficient time has elapsed to justify reconsideration of an indefinite suspension order and receives the final report from the reinstatement hearing, it determines whether the petitioner has proven that the petitioner's fitness to practice law has been restored and that the factors outlined in Rule 232(e)(4) weigh in favor of reinstatement. If not, the court denies the petition for reinstatement. If so, the court grants the petition for reinstatement and reinstates the petitioner's license to practice law. And under Rule 232(h), the court "may order the [reinstated] attorney to comply with any condition or limitation on the attorney's practice" and "may also order that the attorney's practice be supervised for a period of time."

Having clarified the procedure at issue, the court grants Shaw's petition and reinstates Shaw's Kansas law license. For a period of three years from the date of this

order, Shaw must comply with the following conditions and limitations on her practice, which we borrow from the parties' proposed probation plan and the final hearing report.

Conditions and Limitations

- Shaw must limit her law practice to criminal cases involving infractions, misdemeanors, felony levels 5-10, drug felony levels 3-5, domestic cases, and child in need of care cases. Shaw may modify these practice limits with the written approval of the ODA.
- Shaw must maintain a daily updated inventory of all open cases and clients. The inventory must include the client's name, the client's contact information, the client's goal, the tasks that remain to be completed, all pending deadlines, and the forum (if any) in which the matter is pending.
- Shaw must contact each client by letter at least once every three months concerning the status of the client's case.
- Shaw must resolve all emails on a weekly basis in a case management system established with her supervising attorney.
- Shaw must continue to cooperate with the ODA and timely provide any additional information requested by the ODA.
- Shaw must obtain and maintain lawyer's professional responsibility insurance if she is actively practicing law.

- Shaw must follow the dictates of the Monitoring Agreement with KALAP that she entered on February 15, 2022. This includes following any recommendations made by her KALAP monitor and staff and participating in the KALAP resiliency group.
- Shaw's practice must be supervised by an attorney who agrees to serve and who is mutually agreed upon by the ODA and Shaw.
 - Shaw must allow her supervising attorney complete, unrestricted access to her files, calendar, and other records and must comply with any requests made by the supervisor.
 - Shaw and her supervising attorney must meet weekly unless her supervisor determines their meetings may be at less frequent intervals. During these meetings, Shaw and her supervising attorney must:
 - review all new cases and establish a plan or course of action, including the identification of possible problems Shaw may face in dealing with difficult legal and client relation problems; and
 - review Shaw's schedule to ensure that notices have been sent to all appropriate parties, that deadlines have been met and carried out, that appropriate preparation has been carried out in advance of hearings, and that all updates to the file have been completed.
 - Shaw must follow all of her supervising attorney's recommendations, including the correction of any deficiencies outlined in the supervising attorney's monthly reports and quarterly audits.

- Shaw must include in each engagement agreement language notifying each client that her supervising attorney, who must be identified to the client, has authority to contact them throughout the pendency of representation to verify Shaw is complying with the conditions and limitations on her practice and the Kansas Rules of Professional Conduct.
- Shaw must also ensure her supervising attorney has full access to review Shaw's business email account and notify her clients of the supervising attorney's access to her email as required by the Kansas Rules of Professional Conduct.
- Shaw's supervising attorney's duties include the following:
 - prepare and submit to both Shaw and the ODA monthly reports concerning Shaw's compliance with these conditions of reinstatement;
 - audit Shaw's files every three months and provide a report of each audit to both Shaw and the ODA; and
 - determine whether Shaw's diary and billing procedures are appropriate.

Disapproved Conditions

The court disapproves of the following proposed conditions and does not impose them as conditions.

- Probation plan ¶ 16: "[Shaw's supervising attorney] shall be acting as an officer and agent of the Court while supervising the probation of Petitioner and during

the monitoring process of legal practice of Petitioner. [Shaw's supervising attorney] shall be afforded all immunities by Supreme Court Rule 223 during the course of this activity and pursuant to this Probation Plan."

- Probation plan ¶ 26: "Petitioner shall follow the dictates of Supreme Court Rule 227."
- Hearing panel's recommendation: "[Shaw must] address her outstanding debt collection accounts and judgments by paying a set percentage of the petitioner's income toward those accounts and judgments. The percentage amount should be determined by the probation supervisor and approved by the disciplinary administrator."

The court issues the following additional directives.

Supervising attorney's immunity: Shaw's supervising attorney has absolute immunity from liability for any act within the scope of the attorney's duties in the same manner that an attorney has absolute immunity under Supreme Court Rule 238 (2023 Kan. S. Ct. R. at 311) when supervising a respondent on diversion under Supreme Court Rule 212 (2023 Kan. S. Ct. R. at 264) or on probation under Rule 227.

Release from the conditions and limitations on practice after three years: If Shaw complies with each condition and limitation on her practice outlined above, at the end of the three-year supervisory period, Shaw may move the court to be discharged from any direct oversight by her supervising attorney or the ODA. Shaw must properly serve the motion on the ODA and include the following as attachments:

- Shaw's affidavit describing her compliance with each of the conditions and limitations above; and

- an affidavit from Shaw's supervising attorney describing Shaw's compliance with the conditions and limitations.

No later than 14 days after Shaw files such a motion, the ODA must file a response explaining whether Shaw has complied with the conditions and limitations on her practice and whether she should be discharged therefrom.

Until the court releases her, Shaw remains obligated to comply with the conditions and limitations on her practice, except that the supervising attorney will be deemed released from the duties outlined in this order after the expiration of the three-year supervisory period unless the ODA moves to extend the supervisory period.

Violation of a condition or limitation on practice: Shaw must immediately notify her supervising attorney and the ODA of any noncompliance with any of the conditions and limitations on her practice outlined above. And again, Shaw's supervising attorney has a duty to immediately inform the ODA when the supervising attorney knows or reasonably believes that Shaw has failed to comply with any of the above conditions or limitations.

Fees and continuing legal education: The court further orders Shaw to pay all required reinstatement and registration fees to the Office of Judicial Administration (OJA) and to complete all continuing legal education (CLE) requirements. See Supreme Court Rule 812 (2023 Kan. S. Ct. R. at 609) (outlining CLE requirements following reinstatement). The court directs that once OJA receives proof of Shaw's completion of these conditions, OJA must add Shaw's name to the roster of attorneys actively engaged in the practice of law in Kansas.

The court orders the publication of this order in the official Kansas Reports and the assessment of all costs herein to Shaw.

Dated this 2nd day of August 2023.