

Proposed Kansas Rule of Professional Conduct 6.5: Limited Legal Services Through a Nonprofit or Court Program

The Kansas Supreme Court is accepting public comment on proposed Rule 6.5: Limited Legal Services Through a Nonprofit or Court Program. The proposed rule would be under Rule 240: Kansas Rules of Professional Conduct.

Rule 6.5 will enable Kansas licensed attorneys working with nonprofit or court programs to provide short-term, limited legal services without requiring the attorney to check for conflicts of interest or track detailed information regarding possible conflicts.

Comment may be made by email to scrulespubliccomment@kscourts.org until noon Friday, October 22, 2021. The subject line must read “Rule 6.5.”

Rule 6.5 Limited Legal Services Through a Nonprofit or Court Program

(a) A lawyer may provide pro bono or low-cost short-term, limited legal services through a nonprofit or court program without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter. The following provisions apply to providing these services:

- (1) Rules 1.7 and 1.9(a) apply only if the lawyer knows that the representation of the client involves a conflict of interest; and
- (2) Rule 1.10 applies only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by Rule 1.7 or 1.9(a) with respect to the matter.

(b) A lawyer’s participation in a program described in subsection (a) will not preclude the lawyer’s firm under Rule 1.10 from representing a client with interests adverse to a client the lawyer represented through the program.

Comment

[1] Nonprofit and court programs through which lawyers provide pro bono or low-cost short-term, limited legal services help people address their legal problems without further representation by a lawyer. For example, a lawyer might provide legal advice or help a person complete legal forms through a legal-advice hotline, advice-only clinic, or pro se counseling program. Alternatively, a lawyer might participate in the Kansas Bar Association’s Ask-a-Lawyer program that charges a fee of \$2.00 per minute for a person

to talk with an attorney. In these programs, a lawyer-client relationship is established, but there is no expectation that the lawyer's representation of the client will continue beyond the limited consultation. Such programs are normally operated under circumstances in which it is not feasible for a lawyer to systematically screen for conflicts of interest as is generally required before undertaking a representation. See, e.g., Rules 1.7, 1.9, and 1.10.

[2] A lawyer who provides short-term, limited legal services under this rule must secure the client's informed consent to the limited scope of the representation. See Rule 1.2(c). If a pro bono or low-cost short-term, limited representation would not be reasonable under the circumstances, the lawyer may offer advice to the client but must also advise the client of the need for further assistance of counsel. Except as provided in this rule, the Rules of Professional Conduct are applicable to the limited representation, including Rules 1.6 and 1.9(c).

[3] A lawyer who is representing a client in the circumstances addressed by this rule ordinarily is not able to systematically screen for conflicts of interest. Subsection (a) requires compliance with Rules 1.7 or 1.9(a) only if the lawyer knows that the representation presents a conflict of interest for the lawyer. Subsection (a) requires compliance with Rule 1.10 only if the lawyer knows that another lawyer in the lawyer's firm is disqualified in the matter by Rule 1.7 or 1.9(a).

[4] The limited nature of the services significantly reduces the risk of conflicts of interest with other matters being handled by the lawyer's firm. Subsection (b) provides that Rule 1.10 is inapplicable to a representation governed by this rule except as provided by subsection (a)(2). Subsection (a)(2) requires the participating lawyer to comply with Rule 1.10 when the lawyer knows that the lawyer's firm is disqualified by Rule 1.7 or 1.9(a). By virtue of subsection (b), however, a lawyer's participation in a pro bono or low-cost short-term, limited legal services program will not preclude the lawyer's firm from undertaking or continuing the representation of a client with interests adverse to a client being represented by the lawyer through the program. Nor will the personal disqualification of a lawyer participating in the program be imputed to other lawyers participating in the program.

[5] After commencing a short-term, limited representation in accordance with this rule, if a lawyer represents the client in the matter on an ongoing basis, Rules 1.7, 1.9(a), and 1.10 become applicable.