

## **Amended Supreme Court Rule 712B: Pro Bono or Low-Cost Direct Legal Services Provided by Retired, Inactive, or Single-Employer Attorneys**

The Kansas Supreme Court is accepting public comment on amendments to Supreme Court Rule 712B, which will be renumbered to become Rule 1404.

Rule 712B establishes a process for nonprofit legal service providers or law school clinics to be approved to use retired, inactive, or single-employer attorneys to provide pro bono services. The rule also identifies the requirements and creates the process for attorneys who want to provide these services.

The proposed amendments will allow the Office of Judicial Administration to review and approve applications from providers, programs, or clinics, as well as review and approve applications from attorneys seeking authorization under the rule. The Office of Judicial Administration will be required to update the Supreme Court of its application decisions.

Proposed changes are shown using strikethrough for deletion and underlining for new language.

Comment may be made by email to [publiccomments@kscourts.org](mailto:publiccomments@kscourts.org) until 5 p.m. Monday, August 30, 2021. The subject line must read "Rule 712B."

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### **Rule ~~1404~~ 712B**

#### **PRO BONO OR LOW-COST DIRECT LEGAL SERVICES PROVIDED BY RETIRED, INACTIVE, OR SINGLE-EMPLOYER ATTORNEYS**

- (a) **Definitions.** For purposes of this rule, the following definitions apply.
- (1) **“Accredited law school clinic”** means a clinic established by an accredited law school whose primary mission is to provide pro bono or low-cost direct legal services to low-income Kansas residents or not-for-profit entities.
  - (2) **“Not-for-profit program”** means an initiative within a not-for-profit organization if the initiative’s primary mission is to provide pro bono or low-cost direct legal services to low-income Kansas residents or not-for-profit entities.
  - (3) **“Not-for-profit provider of legal services”** means an organization whose primary mission is to provide pro bono or low-cost direct legal services to low-income Kansas residents or not-for-profit entities.
  - (4) **“Pro bono or low-cost direct legal services”** means civil, criminal, and administrative legal advice or representation provided free of charge or at a low cost.

- (b) **Applicability.** This rule applies to the following:
- (1) an attorney who is registered under Rule 206 as retired or inactive or admitted under Rule 712 and who seeks to provide pro bono or low-cost direct legal services through a not-for-profit provider of legal services, a not-for-profit program, or an accredited law school clinic; and
  - (2) a not-for-profit provider of legal services, a not-for-profit program, or an accredited law school clinic that seeks to have an attorney who is registered under Rule 206 as retired or inactive or admitted under Rule 712 provide pro bono or low-cost direct legal services.
- (c) **Attorneys.** An attorney to whom this rule applies:
- (1) must be in good standing in Kansas and in any other jurisdictions where licensed to practice law;
  - (2) must have no docketed complaint pending before the Kansas Board for Discipline of Attorneys and the Kansas Supreme Court, and no disciplinary complaint pending in any other jurisdiction;
  - (3) is subject to the jurisdiction of the Supreme Court for disciplinary purposes under Rule 200 et seq.;
  - (4) may provide only pro bono or low-cost direct legal services under this rule;
  - (5) may not ask for or receive personal compensation for any pro bono or low-cost direct legal services provided under this rule, except for reimbursement of costs and expenses as described in subsection (g); and
  - (6) must be authorized to provide pro bono or low-cost direct legal services under subsection (e).
- (d) **Application for Approval of Provider, Program, or Clinic.**
- (1) **Form.** A not-for-profit provider of legal services, a not-for-profit program, or an accredited law school clinic seeking approval under this rule must submit an application available from the Office of Judicial Administration that requires the following information:
    - (A) the primary mission of the provider, program, or clinic;
    - (B) the fee structure of the provider, program, or clinic;
    - (C) the sources of funds received by the provider, program, or clinic during the last fiscal year and the percentage of total funds from each source;
    - (D) the criteria to be used to determine a potential client's eligibility for pro

bono or low-cost direct legal services;

- (E) the type of pro bono or low-cost direct legal services to be provided;
- (F) a certification that an active Kansas licensed attorney will supervise and be responsible for the acts of any attorney providing pro bono or low-cost direct legal services under this rule;
- (G) a certification that the provider, program, or clinic has professional liability insurance that covers an attorney providing pro bono or low-cost direct legal services; and
- (H) a certification that any low-income Kansas resident or not-for-profit entity who receives pro bono or low-cost direct legal services under this rule will receive those services free of charge or at a low cost.

(2) **Process.** The following process applies after submission of an application under subsection (d)(1).

- (A) The Office of Judicial Administration will review and may verify the contents of the application.
- (B) If the application is incomplete, the Office of Judicial Administration will request additional information.
- (C) If the application is complete, the Office of Judicial Administration will approve or deny the application ~~present the application to the Supreme Court.~~

~~(B) The Supreme Court will approve or deny the application.~~

(3) **Amendments to Application.** If information submitted under subsection (d)(1) changes, the provider, program, or clinic must give written notice of the change to the Office of Judicial Administration no later than 14 days after the change occurs. No later than 30 days after the notice is given, the provider, program, or clinic must submit a new application.

(e) **Application for Authorization for Attorney.** Before an attorney may provide pro bono or low-cost direct legal services under this rule, a not-for-profit provider of legal services, a not-for-profit program, or an accredited law school clinic must receive authorization for the attorney.

(1) **Form.** A provider, program, or clinic seeking authorization for an attorney under this rule must submit an affidavit from the attorney on a form available from the Office of Judicial Administration that affirms the attorney:

- (A) is in good standing in Kansas and in any other jurisdictions where licensed to practice law;

- (B) has no docketed complaint pending before the Kansas Board for Discipline of Attorneys and the Kansas Supreme Court and no disciplinary complaint pending in any other jurisdiction;
  - (C) is subject to the jurisdiction of the Supreme Court for disciplinary purposes under Rule 200 et seq.;
  - (D) may provide only pro bono or low-cost direct legal services under this rule;
  - (E) may not ask for or receive personal compensation for any pro bono or low-cost direct legal services provided under this rule, except for reimbursement of costs and expenses as described in subsection (g); and
  - (F) authorizes the Office of Judicial Administration to verify the contents of the affidavit.
- (2) **Process.** The following process applies after submission of an application under subsection (e)(1).
- (A) The Office of Judicial Administration will review and may verify the contents of the application.
  - (B) If the application is incomplete, the Office of Judicial Administration will request additional information.
  - (C) If the application is complete, the Office of Judicial Administration will approve or deny the application ~~present the application to the Supreme Court~~.
  - ~~(B) The Supreme Court will approve or deny the application.~~
- (3) **Amendments to Application.** If information submitted under subsection (e)(1) changes, the provider, program, or clinic must give written notice of the change to the Office of Judicial Administration no later than 14 days after the change occurs. No later than 30 days after the notice is given, the provider, program, or clinic must submit a new application.
- (f) **Continuing Legal Education.** A retired or inactive attorney providing pro bono or low-cost direct legal services under this rule is exempt from the requirements of Rule 804.
- (g) **Fees, Costs, and Expenses.** An attorney who provides pro bono or low-cost direct legal services under this rule may not receive compensation from the not-for-profit provider of legal services, not-for-profit program, or accredited law school clinic or any client of the provider, program, or clinic, except for reimbursement of costs and expenses. This prohibition does not prevent the attorney from seeking costs and expenses from an opposing party on behalf of the provider, program, or clinic.

(h) **Renewal.** No later than June 1 of each year, a not-for-profit provider of legal services, a not-for-profit program, or an accredited law school clinic approved by the Supreme Court under this rule must submit an application for renewal available from the Office of Judicial Administration. The ~~approval-renewal~~ period is a period of one year from July 1 through June 30.

(1) **Application for Renewal.** The application must include the following:

- (A) a statement that the provider, program, or clinic remains in compliance with this rule;
- (B) a list of the names of all attorneys providing pro bono or low-cost direct legal services under this rule for the provider, program, or clinic;
- (C) a general summary of the types of pro bono or low-cost direct legal services provided under this rule;
- (D) the total number of hours of pro bono or low-cost direct legal services provided by the provider, program, or clinic under this rule; and
- (E) for each attorney authorized to provide pro bono or low-cost direct legal services for the provider, program, or clinic under this rule, either of the following:
  - (i) an affidavit affirming that the information contained in the attorney's application for authorization remains accurate, or
  - (ii) a new application for authorization under subsection (e).

(2) **Process.** The following process applies after submission of an application for renewal under subsection (h)(1).

- (A) The Office of Judicial Administration will review and may verify the contents of the application.
- (B) If the application is incomplete, the Office of Judicial Administration will request additional information.
- (C) If the application is complete, the Office of Judicial Administration will approve or deny the application ~~present the application to the Supreme Court~~.
- ~~(B) The Supreme Court will approve or deny the application.~~

(i) **Termination of Authorization.**

(1) **Grounds.** An attorney's authorization to provide pro bono or low-cost direct legal services under this rule terminates if the attorney:

- (A) accepts personal compensation for pro bono or low-cost direct legal services provided under this rule, except as provided for in subsection (g);
  - (B) ceases to provide pro bono or low-cost direct legal services under this rule with the not-for-profit provider of legal services, not-for-profit program, or accredited law school clinic;
  - (C) is disciplined in Kansas under Rule 225(a) or another jurisdiction for professional misconduct;
  - (D) registers as disabled due to mental or physical disability under Rule 206;
  - (E) is transferred to disabled status under Rule 234; or
  - (F) engages in any other conduct that adversely reflects on the attorney's ~~lawyer's~~ honesty, trustworthiness, or fitness as an attorney ~~lawyer~~ in other respects.
- (2) **Notice.** No later than 14 days after the provider, program, or clinic becomes aware that an attorney's authorization to provide pro bono or low-cost direct legal services has terminated under subsection (i)(1), the provider, program, or clinic must submit a notice of termination form ~~give written notice to the Supreme Court on a form~~ available from the Office of Judicial Administration.
- (j) **Filing User.** An attorneys authorized under this rule ~~is~~ are considered a ~~are~~ filing users under Rule 122 for the limited purpose of providing pro bono or low-cost direct legal services.
- ~~(k) **Previously Approved Providers, Programs, and Clinics.** A not for profit provider of legal services, a not for profit program, or an accredited law school clinic previously approved by the Supreme Court under former Rule 208 (2019 Kan. S. Ct. R. 252) must comply with this rule no later than 45 days after its effective date.~~
- (k) **Periodic Reporting to the Supreme Court.** The Office of Judicial Administration will provide periodic reports to the Supreme Court regarding application decisions under subsections (d), (e), and (h).