



Office of Judicial Administration

301 SW 10th Avenue / Topeka, KS 66612-1507 / 785-296-2256 / www.kscourts.org / info@kscourts.org

Notice of Request for Comments Proposed Supreme Court Rule 1402 Providing Assistance to the Public

The Kansas Supreme Court is accepting comment on a proposed rule that addresses assistance judicial branch employees provide to members of the public.

Proposed Supreme Court Rule 1402 expands guidance given to judicial branch employees by outlining differences between giving legal information and providing legal advice. A judicial branch employee may provide information about the judicial branch when assisting a member of the public but cannot provide legal advice that would constitute the practice of law.

The proposed rule is available for review on the Kansas judicial branch website at www.kscourts.org under the heading *What's New*.

You may submit comment by email to publiccomments@kscourts.org. The subject line must read "Rule 1402." Or, you can send a written comment by U.S. mail to:

Office of Judicial Administration
Attn: Comment on Supreme Court Rule 1402
301 SW 10th Avenue
Topeka, KS 66612-1507

Comments must be received by 5 p.m. Monday, March 25, 2019. Comments will be given to Kansas Supreme Court justices and are confidential.

Any individual with a disability may request an accommodation in order to participate in submitting a comment about Proposed Supreme Court Rule 1402. Please make requests for accommodation by contacting the local Clerk of the District Court.

Proposed Supreme Court Rule 1402

The Kansas Supreme Court is accepting comment on a proposed rule that addresses information that judicial branch employees may provide the public. Proposed Supreme Court Rule 1402 expands guidance given to judicial branch employees by outlining differences between giving legal information and providing legal advice. A judicial branch employee may provide information about the judicial branch when assisting a member of the public but cannot provide legal advice that would constitute the practice of law.

Comment may be made by email to publiccomments@kscourts.org until 5 p.m. Monday, March 25, 2019. The subject line must read "Rule 1402."

RULES RELATING TO ACCESS TO JUSTICE

RULE 1402

PROVIDING ASSISTANCE TO THE PUBLIC

- (a) **Purpose.** The purpose of this rule is to assist court staff in answering questions posed by a member of the public about the operation of the judicial system. The rule is intended to enable court staff to provide the best possible service and to provide accurate information without giving legal advice. The best assistance to provide in many situations may be for the court user to seek the advice of an attorney. The rule does not restrict Kansas judicial branch employees from performing duties provided by statute or rule, such as collecting applicable fees or costs or educating the public about court procedures and processes.
- (b) **Terms Defined.** Court staff refers to Kansas judicial branch employees and court volunteers who answer questions posed by the public.
- (1) A Kansas judicial branch employee is an employee of the state of Kansas who is employed by the judicial branch and is subject to the Kansas Court Personnel Rules adopted by the Kansas Supreme Court.
 - (2) A court volunteer is a person who volunteers for the court by providing information to the public. A court volunteer is not volunteering as or on behalf of an attorney, law firm, or law practice and, as such, does not provide legal advice. Before participating as a court volunteer, the individual must receive appropriate training required by the Judicial Administrator.
 - (3) A member of the public includes a self-represented litigant who seeks information to file, pursue, or respond to a case without the assistance of an attorney authorized to practice before the court.

- (c) **Required Assistance.** In all circumstances court staff must treat the public respectfully and provide information in a fair and impartial manner. Court staff also must provide consistent information to all members of the public, including all parties to an action. In appropriate situations, court staff must act as follows when assisting the public.
- (1) Offer information about entities that provide pro bono legal services, low cost legal services, legal aid programs, lawyer referral services, and other places where legal information may be available, such as state and local law libraries.
 - (2) Explain where an individual can find forms, instructions, and other resources that have been developed to comply with Kansas law.
 - (3) Encourage self-represented litigants to consider obtaining legal advice. Not every type of case can be competently handled by someone representing himself or herself. Some legal matters may seem simple but can actually be highly technical and complex. It may be in the best interests of a self-represented litigant to consult an attorney to determine the complexity of the case before beginning any legal process. Some attorneys will provide low or no cost initial consultations or will provide limited, low cost assistance.
 - (4) Provide information about alternative dispute resolution programs, including mediation services.
 - (5) Provide information about court proceedings based on the assumption that the information provided by the member of the public is accurate.
- (d) **Permitted Assistance.** When assisting the public, court staff may provide the assistance listed below.
- (1) Check for completion of forms when offered for filing and explain instructions or define terms used in the forms.
 - (2) Provide information about court processes and procedures.
 - (3) Provide information regarding how to calculate child support guidelines, such as sharing instructions on how to use software that will assist in calculating child support under court-approved guidelines.
 - (4) Assist a self-represented litigant in preparing an appropriate order form as directed by the court.
 - (5) Provide information as directed by the court about local resources and programs.
 - (6) Identify language-access resources to assist in communication.

(7) Assist with obtaining public records.

(e) **Prohibited Assistance.** Court staff must not:

- (1) represent a litigant in court;
- (2) perform legal research for a member of the public;
- (3) deny a member of the public access to the court by providing information court staff know to be incorrect;
- (4) lead a litigant to believe that court staff represents the litigant as an attorney in any capacity;
- (5) induce a member of the public to rely on court staff for legal advice;
- (6) investigate facts of a litigant's case; or
- (7) disclose information in violation of a statute, rule, or caselaw.

(f) **Disclosure.** All courts should provide conspicuous notice of the following.

- (1) Communications between court staff and a member of the public do not create an attorney-client relationship.
- (2) Communications with court staff are neither privileged nor confidential.
- (3) Court staff must remain neutral and impartial in providing information.
- (4) Court staff are not responsible for the outcome of a case.
- (5) A member of the public should consult with an attorney if the individual desires personalized legal advice or strategy, confidential communications with an attorney, or representation by an attorney.

(g) **Notice to the Public.** The Judicial Administrator, upon consultation with the Access to Justice Committee, will provide a document for courts to post that describes assistance that court staff can and cannot provide to the public.