

Amendments to Rule 233: Kansas Lawyers Assistance Program

The Kansas Supreme Court is accepting public comment on a proposed amendment to Supreme Court Rule 233: Kansas Lawyers Assistance Program (formerly Rule 206).

Amendments to Rule 233 are shown using strikethrough for deletion and underlining for new language.

Generally, the rule has been restyled and retooled to align with other Supreme Court Rules. Additional amendments clarify processes and reflect existing practices not presently in the rule, such as the process for the KALAP Foundation.

Comments may be made by email to scrulespubliccomment@kscourts.org until noon February 15, 2021. The subject line must read "Rule 233."

Rule 233

KANSAS LAWYERS ASSISTANCE PROGRAM

- (a) **~~KALAP Purpose.~~** The Kansas Lawyers Assistance Program (KALAP) is established to ~~provide immediate and continuing assistance to any lawyer needing help with issues, including physical or mental disabilities that result from disease, addiction, disorder, trauma, or age and who may be experiencing difficulties performing the lawyer's professional duties.~~ KALAP will have fulfill the following purposes:
- (1) provide immediate and continuing assistance to any legal professional who is a lawyer, bar applicant, or law student and who is experiencing a physical or mental health issue such as depression, stress, grief, anxiety, alcohol or drug abuse, gambling addiction, age-related concerns, or any other circumstance that may affect the legal professional's quality of life or ability to perform the legal professional's duties;
 - ~~(2) to protect citizens from potential harm that may be caused by lawyers a legal professional in need of assistance may cause;~~
 - ~~(2) to provide assistance to lawyers in need; and~~
 - (3) to educate the bench and bar legal community about the causes nature of issues that may affect a legal professional and the services available for lawyers needing assistance to a legal professional in need; and
 - (4) develop programs that emphasize prevention of circumstances that might negatively affect a legal professional.
- (b) **~~KALAP Services.~~** KALAP will provide the following services:
- (1) offer immediate and continuing assistance, at no cost to lawyers such as mentoring, peer support, monitoring, intervening, and referral for treatment services, to a legal professional, including a lawyer against whom a disciplinary complaint is pending;

- (2) assistance to a law firm or organization, including education, training, and monitoring services;
- (23) plan and present ~~educational~~ programs to achieve the following goals:
- (iA) ~~increase the awareness and understanding of members of the bench and bar about problems of lawyers with physical or and mental disabilities as defined in subsection (a) health issues;~~
 - (iiB) ~~enable members of the a legal professional to self-identify physical and mental health issues and to recognize and identify problems in themselves and in their issues in the legal professional's colleagues;~~
 - (iiiC) ~~reduce the stigma associated with addiction and other physical and mental health disabilities issues; and~~
 - (ivD) ~~enable members of educate the legal profession to understand community on appropriate ways of assisting and interacting with affected individuals; and a legal professional experiencing physical or mental health issues.~~
- (3) ~~provide assistance to lawyers and their firms, including lawyers against whom disciplinary complaints are pending.~~
- (c) **Costs.** KALAP will provide the services described in subsection (b) at no cost to any participant, except that a legal professional may be responsible for the costs of psychological, medical, rehabilitative, and other treatment services.
- (ed) **KALAP Executive Director.** The Supreme Court will appoint an ~~E~~executive ~~D~~irector who will serve at the pleasure of the court. The ~~E~~executive ~~D~~irector must be a lawyer, preferably with several years² of experience in assisting individuals with physical or mental ~~disabilities that result from disease, addiction, disorder, trauma, or age~~ health issues. The ~~E~~executive ~~D~~irector must have sufficient experience and training to assist the Kansas Lawyers Assistance Board in fulfilling its purpose.
- (de) **Kansas Lawyers Assistance Board.** The Supreme Court will appoint a ~~Board known as the members to serve on the~~ Kansas Lawyers Assistance Board. ~~The Board will be comprised of no fewer than 11 members who:~~
- (1) **Membership.** The Board will be comprised of no fewer than 11 members who meet the following requirements:
 - (1) (A) are lawyers, active or retired lawyers;
 - (2) (B) have diverse experience and knowledge; and
 - (3) (C) demonstrate an understanding of and ability to assist lawyers in the problems of physical or mental disabilities that result from disease, addiction, disorder, trauma, or age legal professionals with physical or mental health issues.

- (e) (2) **Board Terms.** ~~Effective July 1, 2012, the terms of all current and future board members will be subject to the following: The Supreme Court will appoint members to the Board for a term of four years.~~
- (1) ~~Terms of service on the Board will be 6 years each and no member, current or future, may serve more than 18 consecutive years. A member who completes 18 consecutive years of service may not be reappointed until at least 3 years have elapsed since the end of the 18 years.~~
- (2) ~~At the expiration of the terms of the existing members, the term of each new or succeeding member of the Board will be 6 years.~~
- (3) ~~A new member appointed to fill a vacancy will serve the unexpired term of the previous member and may subsequently be appointed to two additional 6-year terms.~~
- (A) **Member Appointed Before July 1, 2020.** ~~A Board member who was appointed before July 1, 2020, may serve up to three consecutive six-year terms. No member may serve more than 18 consecutive years.~~
- (B) **Member Appointed After July 1, 2020.** ~~A Board member who is appointed after July 1, 2020, is appointed for a term of four years. No member may serve more than three consecutive four-year terms unless appointed to fill a vacancy.~~
- (C) **Vacancy.** ~~The Supreme Court will appoint a new member to fill a vacancy. A new member appointed to fill a vacancy serves the unexpired term of the previous member. A member initially appointed to serve an unexpired term may serve three consecutive four-year terms thereafter.~~
- (D) **Return to Service.** ~~A member may return to service on the Board after a break in service.~~
- (43) **Law Students.** ~~In addition to the Board members appointed under subsection (e)(1), The Supreme Court may also appoint two a law students from either or both of the each Kansas law schools in Kansas to serve as a liaison to the Board for a terms of 1one or 2two years.~~
- (f) (4) **Chair, and Vice-chair, and Secretary.** ~~The Board Supreme Court will designate one member as a Board chair; and one member as a vice-chair; and a secretary.~~
- (g) (5) **Meetings; Quorum.** ~~The Board will meet quarterly and when the need arises. A majority of the Board members who have been duly appointed will constitute a quorum, and a quorum must be present before the Board may take any action taken by the Board will require a majority of those present and eligible to vote.~~
- (h) (6) **Board Powers and Duties.** ~~The Board has the following powers and duties duty to:~~
- (4) (A) ~~advise and recommend to the Supreme Court candidates for appointment as members of to the Board and or as the Executive Ddirector;~~

- (2) ~~(B)~~ establish policy and adopt ~~procedural rules-procedures~~ procedures consistent with this rule;
 - (3) ~~(C)~~ oversee the operation of the program to achieve the purposes stated in subsection (a); ~~and~~
 - (D) create ad hoc committees as necessary to advance the purpose of KALAP or to study specific issues identified by the Board; and
 - (4) ~~(E)~~ ~~make-prepare reports-to~~ for the Supreme Court as ~~the court may require~~ requested.
- (if) **Budget, Salaries, and Expenses and Budget.** ~~The Supreme Court will determine the salaries of the Executive Director and program KALAP staff, who will also be reimbursed for actual travel and other expenses incidental to their duties. Board members and KALAP volunteers will receive per diem and expenses. The KALAP budget will be paid out of~~ funded by fees collected under Rule 206. The chief financial officer with the Office of Judicial Administration will conduct an annual review of financial internal controls, processes and procedures, and reports.
- (g) **Foundation.** KALAP may establish a nonprofit tax-exempt foundation to carry out KALAP's purpose. A foundation should comply with section 501 of the internal revenue code and the bylaws and articles of incorporation should be set up accordingly. A foundation may collect and receive donations to furnish financial assistance, including low interest loans, to legal professionals seeking treatment for physical or mental health issues. The KALAP Board will appoint foundation directors. The directors will establish foundation rules and regulations. The chief financial officer with the Office of Judicial Administration or an outside CPA firm will conduct an annual review of financial internal controls, processes and procedures, and reports.
- (jh) **KALAP Volunteer Responsibilities.** ~~The responsibilities of a~~ A KALAP volunteer may ~~include~~ have the following responsibilities:
- (1) ~~assisting in~~ with an interventions;
 - (2) serving as a mentor, ~~and/or~~ monitor, or twelve-step program sponsor;
 - (3) acting as a ~~contact or liaison with~~ between KALAP and the courts, law firms, law schools, and bar organizations-associations and local committees, ~~law firms, and law schools;~~
 - (4) providing compliance monitoring ~~where appropriate;~~ and
 - (5) performing any other function ~~deemed appropriate and necessary~~ requested by the ~~Board executive director~~ to fulfill the program KALAP's purposes.
- (ki) **Confidentiality.**
- (1) All records and information maintained ~~by KALAP, its Board, employees, agents, designees, volunteers, or reporting parties~~ is relating to the services provided under

subsections (b)(1) and (b)(2) are confidential, privileged, and not subject to discovery or subpoena. All communication between a participant and the aforementioned individuals—an individual or entity related to these services is privileged against disclosure to the same extent and subject to—and must be treated the same conditions as confidential communications between an attorney and client. The Executive Director may compile and disclose statistical information, devoid of all identifying data. Confidentiality under this section does not prohibit the limited disclosure of information when that disclosure is considered reasonably necessary to prevent an act that is believed likely to result in imminent death or imminent substantial bodily harm.

- (2) The executive director may compile and disclose statistical information without revealing any identifying data.
- (23) The Executive Director and staff, Board members, employees, agents, designees, volunteers, or reporting parties are relieved from the provisions of Rule 8.3 of the Kansas Rules of Professional Conduct and Supreme Court Rule 210 as to for work done and information obtained in carrying out their duties and responsibilities under this rule.
- (34) Any person violating subsection (k)(1) may be subject to punishment for contempt of by the Supreme Court.
- (45) The KALAP office will must be in a location where privacy and confidentiality requirements of this rule can be maintained.
- (4j) **Immunity.** The duties and responsibilities of the Executive Director and staff, Board members of the Board, employees, agents, designees, and volunteers, or reporting parties are owed to the Supreme Court and the public in general, not to any individual lawyer legal professional or another person. Nothing in this rule is to be construed as creating creates a civil cause of action against the aforementioned these individuals or reporting parties, and they are immune from liability for any omission or conduct in the course of carrying out their official duties and responsibilities or failing to fulfill their duties and responsibilities under this rule.
- (mk) **Local Committees.** A local bar association in this state-Kansas may establish and fund a local committee for providing to provide assistance to a Kansas attorney needing help because of physical or mental disabilities that result from disease, addiction, disorder, trauma, or age that impact the attorney's ability to perform the attorney's professional duties. A committee formed under this rule will be subject to the requirements of subsections (b) and (k). A local committee must compile and disclose to KALAP statistical information, devoid of all identifying data, on request of the Executive Director. A local committee, its members, and volunteers are entitled to the immunities of subsection (l), so long as the requirements of this rule are met. On request, KALAP will provide assistance to a committee established under this subsection legal professional who is experiencing a physical or mental health issue.

- (1) **Responsibilities.** A local committee has the following responsibilities:
 - (A) to provide the services described under subsection (b);
 - (B) to follow the requirements of subsection (i); and
 - (C) to compile and disclose statistical information to KALAP, without revealing any identifying data, if requested by the executive director.
- (2) **Immunity.** A local committee and its members and volunteers are entitled to the immunities of subsection (j) and are relieved of the reporting requirements in subsection (i)(3) if the purpose of the committee is to provide immediate assistance to a legal professional experiencing a physical or mental health issue and the requirements of confidentiality in subsection (i)(1) are met.
- (3) **KALAP Assistance.** KALAP will assist any local committee upon request.