

**PROPOSED ADMINISTRATIVE ORDER 22:
POLICY REGARDING THE PROVISION OF
LEGAL INFORMATION TO THE PUBLIC**

ADMINISTRATIVE ORDER NO. 22 (proposed)

Policy Regarding Provision of Legal Information to the Public

Pursuant to Ark. Const. Amend. 80 §§ 1, 3, 4; Ark. Code Ann. §§ 16-10-101 *et seq.*; and this Court's inherent rule-making authority, the Court adopts and publishes Administrative Order Number 22.

I. Purpose

An increasing number of individuals—in Arkansas and across the country—are handling their own legal problems without the assistance of lawyers. These “Self-Help Patrons”¹ often seek help from court staff, librarians, and others who have specialized knowledge of the court system or legal resources (“Self-Help Personnel”), but who are prohibited from offering legal advice. Absent clear direction on the distinction between what constitutes “legal information” and what constitutes “legal advice,” Self-Help Personnel may be overly cautious in providing assistance to Self-Help Patrons or may risk being reported or reprimanded by their employers. As a result, Self-Help Patrons may be unnecessarily frustrated in their efforts to effectively navigate the legal system and may, in turn, lose confidence in our courts. Furthermore, there may be instances where Self-Help Patrons involved in litigation may be entitled to receive assistance from the court as a matter of due process.²

It is the policy of the Arkansas Supreme Court to ensure access to Arkansas courts by all persons, including those who may not have the benefit of legal representation. The purpose of this Administrative Order is to provide clear guidance to Self-Help Personnel so that they are equipped to provide appropriate legal information to Self-Help Patrons consistent with applicable standards of impartiality and without engaging in the unauthorized practice of law.

The goal is to provide authority for, within the bounds of this Administrative Order, assistance to achieve fair and efficient resolution of cases on their merits, and to minimize the delays and inefficient use of court resources that may result from use of the court system by litigants who are not represented by lawyers. There is a compelling state interest in resolving cases efficiently and fairly, regardless of the financial resources of the parties.

¹ “Self-Represented Litigant” is a term often used to describe these individuals, but such terminology fails to take into account persons with legal issues that may not involve litigation. Use of the word “patron” also acknowledges that courts and libraries are, and should be, institutions that serve members of the public.

² In *Turner v. Rogers*, 131 S. Ct. 2507 (2011), the U.S. Supreme Court held that trial judges in civil contempt proceedings must ensure that certain safeguards are in place to avoid wrongful conviction, including (1) notice to the defendant that his “ability to pay” is a critical issue in the contempt proceeding; (2) the use of a form (or the equivalent) to elicit relevant financial information; (3) an opportunity at the hearing for the defendant to respond to statements and questions about his financial status (e.g., those triggered by his responses on the form); and (4) an express finding by the court that the defendant has the ability to pay. Although the findings in that case were limited to the civil contempt context, there are indications that it may have greater implications for the broader realm of civil self-represented litigation. *See, e.g.*, Richard Zorza, *A New Day for Judges and the Self-Represented: The Implications of Turner v. Rogers*, THE JUDGES’ JOURNAL, Fall 2011, at 16.

II. Definitions

- A. “Self-Help Patron” means any individual who seeks legal information to pursue or defend a court case or administrative action, or to understand potential legal rights, remedies, or obligations.
- B. “Self-Help Personnel” means court staff, librarians, and other individuals who are frequently asked to provide help for people involved in legal matters. Those court staff, librarians, and other individuals who are also licensed lawyers are governed by this Order in the same way that non-attorney personnel are governed unless they are acting on behalf of a nonprofit or court-annexed limited legal services program as provided in Arkansas Rule of Professional Conduct 6.5.
- C. “Self-Help Assistance” means support and guidance provided by Self-Help Personnel within the scope and limitations of this Order, including collaboration and coordination with legal and community resources.
- D. “Approved Forms” means the forms and instructions that appear on the Arkansas Legal Services Partnership website; on the Arkansas Judiciary website; in administrative orders, rules, or other policies of the Supreme Court; in administrative agency rules; in state statutes; and local forms to facilitate following local case-processing procedures.

III. Role of Self-Help Personnel

- A. Basic Services. Self-Help Personnel may provide the following services:
- Provide general information about court procedures and logistics, including requirements for service, filing, scheduling hearings and compliance with local procedure;
 - Provide, either orally or in writing, information about court rules, terminology, procedures, and practices;
 - Inform Self-Help Patrons of available pro bono legal services, low cost legal services, unbundled legal services, legal aid programs, alternative dispute resolution services including referrals to the Arkansas Alternative Dispute Resolution Commission’s database of certified mediators, referrals to legal services and legal aid programs, lawyer referral services (such as Arkansas Find-A-Lawyer), and legal resources offered by state and local libraries, legal aid programs, and state agencies;
 - Encourage Self-Help Patrons to obtain legal advice without recommending a specific lawyer or law firm;
 - Explain options within and outside the court system, including providing information about community resources and services;
 - Provide information about domestic violence resources;
 - Offer educational sessions and materials, as available, and provide information about classes, such as parenting education classes;

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- Assist Self-Help Patrons in selecting the correct forms, and instructions on how to complete forms, based on the Self-Help Patron's description of what he or she wants to pursue or request from the court, including, but not limited to, providing forms for the waiver of filing fees. Where no Approved Form exists to accomplish the Self-Help Patron's request, Self-Help Personnel should inform the litigant of that fact;
- Record information provided by the Self-Help Patrons onto Approved Forms if that person cannot complete the forms due to disability, language, or literacy barriers;
- Assist Self-Help Patrons to understand what information is needed to complete filling in the blanks on Approved Forms;
- Review finished forms to determine whether forms are complete, including checking for signatures, notarization, correct county name, and case number;
- Assist in calculating child support using the Arkansas Child Support Guidelines, based on financial information provided by the Self-Help Patron;
- Answer general questions about how the court process works;
- Answer questions about court timelines;
- Provide docket information;
- Provide information concerning how to get a hearing scheduled;
- Inform Self-Help Patrons of the availability of interpreter and sign language assistance and process requests for such services;
- At the direction of the court, review Self-Help Patrons' documents prior to hearings to determine whether procedural requirements for the filing of pleadings have been met;
- Assist Self-Help Patrons with preparation of proposed court orders based upon the parties' agreement or stipulation for signature of the judge or magistrate;
- Answer questions about whether an order has been issued, where to get a copy if one was not provided, and read the order to the individual if requested;
- Provide a Self-Help Patron with access to information from a case file that has not been restricted by statute, rule or directive;
- Provide assistance based on the assumption that the information provided by the Self-Help Patron is accurate and complete;
- Provide the same services and information to all parties to an action, as requested;
- Provide information about language and/or citations of statutes and rules, without advising whether or not a particular statute or rule is applicable to the situation;
- Provide other services consistent with the intent of this Order and the direction of the court, including programs in partnership with other agencies and organizations.

B. Prohibited Services. Self-Help Personnel shall not:

- Recommend whether a case should or should not be brought to court or administrative order appealed or not appealed;
- Give an opinion about the outcome of a case that is brought to court or an administrative action that is appealed;
- Represent a Self-Help Patron in court;
- Tell a Self-Represented Patron that Self-Help Personnel may provide legal advice;
- Provide legal analysis, strategy, or advice;

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- Disclose information in violation of a court order, statute, rule, order, or case law;
- Refuse to allow a Self-Help Patron to proceed with his or her case based solely on the fact that he or she is self-represented;
- Tell the Self-Help Patron anything Self-Help Personnel would not repeat in the presence of the opposing party, or any other party to the case;
- Advise a Self-Help Patron that he or she should go to a specific lawyer or law firm for fee-based representation.
- Tell the Self-Help Patron how he or she should word any substantive content in court pleadings or other legal documents.
- Talk to a judge on behalf of a Self-Help Patron.

IV. Assistance by Self-Help Personnel is not the Practice of Law

The performance of services by Self-Help Personnel in accordance with this order is not the practice of law, as Self-Help Personnel are to provide neutral information and are not to give legal advice. Information provided by a Self-Help Patron to Self-Help Personnel is neither confidential nor privileged. No attorney-client relationship exists between Self-Help Personnel and a Self-Help Patron.

V. Assistance by Lawyers and Nonlawyer Assistants who are not Self-Help Personnel

When Self-Help Personnel refer Self-Help Patrons to community resources and services, this may include referrals to legal aid organizations or lawyers or law firms who provide limited scope legal services on a fee-based, “low bono,” or pro bono basis. Such referrals are permitted and do not constitute a violation of this Administrative Order. Lawyers, and their nonlawyer assistants, as that term is used in the Arkansas Rules of Professional Conduct 5.3, are guided by the Arkansas Rules of Professional Conduct, including, but not limited to Rule 6.5 which addresses nonprofit and court-annexed limited legal services programs.

VI. Availability of Services

Subject to available resources, assistance is available to all Self-Help Patrons. Self-Help Personnel may direct Self-Help Patrons to other appropriate services where the inquiry is better addressed. Some limited examples are: the Office of the Prosecuting Attorney for questions about victims’ services; the Americans with Disabilities Act coordinator in the location, for information about accommodations necessary for a Self-Help Patron; the collections investigator for information about payment of court costs; the clerk and recorder, for information about property records; and the Division of Revenue, Motor Vehicle Division, for information about drivers’ licenses or state identification.

VII. Copy Costs

Courts and libraries may require Self-Help Patrons to pay the reasonable copying costs of providing forms and instructions to Self-Help Patrons, provided that the charge for persons who are indigent may be reduced or waived, as required by statute, rule or directive.

VIII. Notices to Self-Help Patrons

Court-based Self-Help Personnel shall provide and, if necessary, review with the Self-Help Patron, the below “Notice to Self-Help Court Patron.” Such notice shall also be available through conspicuous posting and be made available in other languages, as needed. Self-Help Personnel who are providing Self-Help Services outside of a court setting may provide and post the “Notice to Self-Help Patron” below.

NOTICE TO SELF-HELP COURT PATRON

Self-help services are available to all persons who seek information to file, pursue, or respond to a case without the assistance of a lawyer authorized to practice before the court, within the resources available to us.

We are employees of the court and are available to provide information about court procedures, practices, rules, terminology, and forms, as well as community resources and services that can help you. By providing this information, we are not taking sides in a case. This means we will provide the same services and information to all parties in a case, if requested. We cannot act as your lawyer or provide legal advice.

We can explain the court process, help you to understand what information is needed to fill in the blanks on a form, and review your forms for completeness. We cannot tell you what your legal rights or remedies are, represent you in court, or tell you how to testify in court.

Based on the information you share with us, we can help you locate forms and understand the information you need for your case. Any information you share with us is not confidential or privileged.

No attorney-client relationship exists between us and you. If you need a lawyer or legal advice, we can help you find community resources and services, but we cannot tell you which lawyer or law firm you should use.

We are not responsible for the outcome of your case.

We are not investigators and cannot provide investigative services.

We are court employees, and we do not act on behalf of any particular judge. The presiding judge in your case may require that you change a form or use a different form. The judge is not required to grant the relief you request in a form.

In all cases, it is best to obtain the assistance of your own lawyer, especially if your case presents significant or complicated issues. If requested, we will help you find community resources and services without recommending a specific lawyer or law firm.

For more information about the court's self-help assistance, see Administrative Order No. 22, which is available at [website].

NOTICE TO SELF-HELP PATRON

Within the resources available to us, informational services are available to all persons who seek information to file, pursue, or respond to a case without the assistance of a lawyer authorized to practice before the court.

We are available to assist you in locating information about court procedures, practices, rules, terminology, and forms, as well as community resources and services that can help you. By providing this information, we are not taking sides in a case. This means we will provide the same services and information to all parties in a case, if requested. We cannot act as your lawyer or provide legal advice.

We cannot tell you what your legal rights or remedies are, represent you in court, or tell you how to testify in court.

Based on the information you share with us, we can help you locate forms and understand what information you need for your case. Any information you share with us is not confidential or privileged.

No attorney-client relationship exists between us and you. If you need a lawyer or legal advice, we can help you find community resources and services but we cannot tell you which lawyer or law firm you should use.

We are not responsible for the outcome of your case.

We are not investigators and cannot provide investigative services.

In all cases, it is best to obtain the assistance of your own lawyer, especially if your case presents significant or complicated issues. If requested, we will help you find community resources and services without recommending a specific lawyer or law firm.

For more information about self-help assistance, see Administrative Order No. 22, which is available at [website].

PROPOSED RULES/MODIFICATIONS

Arkansas Code of Judicial Conduct 2.2: Impartiality and Fairness

Arkansas Rule of Civil Procedure 11: Signing of Pleadings, Motions, and Other Papers; Sanctions

Arkansas Rule of Professional Conduct 1.2: Scope of Representation and Allocation of Authority Between Client and Lawyer

Arkansas Rule of Professional Conduct 4.2: Communication with Person Represented by Counsel

Arkansas Rule of Professional Conduct 4.3: Dealing with Unrepresented Persons

Arkansas Rule of Civil Procedure 87 [NEW]: Limited Scope Representation

Draft of Suggested Revision to the Revised Arkansas Code of Judicial Conduct

Current Rule

RULE 2.2 Impartiality and Fairness

A judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially.

COMMENT

- [1] To ensure impartiality and fairness to all parties, a judge must be objective and open-minded.
- [2] Although each judge comes to the bench with a unique background and personal philosophy, a judge must interpret and apply the law without regard to whether the judge approves or disapproves of the law in question.
- [3] When applying and interpreting the law, a judge sometimes may make good-faith errors of fact or law. Errors of this kind do not violate this Rule.
- [4] It is not a violation of this Rule for a judge to make reasonable accommodations to ensure pro se litigants the opportunity to have their matters fairly heard.

Suggested Revision

RULE 2.2 Impartiality and Fairness

(A) A judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially.

(B) A judge may make reasonable accommodations, consistent with the law and court rules, to facilitate the ability of all litigants, including self-represented litigants, to be fairly heard.

COMMENT

- [1] To ensure impartiality and fairness to all parties, a judge must be objective and open-minded.
- [2] Although each judge comes to the bench with a unique background and personal philosophy, a judge must interpret and apply the law without regard to whether the judge approves or disapproves of the law in question.
- [3] When applying and interpreting the law, a judge sometimes may make good-faith errors of fact or law. Errors of this kind do not violate this Rule.
- [4] ~~It is not a violation of this Rule for a judge to make reasonable accommodations to ensure pro se litigants the opportunity to have their matters fairly heard.~~ [4] The growth in litigation involving self-represented litigants and the responsibility of courts to promote access to justice warrant reasonable flexibility by judges, consistent with the law and court rules, to ensure that all litigants are fairly heard. Examples of accommodations that may be made include but are not limited to (1) making referrals to any resources available to assist the litigant in the preparation of the case; (2) liberally construing pleadings to facilitate consideration of the issues raised; (3) providing general information about proceeding and foundational requirements; (4) attempting to make legal concepts understandable by using plain language

whenever possible; (5) asking neutral questions to elicit or clarify information; (5) modifying the traditional order of taking evidence; and (6) explaining the basis for a ruling.

Rule 11. Signing of Pleadings, Motions, and Other Papers; Sanctions.

(a) Signatures.

(1) Every pleading, written motion, and other paper of a party represented by an attorney shall be signed by at least one attorney of record in his or her individual name, whose address shall be stated.

~~(2) A party who is not represented by an attorney~~ self-represented person shall sign his or her pleading, motion, or other paper and state his or her address and telephone number, if any. An attorney may draft or help to draft a pleading, motion, or other paper filed by an otherwise self-represented person. The attorney shall include a notation at the end of the prepared document stating: "This document was prepared with the assistance of a licensed Arkansas lawyer pursuant to Arkansas Rule of Professional Conduct 1.2(c)." The attorney need not sign that pleading, motion, or other paper.

(3) Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit.

(b) Certificate.

(1) The signature of an attorney or party constitutes a certificate by the signatory that to the best of his or her knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

~~(1)~~ (A) the pleading, motion, or other paper is not interposed for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;

~~(2)~~ (B) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;

~~(3)~~ (C) the factual contentions have evidentiary support;

~~(4)~~ (D) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information;

~~(5)~~ (E) when a party's claim or affirmative defense may only be established in whole or in part by expert testimony, the party has consulted with at least one expert, or has learned in discovery of the opinion of at least one expert, who (i) is believed to be competent under Ark. R. Evid. 702 to express an opinion in the action and (ii) concludes on the basis of the available information that there is a reasonable basis to assert the claim or affirmative defense; and

~~(6)~~ (F) the pleading, motion, or other paper complies with the requirements of Rule 5(c)(2) regarding redaction of confidential information from case records submitted to the court.

(2) For an attorney who provides drafting assistance to an otherwise self-represented person, the attorney may rely on the self-represented person's representation of facts, unless the attorney has reason to believe that such a representation is false or materially insufficient.

(c) Sanctions.

(1) If a pleading, motion, or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or

upon its own initiative, shall impose upon any attorney or party who violated this rule an appropriate sanction.

(2) Sanctions that may be imposed for violations of this rule include, but are not limited to:

- (A) an order dismissing a claim or action;
- (B) an order striking a pleading or motion;
- (C) an order entering judgment by default;
- (D) an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee;
- (E) an order to pay a penalty to the court;
- (F) an order awarding damages attributable to the delay or misconduct;
- (G) an order referring an attorney to the Supreme Court Committee on Professional Conduct or the appropriate disciplinary body of another state.

(3) The court's order imposing a sanction shall describe the sanctioned conduct and explain the basis for the sanction. If a monetary sanction is imposed, the order shall explain how it was determined.

(4) The court shall not impose a monetary sanction against a ~~represented~~ party for violating subdivision ~~(b)(2)~~~~((b)(1)(B))~~, or on its own initiative, unless it issued the show-cause order under subdivision (c)(6) before voluntary dismissal or settlement of the claims made by or against the party that is, or whose attorneys are, to be sanctioned.

(5) A motion for sanctions under this rule shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate subdivision (b). It shall be served as provided in Rule 5 but shall not be filed with or presented to the court unless, within 21 days after service of the motion, (or such other period as the court may prescribe), the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected. If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion.

(6) On its own initiative, the court may order an attorney or party to show cause why conduct specifically described in the order has not violated subdivision (b). The order shall afford the attorney or party a reasonable time to respond, but not less than 14 days.

Rule 1.2. Scope of Representation and Allocation of Authority Between Client and Lawyer.

(a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation, and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

(1) The client's informed consent must be confirmed in writing unless:

(A) the representation of the client consists solely of a telephone consultation;

(B) the representation is provided by a lawyer employed by a nonprofit legal services program or participating in a program authorized by Rule 6.5 and the lawyer's representation consists solely of providing information and advice or the preparation of legal documents; or

(C) the court appoints the attorney for a limited purpose that is set forth in the appointment order.

(2) If the client gives informed consent as required by this Rule, there shall be a presumption that:

(A) the representation is limited to the attorney and the services as agreed upon; and

(B) the attorney does not represent the client generally or in matters other than those as agreed upon.

(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

Rule 4.2. Communication with Person Represented by Counsel

(a) In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law.

(b) A person to whom limited scope representation is being provided or has been provided in accordance with Rule 1.2(c) is considered to be unrepresented for purposes of this rule unless the opposing lawyer has been provided with a written notice of the limited-scope representation. If such notice is provided, the opposing lawyer shall not communicate with the person regarding matters designated in the notice of limited-scope representation without consent or authorization as provided by Rule 4.2(a).

Rule 4.3. Dealing With Unrepresented Person

(a) In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding. The lawyer shall not give legal advice to an unrepresented person, other than the advice to secure counsel, if the lawyer knows or reasonably should know that the interests of such a person are or have a reasonable possibility of being in conflict with the interests of the client.

(b) A person to whom limited scope representation is being provided or has been provided in accordance with Rule 1.2(c) is considered to be unrepresented for purposes of this rule unless the opposing lawyer has been provided with a written notice of the limited scope representation. If such notice is provided, the person is considered to be unrepresented regarding matters not designated in the notice of limited scope representation.

Rule 87. Limited Scope Representation

- (a) Permitted. In accordance with Rule 1.2(c) of the Arkansas Rules of Professional Conduct, an attorney may provide limited scope representation to a person involved in a court proceeding.
- (b) Notice. An attorney's role may be limited as set forth in a notice of limited scope representation filed and served prior to or simultaneously with the initiation of a proceeding or initiation of representation, as applicable. Such notice shall not be required in matters where an attorney's representation consists solely of the drafting of pleadings, motions, or other papers for an otherwise self-represented person as provided in Rule 11(a)(2).
- (c) Termination. The attorney's role terminates without the necessity of leave of court upon the attorney's filing a notice of completion of limited scope representation with a certification of service on the client.
- (d) Service. Service on an attorney providing limited scope representation is required only for matters within the scope of the representation as set forth in the notice.