



New South Wales

District Court Amendment (Referral for Legal Assistance) Rule 2000

under the

District Court Act 1973

The District Court Rule Committee made the following rule of court under the *District Court Act 1973* on 3 August 2000.

J Riznyczok

Acting Secretary to the Rule Committee

Explanatory note

The object of this Rule is to amend the *District Court Rules 1973* to provide for a scheme of Court referrals to a panel of barristers and solicitors who are prepared to act for litigants on a pro bono basis. The provisions to be inserted in the Rules are consistent with those in Part 66A of the *Supreme Court Rules 1970*.

2000 No 494

Clause 1 District Court Amendment (Referral for Legal Assistance) Rule 2000

District Court Amendment (Referral for Legal Assistance) Rule 2000

1 Name of Rule

This Rule is the *District Court Amendment (Referral for Legal Assistance) Rule 2000*.

2 Amendment of District Court Rules 1973

The *District Court Rules 1973* are amended as set out in Schedule 1.

3 Notes

The explanatory note does not form part of this Rule.

Schedule 1 Amendment

(Clause 2)

Part 28C

Insert after Part 28B:

Part 28C Court appointed referral for legal assistance

1 Objectives

- (1) In the interpretation of this Part, preference must be given to a construction that will promote, and be consistent with, the purpose in subrule (2) and the statements in subrules (3) and (4).
- (2) The purpose of this Part is to facilitate, where it is in the interests of the administration of justice, the provision of legal assistance to litigants who are otherwise unable to obtain assistance.
- (3) The provision of legal assistance under this Part is not intended to be a substitute for legal aid.
- (4) A referral under this Part is not an indication that the Court has formed an opinion on the merits of a litigant's case.
- (5) Nothing in this Part requires the Court to make a referral, or to consider a litigant's case for referral, under this Part.

2 Interpretation

In this Part:

litigant, in proceedings, means a person who is a party to the proceedings or who has been served with a subpoena in the proceedings or who has applied to be joined in the proceedings.

Pro Bono Panel means a list of barristers and solicitors referred to in rule 3.

registrar, in relation to any proceedings, means the registrar for the proper place in relation to the proceedings.

2000 No 494

District Court Amendment (Referral for Legal Assistance) Rule 2000

Schedule 1 Amendment

scheme means the scheme for the provision of legal assistance to litigants under this Part.

3 Pro Bono Panel

The registrar for a proclaimed place may maintain a list of persons:

- (a) who are barristers or solicitors, and
- (b) who have agreed to participate in the scheme.

4 Referral to a barrister or solicitor

- (1) The Court may, if it is in the interests of the administration of justice, refer a litigant to a registrar for referral to a barrister or solicitor on a Pro Bono Panel for legal assistance.
- (2) For the purposes of subrule (1), the Court may take into account:
 - (a) the means of the litigant, and
 - (b) the capacity of the litigant to obtain legal assistance outside the scheme, and
 - (c) the nature and complexity of the proceedings, and
 - (d) any other matter that the Court considers appropriate.
- (3) The power to refer may be exercised in the absence of the public and without any attendance by or on behalf of any person.
- (4) A referral to a registrar is effected by the issue of a Referral Certificate in the approved form in relation to the litigant.
- (5) If a Referral Certificate has been issued, a registrar must attempt to arrange for the legal assistance mentioned in the certificate to be provided to the litigant by a barrister or solicitor on a Pro Bono Panel.
- (6) A registrar may refer a litigant to a particular barrister or solicitor only if the barrister or solicitor has agreed to accept the referral.
- (7) A referral to a barrister does not prevent a referral also being made to a solicitor and a referral to a solicitor does not prevent a referral also being made to a barrister.

5 Kind of assistance

A referral may be made for the following kinds of assistance:

- (a) advice in relation to the proceedings,
- (b) representation on directions hearing, interlocutory or final hearing, arbitration or mediation,
- (c) drafting or settling of documents to be filed or used in the proceedings,
- (d) representation generally in the conduct of the proceedings or of part of the proceedings.

6 Provision of assistance by barrister or solicitor

Subject to rule 7, if a barrister or solicitor agrees to accept a referral, he or she must provide legal assistance to the litigant in accordance with the referral.

7 Cessation of assistance

- (1) A barrister or solicitor who has agreed to accept a referral may cease to provide legal assistance to the litigant only:
 - (a) in the circumstances set out in any practice rules governing professional conduct that apply to the barrister or solicitor, or
 - (b) with the written agreement of the litigant, or
 - (c) with the leave of a registrar.
- (2) If a barrister or solicitor ceases to provide legal assistance to a litigant, the barrister or solicitor must inform a registrar in writing within 7 days of so ceasing.

8 Application for leave

- (1) An application by a barrister or solicitor to a registrar for leave to cease to provide legal assistance must be in writing and must briefly state the reasons for the application.
- (2) A copy of the application for leave must be served on the litigant.
- (3) An application for leave may be heard by a registrar in the absence of the public and without any attendance by or on behalf of any person.

2000 No 494

District Court Amendment (Referral for Legal Assistance) Rule 2000

Schedule 1 Amendment

- (4) In deciding whether to grant leave under this rule, a registrar must consider:
- (a) whether the barrister or solicitor would be likely to be able to cease to provide legal assistance to the litigant under any practice rules governing professional conduct that apply to the barrister or solicitor, and
 - (b) any conflict of interest that the barrister or solicitor may have, and
 - (c) whether there is a substantial disagreement between the barrister or solicitor and the litigant in relation to the conduct of the litigation, and
 - (d) any view of the barrister or solicitor:
 - (i) that the litigant's case is not well founded in fact or law, or
 - (ii) that the litigant's prosecution of the litigation is an abuse of process, and
 - (e) whether the barrister or solicitor lacks the time to provide adequate legal assistance to the litigant because of other professional commitments, and
 - (f) whether the litigant has refused or failed to pay any disbursements requested under rule 10, and
 - (g) whether it is unfair to the barrister or solicitor to require him or her to continue to provide legal assistance under the scheme, and
 - (h) any other matter that the registrar considers relevant.
- (5) An application for leave under this rule and any related correspondence:
- (a) is confidential, and
 - (b) is not part of the proceedings in relation to which the referral was made, and
 - (c) does not form part of the Court file in relation to those proceedings.

9 Costs

- (1) Subject to subrules (2) and (3) and rule 10, a barrister or solicitor who provides legal assistance to a litigant under the scheme must not seek or recover any costs for the legal assistance.
- (2) If an order for costs is made in favour of a litigant who is assisted under the scheme, the barrister or solicitor who has provided the legal assistance is entitled to recover the amount of costs that another person is required to pay under the order.
- (3) A barrister or solicitor must account to the litigant for any money received by the barrister or solicitor in respect of disbursements that were paid by the litigant.

10 Disbursements

A barrister or solicitor who provides legal assistance to a litigant under the scheme may request the litigant to pay any disbursements reasonably incurred, or reasonably to be incurred, by the barrister or solicitor on behalf of the litigant in connection with the legal assistance.