

IN THE SUPREME COURT OF FLORIDA

October 4, 2001

No. AOSC00-5

IN RE: PROPOSED AMENDMENTS TO THE RULES REGULATING
THE FLORIDA BAR (UNBUNDLED LEGAL SERVICES)

COMMITTEE REPORT

On February 28, 2000, this Court ordered The Florida Bar to study the possible need for unbundled legal services (hereinafter referred to as "limited representation") and if a need exists, submit to the Court proposed amendments to the Rules Regulating The Florida Bar or other Court rules that may be required to facilitate "limited representation." A copy of the order is attached as Appendix A. As a result, then President of The Florida Bar Herman Russomanno created the Unbundled Legal Services Special Committee, (hereinafter "Committee") to determine if there was a need for the investigation of "limited representation" and to review the rules and areas of practice that may be affected. The Committee met several times to discuss the issue and received input from other bar sections and committee. What follows is the final report of the Committee.

NEED FOR LIMITED REPRESENTATION

“Limited Representation,” means the process of breaking down the package of discrete tasks that encompass traditional legal representation into its components so that the client can be in charge of selecting from a lawyer’s services only part of the full package and contracting with the lawyer accordingly. This process has also been called discrete task representation or discrete task services.

The Committee recognizes that there may be barriers faced by self-represented litigants both in and out of the courtroom which may limit their access to justice. The manner in which people are treated in the justice system is vital to the effectiveness of the courts as a public institution. This means not only devoting sufficient resources, but also using the most creative mechanisms possible to ensure full and meaningful access to, and participation in, the legal process. Much is at stake in the formulation of policy affecting members of the public who find themselves, or choose to be, in litigation without counsel or with limited legal representation. Recognizing the need for “limited representation” is one step in ensuring that their needs are met.

PROPOSED RULE FROM THE FAMILY LAW SECTION

Before President Russomanno formed this Committee, the Executive Council of the Family Law Section considered and approved a proposed family law rule

amendment regarding "limited representation." A copy of proposed Family Law Rule 12.040 is attached as Appendix B. ¹ These rules were reviewed by the Committee.

Proposed Family Law Rule 12.040(a) states that "An Attorney of Record for a party, in a proceeding governed by these rules, shall be the Attorney of Record throughout the same proceeding, unless at the time of appearance the attorney files a notice, signed by the party, specifically limiting the attorney's appearance only to the particular proceeding or matter in which the attorney appears."

Proposed Family Law Rule 12.040(b) states that "An Attorney of Record may withdraw or partially withdraw, thereby limiting the scope of their original appearance to a particular proceeding or matter with approval of the court, after filing a motion setting forth the reasons and serving a copy upon the client and interested persons. A person shall remain attorney of record until such time as the court enters an order, except as set forth in paragraph (c) below."

Proposed Family Law Rule 12.040(c) states that "If an attorney appears *of Record* for a particular limited proceeding or matter, as provided for herein, that attorney shall be deemed *of Record* for only that particular proceeding or matter."

¹ The Court should note, however that while the Family Law Section has endorsed and suggested a family law rule for "limited representation" (Rule 12.040), the Family Law Rules Committee has taken the position a rule is not needed. See the minutes of the Family Law Rules Committee Meeting dated June 22, 2001, attached as Appendix C. This is due in part to the existence of current ethics rules regarding representation. Also, the Family Court Steering Committee supports the concept of unbundled legal services.

(Emphasis in original.)

Proposed Family Law Rule 12.040(d), requires that "a party who files a pleading or document of record shall certify whether or not the party has received assistance from an attorney in the preparation of the pleading or document and, if so, identify the attorney."

After reviewing these rules, the Committee found that comment to Rule 4-1.2 currently includes the following language as it applies to Proposed Family Law Rule 12.040 (a)(b) & (c):

Services limited in objectives or means

The objectives or scope of services provided by a lawyer may be limited by agreement with the client or by the terms under which the lawyer's services are made available to the client. For example, a retainer may be for a specifically defined purpose.

A copy of Rule 4-1.2 is attached as Appendix D.

INPUT FROM OTHER BAR SECTIONS AND COMMITTEES

The Committee discussed the possibility of other areas of practice being affected by a limited representation rule in family law matters and the possibility that there may be effects that are unexpected. The Committee decided that comments

from other bar sections and committees would be necessary and helpful so the Committee requested comments and review in a letter to section and committee chairs before The Florida Bar's Midyear meeting held in January 2001. A copy of the letter is attached as Appendix E. Section Chairs from the Criminal Law, Elder Law and Trial Lawyers Sections contacted the Committee to discuss the proposed family law rule before the Annual Meeting. Mr. Robert F. Spohrer, Chair of the Trial Lawyers Section contacted the Committee after the meeting and said that at this time, the trial lawyers take no position with respect to this proposed family law rule. Also, the Committee received a letter from Mr. Hal K. Litchford, Chair of the Business Law Section, which said that the Business Law Section had determined to take no position on the proposed rule; a copy of the letter is attached as Appendix F. Additionally, the Committee received a letter from Mr. Stuart N. Ratzan, President of the Young Lawyers Division who said that the Young Lawyers Division Board of Governors, at its meeting on January, 26, 2001, considered Proposed Family Law Rule 12.040. After debate and discussion, the Young Lawyers Division Board, by majority vote, opposed the adoption of Rule 12.040. Due to the limited time the Young Lawyers Division Board had to consider the matter, however, the Board reserved the right to reconsider its position if it received additional, persuasive information between February 2, 2001 and the Court's deadline. A copy of the letter from the Young

Lawyers Division Board is attached as Appendix G.

The Committee also referred the Proposed Family Law Rule 12.040 to the Standing Committee on Professional Ethics for analysis of the proposed family law rule in light of the existing Rules of Professional Conduct. A copy of the letter requesting review by the Standing Committee on Professional Ethics is attached as Appendix H.

The Professional Ethics Committee, (hereinafter "PEC") reviewed Proposed Family Law Rule 12.040 in light of existing Rules of Professional Conduct at its meeting of January 19, 2001, at the request of the Committee. The PEC was of the opinion that the substance of the rule and the concept of "unbundling" legal services seems to be addressed by Rule 4-1.2(c) and the comment, regarding scope of representation. Rule 4-1.2(c) states that "a lawyer may limit the objectives of the representation if the client consents after consultation." The comment provides as follows:

The objectives or scope of services provided by a lawyer may be limited by agreement with the client or by the terms under which the lawyer's services are made available to the client. For example, a retainer may be for a specifically defined purpose. Representation provided through a legal aid agency may be subject to limitations on the types of cases the agency handles. When a lawyer has been retained by an insurer to represent an insured, the representation may be limited to matters related to the insurance coverage. The terms upon which representation is

undertaken may exclude specific objectives or means. Such limitations may exclude objectives or means that the lawyer regards as repugnant or imprudent.

An agreement concerning the scope of representation must accord with the Rules of Professional Conduct and law. Thus, the client may not be asked to agree to representation so limited in scope as to violate rule 4-1.1 or to surrender the right to terminate the lawyer's services or the right to settle litigation that the lawyer might wish to continue.

PEC members expressed concern that disclosure to the clients of the limited nature of the representation must be adequate. Clients may have difficulty understanding what is included within a limited representation, particularly in the context of family law matters which often involve emotional issues. The chair of the PEC commented that the Family Law Section might consider that their proposed rule, which requires that the name of the attorney who drafts pleadings for pro se litigants, requires more disclosure than Florida Ethics Opinion 79-7 (Reconsideration), which requires only that the pleadings be marked "prepared with the assistance of counsel." In summary, the Professional Ethics Committee felt that both the proposed rule and the concept of "unbundled" services are consistent with existing Rules of Professional Conduct. A copy of the memorandum from the Professional Ethics Committee with a copy of Florida Ethics Opinion 79-7 (Reconsideration) is attached as Appendix I.

CONCLUSIONS AND RECOMMENDATIONS

The Committee held its last meeting September 6, 2001, during the Bar's General Meeting in an effort to make a final recommendation to the Court. Members generally agreed that attorneys can provide limited and specific representation to clients and much of the discussion centered on whether that limited help should include limited appearances in court. The Committee decided that it should. ²

Upon careful consideration of the foregoing, this Committee has reached the following conclusions and makes these recommendations to the Court:

1. This Committee did not independently investigate the need for "limited representation" in family law matters, but relied on the investigation done by the Family Law Section. The Committee accepts their recommendation that there is a need for "limited representation" in family law matters.
2. The Committee received no other information from other sections or committees as to a need for "limited representation" in other areas of practice. The Committee, therefore concluded none is warranted at this time.
3. No amendment to the Rules Regulating The Florida Bar is required to

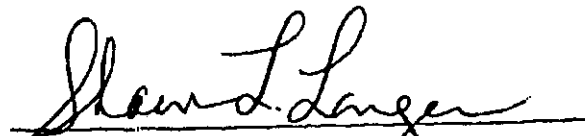
² The Committee could not agree upon whether application of Rule 4-3.3, concerning candor toward the tribunal, would apply to Proposed Family Law Rule 12.040(d), if the attorney who provided assistance had no knowledge of the failure of the party to notify the tribunal. A copy of Rule 4-3.3 is attached as Appendix J.

facilitate "limited representation" as presented in Proposed Family Law Rule 12.040.

4. The implication of Rule 4-3.3, concerning candor toward the tribunal, as it applies to the attorney notification requirement in Proposed Family Law Rule 12.040(d), should be addressed by the Court.

5. The Committee recommends that the Court refer the matter to the Family Law Rules Committee with a request that the committee draft a rule that specifically addresses limited representation in court.

Respectfully submitted,



SHARON LYNNE LANGER, Chair
Unbundled Legal Services Committee

cc: John F. Harkness, Jr.
Terrence Russell