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SID J. WHITE

AUG 21 1998

CLERK, SUPREME COURT
By _____
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

IN RE: AMENDMENT TO THE
FLORIDA FAMILY LAW RULES
OF PROCEDURE (SELF HELP)

CASE NO.: 93,319

COMMENTS FROM THE FAMILY LAW RULES COMMITTEE

GEORGE S. REYNOLDS, III, Chair of the Family Law Rules Committee, and JOHN F. HARKNESS, JR., Executive Director of The Florida Bar, file these comments on the petition of the Family Court Steering Committee to adopt Florida Family Law Rule of Procedure 12.750, Family Self Help Programs.

The Family Law Rules Committee of The Florida Bar considered the rule proposed by the Family Court Steering Committee at its June 19, 1998 meeting. The committee generally supports the proposed rule, but suggests the following changes for the reasons stated:

1. Subdivision (a): The committee recommends deleting "under the auspices of the court." Some self help programs may be operated by other entities such as legal services providers or local bar associations. All family law self help programs should be governed by the same rules.
2. Subdivision (c)(1): As proposed by the Steering Committee, subdivision (c)(1) allows self help programs to provide information about forms without recommending any specific course of action or form. The Rules Committee recommends removing the words "or form" at the end of the sentence.

The Family Court Steering Committee in its brief cites *The Florida Bar v. Brumbaugh*, 355 So.2d 1186 (Fla. 1978), for the proposition that recommending a specific form to a litigant constitutes unlicensed practice of law. The respondent in this case operated a for-profit secretarial service preparing legal documents for litigants. She had no legal training of any kind, was not working under the supervision of anyone with legal training, and was not using court-approved forms (which did not exist at the time). The individuals providing services in the self help programs will have some legal training, will be supervised by attorneys, will be working with court-approved forms, and will be operating within the context of a nonprofit, court-approved program. Other services Ms. Brumbaugh provided, such as providing information on how to file a court proceeding, that were prohibited by the Court in this case are authorized by the proposed rule for self help legal programs.

In the twenty years since *Brumbaugh*, this Court has recognized the problems presented by the growing numbers of self-represented litigants, especially in family law cases, and has responded in various ways, including developing forms and instructions

designed for their use. To prohibit self-help program staff from advising litigants on which forms are necessary for their case would impair the effectiveness of these programs. Unless the appropriate forms can be provided to litigants, the practical purpose of the entire self help program cannot be achieved.

3. Subdivision (c)(3): This subdivision allows the chief judge of each circuit to approve additional forms for use in the circuit. The committee recommends deletion of this subdivision. The current package of approved family law forms provide a comprehensive set for most family law proceedings. Additional forms should be approved through the mechanism provided by the court and be consistent statewide.

4. Subdivision (c)(6): Delete subdivision (c)(6), allowing provision of definitions of legal terminology, entirely. The inclusion of this subdivision could lead to information or misinformation being distributed by personnel untrained in the law. While there would be no objection to providing a dictionary, written instruction for a form, or statute for the pro se litigant to review, self help program personnel should not be explaining legal terminology because to do so would constitute practice of law. The distinction between subdivisions (c)(6) and (c)(7) should be noted. Subdivision (c)(7) allows self help personnel to provide references to citations or statutes and rules "without advising whether a specific statute or rule is applicable to the self represented litigant's situation." This could be done, for example, by providing a litigant a copy of Chapter 61, Florida Statutes. To provide a definition of legal terminology, however, the staff person must listen to the question, interpret it, and then provide a definition. This is different from the actions permitted by subdivision (c)(7). There are sufficient forms and instructions available for use by self help personnel and litigants to make the provision of a definition unnecessary.

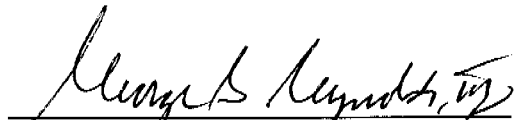
5. Subdivisions (c)(14) and (c)(15): These subdivisions have been moved to the beginning of the list of permissible activities to emphasize their importance. Litigants should be aware of the potential dangers in self representation and should be encouraged to consult an attorney if they have questions that cannot be addressed by the program staff.

6. Subdivision (h): Language has been added to the Notice of Limitation of Services Provided to inform litigants that self help program staff members are not acting on behalf of the court or any judge and that forms when completed are not binding on the court. It has been the experience of members of the committee that self represented litigants believe that because the form was completed with the assistance of court staff, the judge must accept it and grant the relief requested. This is not the case, and litigants should be advised of this fact.

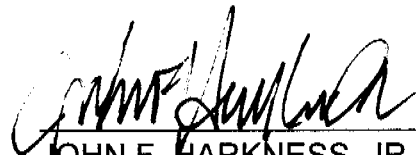
The committee also recommends that the section at the end of the Notice be reproduced in the language of the litigant if the person does not read English. The litigant signing the notice should be fully aware of what he or she is signing.

A copy of the proposed rule as amended by the Rules Committee is attached. The rule was approved by the committee by a vote of 25-4-0. The Florida Bar Board of Governors was not in favor of adoption of this rule and will be filing comments with the Court. The Board voted, however, 34-2-0, to support the Family Law Rules Committee revisions should the Court choose to adopt a rule on this issue.

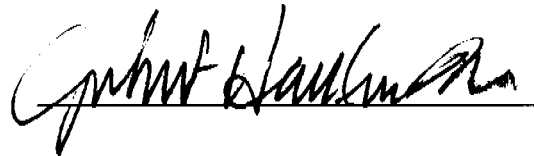
Respectfully submitted this 21 day of August, 1998.


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I HEREBY CERTIFY that a copy of the foregoing has been furnished to
B. Elaine New, Office of the State Courts Administrator, 500 South Duval Street,
Tallahassee, FL 32399.



RULE 12.750. FAMILY SELF HELP PROGRAMS

(a) **Establishment of Programs.** A chief judge, by local rule, may establish a self help program to facilitate access to family courts. The purpose of a self help program is to assist self represented litigants, within the bounds of this rule, to achieve fair and efficient resolution of their family law case. The purpose of a self help program is not to provide legal advice to self represented litigants. This rule applies only to programs established and operating ~~under the auspices of the court~~ pursuant to this rule.

(b) Definitions.

(1) "Family law case" means any case in the circuit that is assigned to the family law division.

(2) "Self represented litigant" means any individual who seeks information to file, pursue, or respond to a family law case without the assistance of a lawyer authorized to practice before the court .

(3) "Self help personnel" means lawyer and nonlawyer personnel in a self help program.

(4) "Self help program" means a program established and operating under the authority of this rule.

(c) Services Provided. Self help personnel may:

~~14.~~(1) encourage self represented litigants to obtain legal advice;

~~15.~~(2) provide information about available pro bono legal services, low cost legal services, legal aid programs, and lawyer referral services;~~and~~

~~4.~~(3) provide information about available Supreme Court approved forms, without providing advice or recommendation as to any specific course of action ~~or form~~;

~~2.~~(4) provide Supreme Court approved forms and Supreme Court approved instructions on how to complete the forms;

~~3.~~ ~~upon written approval by the chief judge, provide additional forms not included in or inconsistent with the Supreme Court approved forms, copies of which are to be sent to the Chief Justice, the chair of the Family Law Rules Committee of The Florida Bar, the chair of the Family Law Section of The Florida Bar, and the chair of the Family Court Steering Committee. Such additional forms may be utilized until acted on by the Supreme Court;~~

- ~~4.~~(5) engage in limited oral communications to assist a person in the completion of blanks on Supreme Court approved forms ~~or forms created pursuant to subdivision (c)(3)~~;
- 5.~~(6)~~ record information provided by a self represented litigant on Supreme Court approved forms ~~or forms created pursuant to subdivision (c)(3)~~ only if the self represented litigant is unable to do so by reason of language barrier or disability;
- ~~6.~~ provide, either orally or in writing, definitions of legal terminology from widely accepted legal dictionaries or other dictionaries;
- ~~(7.)~~ provide, either orally or in writing, citations of statutes and rules, without advising whether or not a particular statute or rule is applicable to the self represented litigant's situation;
- ~~(8.)~~ provide docketed case information;
- ~~(9.)~~ provide general information about court process, practice, and procedure;
- ~~(10.)~~ provide information about mediation, required parenting courses, and courses for children of divorcing parents;
- ~~(11.)~~ provide, either orally or in writing, information from local rules or administrative orders;
- ~~(12.)~~ provide general information about local court operations;
- ~~(13.)~~ provide information about community services; and
- ~~16.~~(14) facilitate the setting of hearings.

(d) **Limitations on Services.** Self help personnel shall not:

- ~~4.~~(1) provide legal advice, or recommend a specific course of action for a self represented litigant;
- ~~2.~~(2) provide interpretation of legal terminology, statutes, rules, orders, cases, or the constitution;
- ~~3.~~(3) provide information that must be kept confidential by statute, rule, or case law;
- ~~4.~~(4) deny a litigant's access to the court;
- ~~5.~~(5) encourage or discourage litigation;

- 6-(6) record information on forms for a self represented litigant, except as provided in subdivision (c)(56);
- 7-(7) engage in oral communications other than those reasonably necessary to elicit factual information to complete the blanks on forms or except as otherwise authorized in subdivision (c);
- 8-(8) perform legal research for litigants;
- 9-(9) represent litigants in court; and
- 10-(10) lead litigants to believe that they are representing them as lawyers in any capacity or induce the public to rely upon them for legal advice.

(e) **Unauthorized Practice of Law.** The services listed in subdivision (c), when performed by nonlawyer personnel in a self help program, shall not be the unauthorized practice of law.

(f) **No Confidentiality.** Notwithstanding ethics rules that govern attorneys, certified legal interns, and other persons working under the supervision of an attorney, information given by a self represented litigant to self help personnel is not confidential or privileged.

(g) **No Conflict.** Notwithstanding ethics rules that govern attorneys, certified legal interns, and other persons working under the supervision of an attorney, there is no conflict of interest in providing services to both parties.

(h) **Notice of Limitation of Services Provided.** Before receiving the services of a self help program, self help personnel shall thoroughly explain the "Notice of Limitation of Services Provided" disclaimer below. Each self represented litigant, after receiving an explanation of the disclaimer, shall sign an acknowledgment that the disclaimer has been explained to him or her and that he or she understands the limitation of the services provided. The self help personnel shall sign the acknowledgment certifying compliance with this requirement. The original shall be filed by the self help personnel in the court file and a copy shall be provided to the self represented litigant.

NOTICE OF LIMITATION OF SERVICES PROVIDED

THE PERSONNEL IN THIS SELF HELP PROGRAM ARE NOT ACTING AS YOUR LAWYER OR PROVIDING LEGAL ADVICE TO YOU. THE PERSONNEL ARE NOT ACTING ON BEHALF OF THE COURT OR ANY JUDGE. THE FORMS AS COMPLETED MAY NOT BE BINDING ON ANY COURT OR JUDGE.

THE PERSONNEL IN THIS SELF HELP PROGRAM CANNOT TELL YOU WHAT YOUR LEGAL RIGHTS OR REMEDIES ARE, REPRESENT YOU IN COURT OR TELL YOU HOW TO TESTIFY IN COURT.

SELF HELP SERVICES ARE AVAILABLE TO ALL PERSONS, UNLESS LIMITED BY STATUTE, WHO ARE OR WILL BE PARTIES TO A FAMILY CASE.

THE INFORMATION THAT YOU GIVE TO AND RECEIVE FROM SELF HELP PERSONNEL IS NOT CONFIDENTIAL AND MAY BE SUBJECT TO DISCLOSURE AT A LATER DATE. IF ANOTHER PERSON INVOLVED IN YOUR CASE SEEKS ASSISTANCE FROM THIS SELF HELP PROGRAM, HE OR SHE WILL BE GIVEN THE SAME TYPE OF ASSISTANCE THAT YOU RECEIVE.

IN ALL CASES, IT IS BEST TO CONSULT WITH YOUR OWN ATTORNEY, ESPECIALLY IF YOUR CASE PRESENTS SIGNIFICANT ISSUES REGARDING CHILDREN, CHILD SUPPORT, ALIMONY, RETIREMENT OR PENSION BENEFITS, ASSETS, OR LIABILITIES.

____ I can read English.

____ I cannot read English. This notice was read to me by {name} _____
in {language} _____.

Signature

If information is provided by telephone, the notice of limitation of services provided shall be heard by all callers prior to speaking to self help staff.

(i) **Exemption.** Self help personnel are not required to complete Florida Family Law Form 12.900, Disclosure From Nonlawyer, as required by rule 10-2.1, Rules Regulating The Florida Bar. The provisions in rule 10-2.1, Rules Regulating The Florida Bar, which require a nonlawyer to include his or her name and identifying information on a form if she or he assisted in the completion of a form, are not applicable to self help personnel unless the self help personnel recorded the information on the form as authorized in subdivision (c)(4).

(j) **Availability of Services.** Self help programs are available to all self represented litigants in family law cases, unless limited by statute.

(k) **Cost of Services.** Self help programs, as authorized by statute, may require self represented litigants to pay the cost of services provided for by this rule, provided that the charge for persons who are indigent is substantially reduced or waived.

(l) **Records.** All records made or received in connection with the official business of a self help program are judicial records and access to such records shall be governed by rule 2.051, Florida Rules of Judicial Administration.

(m) **Domestic Violence Exclusion.** Nothing in this rule shall restrict services provided by the clerk of the court or family or domestic/repeat violence intake personnel pursuant to rule 12.610.

Commentary

1998 Adoption. It should be emphasized that the personnel in the self help programs should not be providing legal advice to self represented litigants. The services specifically permitted in subdivision (c) either do not constitute the practice of law or the Court has previously authorized nonlawyer personnel to perform the function, except for engaging in limited oral communication to assist a person in completing blanks on forms or recording information on forms when the forms are approved by the chief judge.

Self help personnel should not engage in any activities that constitute the practice of law or inadvertently create an attorney-client relationship. Self help programs should consistently encourage self represented litigants to seek legal advice from a licensed attorney. The provisions of this rule only apply to programs established by the chief judge.

Subdivision (b). This rule applies only to assistance offered in family law cases. The types of family law cases included in a family law division may vary based on local rule and it is anticipated that a local rule establishing a self help program may also exclude types of family law cases from the self help program. Programs may operate with lawyer personnel, nonlawyer personnel, or a combination thereof.

Subdivision (c)(41). The self help program is encouraged to cooperate with the local bar to develop a workable system to provide this information. The program may maintain information about members of The Florida Bar who are willing to provide services to self represented litigants. The program may not show preference for a particular service, program, or attorney.

Subdivision (c)(43). In order to avoid the practice of law, the self help personnel should not recommend a specific course of action or specific form.

Subdivision (c)(35). Self help personnel should not suggest the specific information to be included in the blanks on the forms. Oral communications between the self help personnel and the self represented litigant should be focused on the type of information the form is designed to elicit.

~~Subdivision (c)(6). Self help personnel should be familiar with the court rules and the most commonly used statutory provisions. Requests for information beyond these commonly used statutory provisions would require legal research, which is prohibited by subdivision (d)(8).~~

Subdivision (c)(7). Self help personnel can have access to the court's docket and can provide information from the docket to the self represented litigant.

Subdivision (f). Because an attorney-client relationship is not formed, the information provided by a self represented litigant is not confidential or privileged.

Subdivision (g). Because an attorney-client relationship is not formed, there is no conflict in providing the limited services authorized under this rule to both parties.

Subdivision (h). It is intended that no self represented litigant who receives services from a self help program would believe he or she is receiving legal services. One purpose of the disclosure is to prevent an attorney-client relationship from being formed.

In addition to the signed disclosure, it is recommended that each program post the disclosure in a prominent place in the self help program. The written disclosure should be available and posted in the languages that are in prevalent use in the county.

Subdivision (i). This provision is to clarify that nonlawyer personnel are not required to use Florida Family Law Form 12.900 because the information is included in the disclosure required by this rule. Self help personnel are required to include their name and

identifying information on any form on which they record information for a self represented litigant who is unable to do so because of language barrier or disability.