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IN THE SUPREME COURT OF FLORIDA

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

CASE NO.
93319

CLERK, SUPREME COURT
By _____
Chief Deputy Clerk

PETITION OF THE FAMILY COURT STEERING COMMITTEE
TO CREATE A FLORIDA FAMILY LAW RULE OF PROCEDURE
TO PROVIDE FOR SELF HELP SERVICES

The Family Court Steering Committee, through its chair, Durand Adams, pursuant to the responsibilities assigned to this Committee by the Court in In re Report of the Commission on Family Courts, 633 So.2d 14, 19 (Fla. 1994), and pursuant to In re Family Court Steering Committee (Administrative Order Aug. 22, 1996), petitions this Court to create Florida Family Law Rule of Procedure 12.750, which will provide parameters for personnel who work in family self help programs in the state courts system. The full text of the proposed rule and commentary is attached in Appendix A.

MEMORANDUM IN SUPPORT

An introduction that lays the foundation for the proposed rule is first provided. Second, a description of several court programs in this state that offer services to self represented litigants¹ in family law cases will be provided. Third, the reasons for the proposed rule will be discussed. Fourth, several issues that the proposed rule addresses will be brought to the Court's attention. Finally, each element of the rule will be described. The proposed rule language and commentary is attached as Appendix A.

¹The term "self represented litigant" is used throughout this petition and the proposed rule in order to emphasize that it is the litigant who is responsible for his or her own case and to use terminology that is more easily understood by persons who are not represented by counsel.

I. INTRODUCTION

This Court has recognized that in order for our justice system to maintain credibility it must be available and affordable to all segments of society. In re Amendments to Rules Regulating The Florida Bar- 1-3.1(a) and Rules of Judicial Admin.- 2.065 (Legal Aid), 573 So.2d 800, 806 (Fla. 1990). This Court has repeatedly recognized its role and responsibility in assuring access to the courts. In re Amendments to Rules Regulating The Florida Bar, 573 So.2d at 806; Amendments to Rules Regulating The Florida Bar - 1.3.1(a) and Rules of Judicial Admin. - 2.065 (Legal Aid), 630 So.2d 501, 503 (Fla. 1993) (Clearly this Court has the constitutional responsibility to ensure access to the justice system). To that end, this Court has regularly adopted programs to improve the accessibility of our judicial system. These include simplified proceedings in small claims, probate, and dissolution of marriage matters; the development of simplified forms for self represented litigants; the establishment of citizen dispute resolution centers; and the implementation of mediation and arbitration programs designed to resolve disputes in an efficient and economical manner.

Access to the courts may include a variety of approaches. It has been said that we will achieve access to justice only if we think of the path to access as tributaries feeding a mighty river. See, D'Alemberte, *Tributaries of Justice: the Search for Full Access*, 25 Fla. St. U. L. Rev. 631, 634 (1998). The access problem has traditionally been addressed through isolated solutions such as pro bono services, alternative dispute resolution, and funding for legal services. However, successful access is more likely to be achieved through a combination of these efforts. *Id.* at 632. This proposed rule is one effort, which, in combination with other efforts, will help provide litigants with a way to meaningfully exercise their right to access the courts.

This Court has recognized that the manner in which family law cases are processed is an access issue that necessitates significant attention because it can have a greater effect on individual litigants and their children than any other area of the law. In re Amendments to the Florida Family Law Rules of Procedure, 23 Fla.L. Weekly S105, S109 (Mar. 6, 1998). The Court has previously found that “each circuit must be staffed to screen, evaluate, and manage . . . cases through the justice system to a satisfactory conclusion. A case management staff must be available to help and direct families at the point of initial contact with the judicial system to the appropriate judge, and/or to the appropriate judicial or community-based services.” In re Report of Commission on Family Courts, 633 So.2d at 17, cf., The Florida Bar v. Brumbaugh, 355 So.2d 1186, 1192 (Fla. 1978).

This Court is not alone in its concern regarding cases involving self represented litigants. National organizations, such as the American Bar Association, the Conference of Chief Justices, State Justice Institute, and the American Judicature Society, have all recognized the importance of this issue to the future of the court system and our society. See e.g. American Bar Association Standing Committee on the Delivery of Legal Services, Responding to the Needs of the Self-represented Divorce Litigant (Jan. 1994); Conference of Chief Justices and Conference of State Court Administrators, Litigants Without Lawyers - Exploring Issues, (Aug. 1995), State Justice Institute, 1998 Grant Guidelines for a National Conference on Unrepresented Litigants in Court (1998); and American Judicature Society, Meeting the Challenge of Pro Se Litigation 109 (1998). See also, The Family Law Facilitator Act, West's Ann. Cal. Fam. Code §10000 et. seq., for California's response to the needs of self represented litigants.

In Florida, Chief Justice Kogan's Interim/Operational Plan has been guided by a strategic directive to improve access to the courts. In addition, the long-range strategic plan for the judicial

branch, developed by the Judicial Management Council and recently adopted by the Chief Justice, recommends enhancing public access and service. Specifically, the long-range plan states that “[j]ustice requires equal treatment and ability to petition for the redress of injuries. Barriers to meaningful access to the justice system can result in a system biased toward those who are not confronted by these obstacles.” Judicial Management Council, Taking Bearings, Setting Course: Long-Range Strategic Plan for the Judicial Branch, Long-Range Issue #4 (1998).

Further, the 1998 Legislature provided over \$200,000 in funding for two self help pilot projects. The proviso language associated with that funding requests additional information from the Court be provided in 1999, indicating some interest on the part of the Legislature in self help services. Ch. 98-46, §2216, Laws of Fla.

Finally, the Family Court Steering Committee (FCSC or Committee) has previously recommended that a comprehensive array of services and referrals be implemented to assist self-represented litigants. 23 Fla.L.Weekly at S108. This proposed rule establishes the parameters for these services.

II. CURRENT SITUATION

In October 1997, the Office of the State Courts Administrator, on behalf of the Self Help Subcommittee of the FCSC, conducted a statewide survey of existing family law self help resources. Data obtained from this study revealed that there are great disparities among the circuits in the level of services being provided in self help centers, as well as in the education and experience of the personnel in those centers. For example, survey results from the Third Judicial Circuit indicate that the only assistance available to self represented litigants in its seven counties is that provided by

judicial assistants or employees of the clerk of the court, while the Eleventh Judicial Circuit has programs and personnel to assist self represented litigants in all phases of their cases' progression.

From the self help resource survey, the Self Help Subcommittee identified self help programs in three judicial circuits (1st, 4th, and 11th) that appeared to represent various types of programs available throughout the state. The Subcommittee conducted site visits to each of these three circuits.

The initial site visit was conducted in the Eleventh Judicial Circuit, where the self help program is a cooperative effort of the Legal Aid Society of Miami-Dade County and the Eleventh Judicial Circuit. The program is staffed by attorneys, paralegals, and a clerk, all of whom are employees of the Legal Aid Society. The program is also staffed by interns from the University of Miami's law school, whose internships at the center include time spent working in the center as well as in the classroom. Office space, computers, and telephones for the program are provided by court administration, with county funds.

Pursuant to a local rule, all self represented litigants in the Eleventh Circuit are required to utilize the services of the self help center. The Legal Aid Society has developed and compiled forms packets that are purchased by litigants at a window in the clerk of the court's office. The proceeds from the sale of the forms are used by the Legal Aid Society to defray the costs of operating the self help center. At the time that litigants purchase their forms, they are instructed to complete the forms and go into the self help center for further assistance and instructions. The assistance provided to litigants by the self help center includes a review of their documents to ensure that all necessary documents have been completed, as well as referrals to legal or community services, when needed.

Once their documents have been reviewed at the self help center, litigants are sent back to the clerk of the court's office to file their case(s).

In situations where a litigant comes into the self help center and it is apparent that legal advice is needed because of the complexity of the issues or the litigant's inability to navigate the forms, the litigant is directed either to the yellow pages of the local telephone book, the Legal Aid Society, or the local pro bono project, *Put Something Back*.

The second site visit was conducted in the Fourth Judicial Circuit, where the self help program is operated by court administration. Employees of this program have paralegal or legal secretary backgrounds, and the funding for some of their positions comes from the county, while others are funded through the Family Courts Trust Fund.

Supreme Court approved forms are sold by the clerk of the court, and family law coordinators assist litigants by ensuring that all necessary documents have been completed and filed. The staff also review files for completeness and to determine what may need to be done to move the case through the judicial process. When necessary, legal referrals in the Fourth Judicial Circuit are made to the Legal Aid Society. In addition, because of the limited availability of the services of the Legal Aid Society, the supervisor of the self help program maintains a list of attorneys who are willing to provide free or low cost assistance to litigants who need legal services, and she contacts them on a rotating basis as the need arises.

The final site visit was conducted in the First Judicial Circuit, where the program is also operated by court administration. All of the positions in the circuit's self help center are funded by the Family Courts Trust Fund. The backgrounds of the self help center's personnel include

experience as a judicial assistant, a deputy clerk, and an analyst with the state's child support enforcement program.

While the clerk of the court sells Supreme Court approved forms, many self represented litigants obtain forms through local forms providers and do not have contact with the self help center until after filing a case. The primary method of communication between the circuit's self help personnel and self represented litigants is through recorded messages on an automated telephone system. This system provides litigants with general information about such subjects as filing requirements and setting hearings. Litigants are instructed to call and leave a message on the telephone system when they have completed their forms and are ready to set a hearing. At that point, the case is reviewed by self help personnel to ensure that all necessary documents have been filed and the case is ready to be set for a hearing. The litigants are then contacted and a hearing is scheduled if the case is ready. If the case is not ready for hearing, the litigants are informed of the requirements that must be met in order to proceed.

If it becomes obvious that litigants need legal advice, self help personnel will refer litigants to the lawyer referral service of the local Bar, Legal Services, or the local law library. The supervisor of the self help program sometimes personally contacts attorneys to request that they assist a specific litigant at low or no cost.

Personnel in all three programs stated that they do not give legal advice, but they admitted that they sometimes had difficulty defining legal advice because the line between what constitutes legal advice and permissible activity is not clear. Each of the programs outlined above has grown out of the local culture and needs of the local courts. However, the lack of uniformity reflected

among the programs in these three circuits is indicative of the diversity of self help programs throughout the state.

Following these site visits, it was clear to the Subcommittee that the existing self help programs provide differing types of services. For example, the Subcommittee concluded that the services in the First Circuit were more of a case management nature, the Fourth Circuit blended self help and case management functions, while the Eleventh Circuit the self help project is distinct from their extensive case management unit. The relationship between self help and case management will be discussed later in this petition.

III. REASONS FOR A SELF HELP RULE

Access to courts

As noted in the introduction, providing services to self represented litigants is one means of providing meaningful access to the courts. However, this proposed rule encourages self represented litigants to obtain legal advice. It also provides for information concerning pro bono legal services, low cost legal services, legal aid programs and lawyer referral services to be made available to self represented litigants. Some litigants may nevertheless choose, or be economically forced, to remain self represented. Providing forms, general information about the judicial process, and other information allowed under this proposed rule will allow those who represent themselves one way to access the judicial system.

Self represented litigants' effect on the judicial system

The number of self represented litigants in family law cases is growing. The Committee has discovered that approximately 65% of initial filings in family law cases are by self represented litigants. In re Amendments to the Florida Family Law Rules of Procedure, 23 Fla.L.Weekly at

S105.² In addition, approximately 80% of modification or enforcement family cases involve at least one self represented litigant.³ These findings are consistent with information from other states. See, e.g., American Judicature Society, Meeting the Challenge of Pro Se Litigation 8 (1998).

These self represented litigants may come to the court seeking information about how to obtain a myriad of social and other community-based services. When they begin the court process, many of these disintegrating families are in crisis and in need of social services. Those litigants in need of social services should be referred to appropriate social service agencies to address their needs.

The growing number of self represented litigants, particularly in family law cases, has strained the resources of the judicial branch. When significant numbers of litigants do not know how to access the judicial system or how to process their cases through to resolution, they become frustrated or get lost in the system. This in turn slows the judicial process for everyone.

For instance, a judicial assistant is responsible for managing the judge's time. If she is also being deluged with calls from self represented litigants, she may be unable to do her assigned tasks. Similarly, as litigants go from office to office seeking assistance, the time of other court personnel is consumed. The litigants understandably become frustrated and may not obtain the relief that they are seeking from the court system. Likewise, if unprepared cases are scheduled on the court's calendar, this wastes the both the judge's and the litigant's time. This affects the entire judicial

² This information is based upon data and estimates provided by selected circuits in response to an informal survey conducted in January 1998, by the Office of the State Courts Administrator.

³ Id.

system and public perception of that system. Without an organized method to assist the self represented litigant, not only are these litigants frustrated and disheartened with the judicial process but the time of judges and other court personnel is not used efficiently.

Define the appropriate scope of services

Some members of The Florida Bar have expressed a concern that the courts are establishing a system of courthouse lawyers or a public defender type of system for self represented litigants in family law cases. A rule is needed so that the services provided by the courts are clearly defined.

While the scope of services provided by the court system should not be so extensive as to encourage litigation or to encourage self representation, litigants have a right to represent themselves. §454.18, Florida Statutes; The Florida Bar v. Brumbaugh, 355 So.2d at 1192. The U.S. Supreme Court has noted that self representation is a basic right of free people. Faretta v. California, 422 U.S. 806, 828-30 (1975). The services provided by the court system should only facilitate that right and not encourage it, because many litigants represent themselves to their own detriment.

Practice of law

Some have questioned whether some of the existing self help programs may be providing services that cross the line between providing information about the judicial process and providing legal advice to litigants. This has been a particular concern for programs that are staffed with nonlawyers. There is a need to clearly delineate the services that can be provided by nonlawyers without crossing the line into the practice of law or to authorize certain activities for nonlawyer personnel in self help programs.

Ethical issues

Also, for self help programs electing to employ lawyers, concerns have been raised about the ethical constraints imposed on members of the Bar. For example, if a program provides services to both the husband and wife in a dissolution proceeding, the lawyers may inadvertently create a lawyer-client relationship with both parties to the litigation, in violation of Rule Regulating the Florida Bar 4-1.7(a).

Funding requests

Further, for the 1998 legislative session the Court submitted a legislative budget request for funding of self help programs. The Legislature responded by requesting detailed information about the exact services to be provided in a self help program and how self help services are distinguished from case management services. This proposed rule will provide appropriate definitions and parameters for self help services for future funding requests.

Uniformity

Finally, the Committee believes that it is important to establish uniformity throughout the state so that certain basic services are available in all circuits. While this rule does not require circuits to establish a program or provide all the authorized services, it establishes the boundaries of the services that may be provided.⁴

IV. KEY ISSUES IN THE PROPOSED RULE

There are seven key issues considered by the Committee in developing this rule to which the Court's attention is directed.

⁴The Committee is creating and defining a model self help program as part of the model family court. This rule forms the basic structure for the model self help program.

A. Unauthorized practice of law

The Committee very carefully analyzed each activity proposed for self help programs to determine whether the activity constituted the practice of law. The term “the practice of law” does not have a precise definition. The Court has noted the difficulty in defining the term. In The Florida Bar v. Brumbaugh, 355 So.2d at 1191, the Court indicated that “it is somewhat difficult to define exactly what constitutes the practice of law in all instances.” More recently, in The Florida Bar re Advisory Opinion HRS Nonlawyer Counselor, 518 So.2d 1270, 1271 (Fla. 1988), the Court stated: “the practice of law is an amorphous term, not susceptible to precise definition.” However, the Court has consistently applied the broad parameters that determine what constitutes the practice of law as established in The Florida Bar v. Sperry, 140 So.2d 587 (Fla. 1962), vacated on other grounds, Sperry v. State of Fla. ex rel. The Florida Bar, 373 U.S. 379 (1963).

If the giving of such advice and performance of such services affect important rights of a person under the law, and if the reasonable protection of the rights and property of those advised and served requires that the persons giving such advice possess legal skill and a knowledge of the law greater than that possessed by the average citizen, then the giving of such advice and the performance of such services by one for another as a course of conduct constitute the practice of law.

From these broad parameters, the following elements of the practice of law can be articulated.

1. Giving advice or performing services which affect important rights of a person under the law;
2. The giving of such advice or the performance of such services requires legal skill and knowledge greater than that possessed by the average citizen;
3. A person performs these services for another person or entity; and
4. The services are performed as a course of conduct.

The Court has repeatedly found that the single most important factor in defining and regulating the practice of law is the protection of the public from incompetent, unethical, or irresponsible representation. The Florida Bar v. Moses, 380 So.2d 412, 417 (Fla. 1980); The Florida Bar v. Brumbaugh, 355 So.2d at 1192. Even individuals who do not receive compensation for their services will be enjoined from giving legal advice, unless they are authorized to practice law, because of the potential harm to the public. The Florida Bar v. Smania, 701 So.2d 835 (Fla. 1997), cert. denied, 118 S.Ct. 1302 (1998).

In developing the parameters of services that could be included in a program operated by the court system, the Committee relied upon this Court's precedent to determine which activities do not constitute the practice of law or which have been previously authorized by the Court for nonlawyers to perform. The only activities not allowed under existing precedent, but included in this proposed rule, are the activities of engaging in limited oral communications to assist a person in the completion of forms approved by the chief judge, and recording information on forms approved by the chief judge.

The analysis of whether or not an activity constitutes the practice of law is fact specific; therefore, the Committee has been explicit in its enumeration of the activities that are and are not appropriate for a self help program in the court system. The Committee is aware of Florida Family Law Rule of Procedure 12.010(b)(2), which provides that "nothing shall prohibit any intake personnel in family law divisions from assisting in the preparation of papers or forms to be filed in any action under these rules." However, this rule does not appear to authorize any activities, rather it only provides that the Florida Family Law Rules of Procedure do not prohibit any activity. This

proposed rule will clearly delineate those activities that may be appropriately provided by self help personnel. Each activity is addressed in turn.

1. Provide information about available Supreme Court approved forms, without providing advice or recommendation as to any specific course of action or form.

In The Florida Bar v. Brumbaugh, 355 So.2d at 1194, this Court allowed nonlawyers to sell legal forms. Further, Supreme Court approved forms are public records, which the court is required to provide. Article I, §24, Florida Constitution. In the course of providing the forms, the self help personnel must be able to provide information about available forms.⁵ It is anticipated that an index of forms may be developed to assist self represented litigants.

2. Provide Supreme Court approved forms and Supreme Court approved instructions on how to complete the forms.

In In re Florida Family Law Rules of Procedure, 663 So.2d 1047, 1048 (Fla. 1995), the Court adopted forms and approved instructions to assist the self represented litigant. Also, as noted in (1), these forms are public records, which the court is required to provide to the public.

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.

This is proposed because there may be forms required by local practice, or forms that are not included in the current Supreme Court approved forms, which the programs find self represented litigants regularly require. The Committee anticipates that these additional forms will be reviewed by the Court and the FCSC and could only be used until acted on by the Supreme Court.

⁵However, recommending a specific form constitutes the practice of law. Brumbaugh, 355 So.2d at 1194.

4. 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).

This provision would authorize limited oral communications to assist a person in the completion of blanks on Supreme Court approved forms or on forms created by the chief judge under subsection (c)(3) of this rule. The Court has permitted limited oral communications to assist a person in the completion of Supreme Court approved forms in The Florida Bar Re: Amendment to Rules Regulating the Florida Bar (Chapter 10), 510 So.2d 596, 597 (Fla. 1987). However, the Court has found that completing forms that are not approved by the Florida Supreme Court constituted the unauthorized practice of law. The Florida Bar v. Catarcio, 709 So.2d 96 (Fla. 1998). The Committee requests that the Court expand its authorization and allow self help personnel to engage in limited oral communications to assist a person in the completion of forms approved by the chief judge of a circuit. This would only apply to self help programs authorized under this rule. If the Court allows the use of additional forms under subsection (c)(3), the self help personnel should be able to engage in limited oral communications about these forms in order to elicit the factual information needed to complete the blanks on the forms. Otherwise the self help personnel would be authorized to provide a form but would be precluded from discussing the form with the self represented litigant.

5. 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.

The Court in The Florida Bar Re: Amendment to Rules Regulating the Florida Bar (Chapter 10), 510 So.2d at 597, allowed nonlawyers to record information on Supreme Court approved forms. The Committee requests that this authorization be expanded by the Court by adopting this proposed rule so that self help personnel can record information on forms approved by the chief judge of the

circuit. Again, this would only apply to self help programs authorized under this rule. If the Court allows the use of additional forms under subsection (c)(3), the self help personnel should be permitted to record information on these forms. Otherwise the self help personnel would be authorized to provide both Supreme Court approved forms and forms approved by the chief judge but would only be authorized to record the information on Supreme Court approved forms.

The Committee also proposes that the services provided by self help programs in the court be limited to recording the information for persons who are unable to do so because of a language barrier or other disability. For instance, if a person cannot read or write, the self help personnel could read the form and record the information provided by the self represented litigant. The Committee believes that this limitation is appropriate and is a better use of the limited resources of the court system. Moreover, the Subcommittee was concerned about possible miscommunication between the self represented litigant and the self help personnel who records the information on a form. Limiting this service to instances where the self represented litigant has a language barrier or other disability limits the opportunities for such miscommunication.

6. Provide, either orally or in writing, definitions of legal terminology from widely accepted legal dictionaries or other dictionaries.

In Brumbaugh, this Court found that allowing access to legal texts by nonlawyers did not constitute the practice of law. 355 So.2d at 1192. Similarly, providing definitions from legal dictionaries does not constitute the practice of law since a legal dictionary is a type of legal text. It is contemplated that programs would refer the self represented litigant to “General Information for Pro Se Litigants,” Blacks Law Dictionary, or other generally accepted 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.

In The Florida Bar v. Florida Service Bureau, 581 So.2d 900, 901 (Fla. 1991), this Court found that telling customers what the eviction procedure entails was not the unauthorized practice of law because the information was no greater than that which anyone could glean from reading the eviction statute. Similarly, providing statutes and rules without advising whether or not a particular statute or rule is applicable to the litigant's situation is not the unauthorized practice of law. It is anticipated that a list of statutory provisions and a list of family law rules and forms may be developed for use in self help programs.

8. Provide docketed case information.

Providing information from the case docket does not raise an issue of the unauthorized practice of law because it does not require legal skill and knowledge to provide the information. It is anticipated that self help personnel will have access to information on the docket to assist the self represented litigant in scheduling hearings and with other administrative matters.

9. Provide general information about court process, practice, and procedure.

In The Florida Bar Re Amendment to Rules Regulating the Florida Bar (Chapter 10), 510 So.2d at 597, the Court held that nonlawyers can give information regarding routine administrative matters such as the number of copies to be filed, the amount of the filing fees, the proper method of payment, the time period before a hearing will be scheduled, and other matters of a routine administrative nature necessary to assure that the matter goes forward. Similarly, providing general information about court process, practice and procedure may include providing information

regarding the appropriate attire for the court room, restrictions on bringing children to the courtroom, or that each side will have a turn to speak and present witnesses at a hearing.

10. Provide information about mediation, required parenting courses, and courses for children of divorcing parents.

This information constitutes “matters of a routine administrative nature necessary to assure that the matter goes forward,” which this Court has previously authorized. Id.

11. Provide, either orally or in writing, information from local rules or administrative orders.

Providing access to these public records is required by Article I, §24, Florida Constitution. Providing information from these documents addresses “matters of a routine administrative nature necessary to assure that the matter goes forward.” Id.

12. Provide general information about local court operations.

Providing information about local court operations does not raise questions about the unauthorized practice of law because it does not require legal skill and knowledge. This information may include how long it may be before a hearing can be scheduled, the days and times that hearings are usually scheduled, the hours certain offices are open or other similar information.

13. Provide information about community services.

Providing information about community services does not raise unauthorized practice of law concerns because it does not require legal skill and knowledge. Self represented litigants in a family law case may need a variety of other services which the court system is not designed to address. For reasons previously expressed, the self help programs should have information regarding these services available for self represented litigants. In re Report of the Commission on Family Courts, 633 So.2d at 19.

14. Encourage self represented litigants to obtain legal advice.

Encouraging litigants to obtain legal advice does not raise unauthorized practice of law issues because it does not require legal skill and knowledge.

15. Provide information about available pro bono legal services, low cost legal services, legal aid programs, and lawyer referral services.

Providing information about legal services does not raise questions about the unauthorized practice of law because it does not require legal skill and knowledge. As noted in the commentary, the self help programs are encouraged to cooperate with the local bar to develop a workable system to provide this information. Further, the programs should not show preference for a particular service, program or lawyer.

16. Facilitate the setting of hearings.

Facilitating the setting of hearings does not raise an issue about the unauthorized practice of law. One purpose of a self help program is to make an efficient use of the judge's time. For example, if hearings are scheduled before the parties have complied with all requirements, such as completing a parenting course, litigants are turned away frustrated and it results in an inefficient use of the court's time.

The Committee recommends these specific activities in a self help program for several reasons. First, the Committee determined that it was not appropriate for court personnel to give litigants legal advice about their cases. Self help personnel should not advise about litigation strategy, advise a self represented litigant that a legal theory applies to his or her case, or engage in other activities that clearly constitute the practice of law. The duty of self help personnel is primarily to the court system, not the litigant. If a lawyer-client relationship were formed, it would create an

ethical problem for the lawyer to provide advice to both parties. (See discussion below.) If legal advice was provided by nonlawyers, they would be providing advice they are not qualified or authorized to give.

Second, the services are limited to those that will make the best use of limited resources and are most likely lead to a better use of the court's time.

Finally, the services are limited so that potential litigants are not encouraged to represent themselves, rather they are encouraged to seek legal advice.

B. Self help versus case management

Domestic relations filings continue to increase steadily in most circuits; there has been a 20.6% increase in family law filings from 1990 to 1997.⁶ In addition, as stated earlier, approximately 65% of all original family law cases and 80% of all post-judgment cases have at least one self represented litigant.⁷ These factors indicate that it is imperative that the trial courts implement measures to provide a framework for the reduction of court delay and the timely disposition of these cases. The reduction of delay is crucial in family law cases, where so many of the issues relate to the living arrangements and support of the parties' minor children. Toward this end, many circuits have implemented various self help and case management programs.

For purposes of clarification, the Committee defines case management as a paradigm encompassing three distinct but related elements functioning in concert with each other to assist the

⁶ Summary Reporting System, Percent Changes in Domestic Relations Case Filings, 1993-1997, Office of the State Courts Administrator.

⁷ This information based upon data and estimates provided by selected circuits in response to an informal survey conducted in January 1998, by the Office of the State Courts Administrator.

court in managing its docket. These functions may be performed by one staff member, or a team of staff members, depending on the size of the circuit and available resources. The key is that all cases are managed, the needs of the family are identified with services or referrals provided as appropriate, and that the judge has all information necessary to resolve the case. The three case management elements are:

Self Help Case Management represents the programs necessary to assist self represented litigants with gaining access to the justice system, initially to file an appropriate pleading, and during the pendency of the case to file motions and notices so the matter can progress. Concentrating services before filing and at the beginning of the case will pave the road for access to the court system. These functions are controlled by the proposed self help rule.

Process Case Management is a management tool utilized by the court to assume responsibility for supervising, coordinating, directing and overseeing the process and progress of all cases, regardless of whether the parties are represented. This would include using reports, time standards and file reviews to monitor pending caseload, mean disposition times, and ensuring the timely submission of paperwork and compliance with other requirements.

Service Case Management is the screening of cases to identify necessary services, provide referrals to community services, and make recommendations to the judge. Services may include parenting courses for divorcing parents, courses for children of divorcing parents, mediation, supervised visitation, counseling, custody evaluation, and guardian ad litem services. The scope of the self help personnels' role is to provide information about these services rather than actually providing the services.

C. Income restrictions

The rule, as proposed, allows all persons with family law cases to access a court's self help program, unless the Legislature adopts a statute that imposes income restrictions. Nevertheless, it is the Committee's position that self help services should be available to all litigants regardless of income because the services benefit the court system as well as the litigant. Further, this position is consistent with this Court's previous findings that meaningful access to the courts must be provided. As Justice Kogan stated:

This Court's obligation, therefore, is to ensure that access is genuinely meaningful in today's world. Most importantly, I believe that article I, section 21 is a command to this Court to take every step necessary to make judicial resources available to all the residents of this state, insofar as we can under the doctrine of separation of powers.

In re Amendments to Rules Regulating the Florida Bar - 1.3.1(a) and Rules of Judicial Admin. - 2.065 (Legal Aid), 598 So.2d 41, 58 (Fla. 1992) (emphasis added). People may not know how to identify and select an affordable lawyer, cannot afford the retainers required by many lawyers, do not have access to marital income, or simply choose not to use a lawyer. See, In re Amendments to Rules Regulating The Florida Bar - 1.3.1(a), 598 So.2d at 59; (legal services lie beyond the means of most Floridians, who cannot afford to pay large retainers and steep hourly rates charged by many lawyers).

Because the services benefit the court, it would not make sense for these services to be limited based on income. For instance, if an income threshold of \$50,000 is established, the self represented litigant with more than \$50,000 in income who chooses not to hire a lawyer or cannot afford the lawyer's retainer will still need forms, which are public records, and assistance to obtain information regarding required courses, scheduling of hearings, and other information on court

process and procedure.⁸ Further, it would take additional and unwarranted staff time to “income qualify” each self represented litigant and it would not be feasible to restrict telephone assistance to those who meet the income requirements.

The final language agreed to in the proposed rule recognizes that the Legislature may by statute limit the population eligible to receive services. Also, the proviso language for the funding provided in FY 1998-99 for two pilot self help projects limits the use of the funds from those specific line items to persons with an income that is below 300% of the federal poverty level. For a mother and one child, 300% of the federal poverty level is \$32,550. For a family of four, 300% of the federal poverty level is \$49,350. Based on information collected during the months of February and March of 1998, approximately 9% of the self represented litigants would be excluded under this threshold. This data reflects that the parents of 76 minor children would have been excluded from services during this two month period.⁹

D. Fees

The proposed rule does not require a fee to be assessed against self represented litigants who obtain services from the self help program. The Committee determined that the imposition of a fee would require legislative authorization. Chiles v. Children, 589 So.2d 260 (Fla. 1991) (the legislature alone possesses power to appropriate state funds, and only the legislature may determine

⁸Previous versions of rules regarding pro se litigants suggested a broader array of services, including providing legal advice to litigants. If this approach had been selected it might have been appropriate to impose income restrictions. However, with the limited services authorized under this rule, the Committee asserts that income restrictions are not appropriate.

⁹This information was compiled by staff in the Office of the State Courts Administrator for the Committee. It represent self-reported incomes from a sample (n = 2,200) of self represented litigants in 17 of 20 judicial circuits. Each circuit participated in the data collection effort by either sampling case files or recording information as litigants requested help.

and weigh the needs and fiscal priorities of the state); Broward County v. Michaelson, 674 So.2d 152, 153 (Fla. 4th DCA 1996) (finding a fee set by administrative order was void because there was no constitutional or statutory authority for the imposition, collection or retention of the fee).

There was agreement that if a fee is imposed by the Legislature, the manner in which the fee is imposed is important; the fee should resemble the actual value of services provided (i.e., cost of copying and providing forms). Because the services benefit the court, e.g., verifying that the self help litigant is ready for a hearing before it is scheduled, the structure of the fee is important in order to avoid due process or access to court issues. For instance, the self represented litigant should not be charged an extra fee to have a hearing scheduled when a litigant who is represented by counsel is not charged such a fee. In the proviso language for the pilot programs, the Legislature provided that a fee of up to \$50 shall be charged. Ch. 98-46 §2216, Laws of Fla.

Further, this Court has acknowledged that "it is [the Court's] responsibility to promote the full availability of legal services," and that "[d]evising means for providing effective legal services to the indigent and poor is a continuing problem." The Florida Bar v. Furman, 376 So.2d 378, 382 (Fla. 1979), see also The Florida Bar re Amendment to Florida Rules of Civil Procedure (Dissolution of Marriage), 450 So.2d 810, 811-12 (Fla. 1983). This duty may conflict with the Legislature's expressed intent in proviso language for the funding for the pilot programs that "all such programs become self-supporting within five years." Ch. 98-46, §2216, Laws of Fla.

E. Courthouse lawyers

Some have suggested that a system of courthouse lawyers like the public defender should be developed in family law cases. The Committee does not support this concept. Similarly, the Bar representatives on the Self Help Subcommittee expressed concern that a system of courthouse

lawyers may be developed in the future. The Committee wants to strongly emphasize that such a system is not proposed. Lawyers may be used in the self help programs, but those lawyers are restricted to performing the services enumerated in subsection (c).

The Committee believes that local areas may develop appropriate systems to work with the local bar to provide legal services to as many self represented litigants as possible. Further, the Self Help Subcommittee has agreed to cooperate with the Bar committees to review what changes should be made to existing ethics rules to facilitate delivery of unbundled legal services to self represented litigants. As noted in the introduction, providing self help services is only one aspect of providing and improving access to courts. The FCSC is committed to facilitating access through a variety of means.

F. Family law cases

This rule only applies to services in family law cases. There were some suggestions that these programs should not be limited to family law cases but should provide services to self represented litigants in all civil cases. The Committee determined that the greatest need is in the family law area and that it was beyond the role of this Committee to address issues other than family law cases.

G. Ethical issues

The proposed rule is structured so that a lawyer-client relationship is not formed between a lawyer who is employed in a self help program and a self represented litigant. A test for determining the existence of a lawyer-client relationship has been adopted by the Court. “[T]he test for determining the existence of this fiduciary relationship is a subjective one and hinges upon the client’s belief that he is consulting a lawyer in that capacity and his manifested intention is to seek

professional legal advice.” However, “this subjective belief must. . . be a reasonable one.” The Florida Bar v. Beach, 675 So.2d 106, 109 (Fla. 1996); Bartholomew v. Bartholomew, 611 So.2d 85 (Fla. 2d DCA 1992).

From this test, the following elements can be articulated:

1. The client believes he is consulting a lawyer;
2. The client believes he is consulting a lawyer in the lawyer’s capacity as a lawyer;
3. The client is seeking professional legal advice; and
4. The client’s subjective belief in (1) and (2) is reasonable.

Of course, what is reasonable is based upon the facts and circumstances in a particular situation. In Beach, a disciplinary action was brought against a lawyer who provided legal services to a paralegal office. The Court evaluated whether there was a lawyer-client relationship between the lawyer, Mr. Beach, and a client of the paralegal office. The Court considered the following factors:

1. the “client” specifically sought out the services of a paralegal instead of an lawyer;
2. the “client” entered into a contract with the paralegal and not the lawyer;
3. the contract stated that the “client” would receive a 30 minute consultation with the lawyer but that she would not be represented by the lawyer; and
4. the “client” never met with the lawyer.

Beach, 675 So.2d at 109. While finding that a lawyer-client relationship did not exist under these facts, the Court noted that a close question was presented. Id.

The cases are clear that payment of a fee is not necessary in order to form a lawyer-client relationship. The Florida Bar v. King, 664 So.2d 925, 927 (Fla. 1995).

Because the test for forming a lawyer-client relationship includes a “reasonableness” element, various provisions are included in the rule which, if followed by the self help program, would make it “unreasonable” for a person to subjectively believe that a lawyer-client relationship had been formed. A key element in the rule is the disclaimer that will be communicated before any litigant receives assistance. When services are provided in person, the disclaimer must be signed; when telephone assistance is provided, the disclaimer will be heard before assistance is provided. As suggested in the commentary, this disclosure should be posted in a prominent place in the self help program and be available and posted in languages that are commonly used in the county.

Because the programs are structured so that a lawyer-client relationship is not formed even if lawyer personnel are used, there should be no conflict of interest in providing self help services as delineated by the proposed rule to both sides in a case. The lawyers do not provide legal advice and have not allowed a lawyer-client relationship to be formed. Therefore, the restrictions in the Rules Regulating the Florida Bar should not apply. Rule Regulating the Florida Bar 4-1.7(a), which prohibits representation of opposing parties in litigation, applies to representation of a “client”. If a lawyer-client relationship is not formed, this prohibition would not apply.

Similarly, because a lawyer-client relationship is not formed, the information a self represented litigant may provide is not confidential. The restriction on a lawyer revealing information is limited to “information relating to representation of a client.” Rule Regulating the Florida Bar 4-1.6. Since a lawyer-client relationship is not formed, this restriction does not apply.

Furthermore, the information is not privileged. Generally, a lawyer-client relationship must be formed in order for the communications to be privileged. Keir v. State, 11 So.2d 886, 888 (Fla. 1943). Section 90.502, Florida Statutes, establishes the lawyer-client privilege. The privilege is

limited to “clients” which means “any person. . . who consults a lawyer with the purpose of obtaining legal services or who is rendered legal services by a lawyer.” §90.502(1)(b), Florida Statutes. A “lawyer” is “a person authorized, or reasonably believed by the client to be authorized, to practice law in any state or nation.” §90.502(1)(a), Florida Statutes. The disclosures provided by this rule should make it clear to any litigant that they are not consulting self help personnel for the purpose of obtaining legal services.

Further the Committee determined that it is not appropriate for the information received from a self represented litigant to be confidential or privileged. It would only encourage the self represented litigant to think he was receiving legal advice about his case. Additionally, court personnel should not be restricted from bringing information to the attention of the court if it appears that fraud or other misuse of the judicial process is occurring.

Summary

These seven key issues are important to understand the Committee’s rationale for its recommendations. A brief section by section description and explanation of the proposed rule follows.

V. PROPOSED RULE

The rule begins in subsection (a) by limiting the scope of the rule to programs established by local rule. The local rule process will provide the continuing structure for the program in the circuit and will allow for review by the Supreme Court. As noted above, these programs are limited to providing services in family law cases. Also, as explained in the commentary, a circuit may limit the types of family law cases that are eligible for services in their program by local rule. For instance, while domestic violence is included in the definition of a family law case, Florida Family

Law Rule of Procedure 12.010, a circuit may choose to provide domestic violence services separately. The purpose of a self help program is to assist self represented litigants but it is not to provide legal advice. The programs should be encouraging litigants to seek legal advice.

Subsection (b) provides the definitions applicable to this rule. The definition of “family law case” is more limited in this rule than Florida Family Law Rule of Procedure 12.010 because the program would not be providing services to the types of family law cases other than those included in the family law division of the circuit. The term “self represented litigant” is used instead of the traditional term “pro se” to emphasize that the litigant is responsible for his or her own case and to use terminology that is more easily understood by persons who are not represented by counsel. The term “self help personnel” includes both lawyers and nonlawyers. The term “self help program” is used in the rule and applies to court programs established under the rule and not to legal forms providers or other paralegal services.

Subsection (c) provides the services that can be performed in the self help program. Each service has been discussed above in the analysis on the unauthorized practice of law.

Subsection (d) provides explicit limitations on the services in the self help program. These limitations are imposed to avoid providing legal advice, to avoid forming a lawyer-client relationship, or to avoid other activities inappropriate for a self help program.

Paragraph (e) provides that the activities authorized in subsection (c) shall not be considered the unauthorized practice of law. As discussed in the section on the unauthorized practice of law, two of the activities are not currently authorized for nonlawyers to perform. Specifically, this rule will authorize nonlawyers in court based self help programs to engage in limited oral communications to assist a person in the completion of blanks on forms approved by the chief judge

and to record information on forms approved by the chief judge for litigants who are unable to do so because of a language barrier or disability.

Subsection (f) provides that the information given by a self represented litigant to self help personnel is not confidential or privileged. See the ethics discussion above for further analysis of this issue.

Subsection (g) provides that there is no conflict of interest in providing services to both parties. See the ethics discussion above for further analysis of this issue.

Subsection (h) provides for a disclaimer to be provided to persons receiving services from the self help program. The disclaimer is provided to persons receiving assistance over the telephone and to those who receive services in person. As discussed in the ethics section, the primary purpose of the disclaimer is to avoid any appearance that a lawyer-client relationship is formed.

Subsection (i) addresses an issue under Rule Regulating the Florida Bar 10-2.1. Self help personnel are exempted from the requirement to include identifying information on a form if such personnel assisted with the completion of a form unless the self help personnel actually record the information on the form. It appears that Rule Regulating the Florida Bar 10-2.1 requires the name and identifying information on the form if oral assistance is provided to a self represented litigant, even if the nonlawyer does not record the information. This proposed rule would exempt self help personnel from this requirement unless they actually record the information on the form. For instance, self help personnel may be providing information by telephone. It would not be logistically possible for the self help personnel to include identifying information on the form when only telephonic assistance was provided. Similarly, self help personnel may conduct a class for 30 people and explain the types of information a form is designed to elicit. If Rule Regulating the Florida Bar

10-2.1 requires the name and identifying information on the form for oral assistance, this proposed rule would exempt self help personnel from the requirement.

The self help personnel are also exempted from completing Florida Family Law Form 12.900 because the information from the disclosure is included in the disclosure provided by this rule.

Subsection (j) provides that self help programs are available to all self represented litigants in family law cases, unless limited by statute. (See discussion on income restrictions above).

Subsection (k) provides that self represented litigants may be required to pay for the cost of services if authorized by statute. (See discussion on fees above).

Subsection (l) addresses the records of the program. It restates existing law that all records made or received in connection with the official business of a self help program are public records. Article I, §24, Florida Constitution. Access to these judicial records is governed by Florida Rule of Judicial Administration 2.051.

Subsection (m) creates an exclusion for domestic violence cases so that this rule will not restrict the authority of court personnel to assist in domestic violence cases pursuant to Florida Family Law Rule of Procedure 12.610.

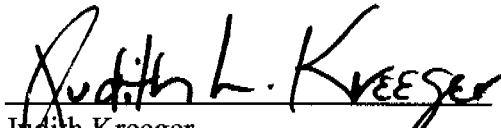
CONCLUSION


Because there are existing programs that may not be in compliance with this rule and because the programs must be established by a local rule, the Committee suggests that circuits be given six months from the date of adoption of this rule in order to come into compliance.¹⁰

The Family Court Steering Committee asserts that this proposed rule will provide the appropriate structure for self help services in the court system. The Committee believes that self help services constitute an important element of the model family court. Such services are needed to assist the court in addressing the needs of the growing numbers of self represented litigants and are also one means of providing access to the courts.

WHEREFORE, for the above stated reasons, the Family Court Steering Committee asks this Court to adopt proposed rule 12.750 to the Florida Family Law Rules of Procedure.

Respectfully submitted,


Judith Kreeger
Chair, Self Help Subcommittee
Dade County Courthouse
73 W. Flagler St.
Miami, Florida 33130
Phone: (305)375-5297
Fax: (305) 375-4211


Durand Adams
Chair, Family Court Steering Committee
Suite 4115
1115 Manatee Avenue, West
Bradenton, Florida 34206
Phone: (941) 749-7156
Fax: (941) 742-5964

ON BEHALF OF THE FAMILY COURT
STEERING COMMITTEE

¹⁰ A draft of this proposed rule was distributed to the Chief Judges, family law judges and trial court administrators in the FCSC's newsletter, *Family Matters*. The Subcommittee reviewed each comment received.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the Foregoing Petition of the Family Court Steering Committee to Create a Florida Family Law Rule of Procedure to Provide for Self Help Services was provided by U.S. Mail to John F. Harkness, Jr., Executive Director, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida, 32399, to George Reynolds, ✓Chair, Family Law Rules Committee of The Florida Bar, Leon County Courthouse, Room 365-K, Tallahassee, Florida and to Karen S. McLead, ✓Chair, Unauthorized Practice of Law Committee of The Florida Bar, P. O. Box 6025, Clearwater, Florida 34618 this 29th day of June, 1998.



B. Elaine New ✓
Senior Attorney
Florida Bar No. 354651

Department of Legal Affairs and Education
Office of the State Courts Administrator
500 South Duval Street
Tallahassee, Florida 32399
Phone: 850/414-8389
Fax: 850/414-1505

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:

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

2. 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. 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. 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;
14. encourage self represented litigants to obtain legal advice;
15. provide information about available pro bono legal services, low cost legal services, legal aid programs, and lawyer referral services; and
16. facilitate the setting of hearings.

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

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

5. encourage or discourage litigation;
6. record information on forms for a self represented litigant, except as provided in subdivision (c)(5);
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. perform legal research for litigants;
9. represent litigants in court; and
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 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)(1). 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)(3). 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 (c)(14). 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 (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.