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IN THE SUPREME COURT OF FLORIDA

FILED

SID J. WHITE

CASE NO. 93,319

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

SEP 30 1998

CLERK, SUPREME COURT

By _____

Chief Deputy Clerk

RESPONSE OF THE FAMILY COURT STEERING COMMITTEE
TO COMMENTS ON THE PROPOSED FLORIDA FAMILY
LAW RULE OF PROCEDURE REGARDING SELF-HELP SERVICES

The Family Court Steering Committee ("the Committee"), through its chair, Circuit Judge Karen K. Cole, pursuant to the responsibilities assigned to it by this Court in *In re Report of the Commission on Family Courts*, 633 So. 2d 14, 19 (Fla. 1994), and in *In re Family Court Steering Committee* (Administrative Order, July 31, 1998), and as authorized by this Court's order of September 9, 1998, permitting the Committee an opportunity to respond by September 30, 1998, to comments received by the Court to the Committee's Petition to create a Florida Family Law Rule of Procedure regarding court based self-help services, responds as follows to the comments¹ on the proposed rule:

I. This Court should not postpone consideration of the proposed rule.

The Florida Bar Board of Governors has suggested that this Court defer to a later date consideration of the proposed rule. To do so would be inconsistent with this Court's prior directives and with the urgent need of Florida's *pro se* litigants in family law matters for assistance in accessing the courts of this state.

¹ The Court received comments from six individuals or groups. Comments were made by The Family Law Rules Committee of The Florida Bar, the Board of Governors of The Florida Bar, Chief Judge Richard Orfinger, Central Florida Legal Services, Inc., the Legal Aid Society of Palm Beach County, Inc., and Dade County Legal Aid.

A. This Court has a long history of concern about access to the justice system for all people.

This Court has long recognized the need to ensure that the justice system is available and affordable to all segments of society. *See In re Amendments to Rules Regulating the Florida Bar – 1-3.1(a) and Rules of Judicial Administration – 2.065 (Legal Aid)*, 573 So. 2d 800, 806 (Fla. 1990). Successful access to the justice system is more likely to be achieved by a variety of initiatives and through the combined efforts of various components of the system. *See D’Alemberte, Tributaries of Justice: the Search for Full Access*, 25 Fla. St. U.L. Rev. 631, 634 (1998).

1. Nonlawyer assistance

This Court has long recognized the need in family law cases to address the issue of nonlawyer assistance to litigants. *See The Florida Bar v. Brumbaugh*, 355 So. 2d 1186 (Fla. 1978). In *The Florida Bar v. Furman*, 376 So. 2d 378, 381 (Fla. 1979), the Court, in response to concerns raised in that case, directed The Florida Bar to “begin immediately a study to determine better ways and means of providing legal services to the indigent.” The Court required that a report be submitted to it by January 1, 1980. The resulting report, *The Legal Needs of the Poor and Underrepresented Citizens of Florida: An Overview*, was prepared by the Center for Governmental Responsibility at the University of Florida. One of the report’s recommendations to this Court and to The Florida Bar was that the use of paralegals be expanded. *Id.* at 10 and 16. The report noted: “Overall, there is a need for direct response to the high number of cases dealing with family law and inaccessibility of the court system.” *Id.* at 44. In the section entitled *Paralegals: Legal Assistance by Nonlawyers*, the report concluded that The Florida Bar must

confront the paralegal issue. *Id.* at 91. Although this report was issued January 10, 1980, more than 18 years ago, The Florida Bar today asks this Court to postpone action on a proposed rule that confronts one aspect of this issue – guidance for the proper provision of court based self-help services.

In 1984, the Governor of the State of Florida, the Chief Justice of the Florida Supreme Court, and the President of The Florida Bar appointed the Commission on Access to the Legal System to explore various alternatives that “would increase access to the legal system on the part of the poor and middle class.” The Commission's report, issued in June 1985, recommended that The Florida Bar work with the court clerks’ association to expand the assistance available to the public through the clerks’ offices in the various circuits. Specifically, the report noted:

The Commission considered several alternatives to provide greater assistance to members of the public in completing legal forms and handling their own court actions. . . . The Commission’s discussions ranged from a recognition that there are certain legal matters that may not need the assistance of attorneys in order to pursue remedies to providing an attorney assistant in each Clerk’s Office in our state. . . . The Commission believes that The Florida Bar and court clerks working together can provide the framework and education program that will allow the clerk’s office to provide legal assistance in the form of procedural information and assistance in completing court documents.

The Florida Bar, *Report of the Special Commission on Access to the Legal System, Public Interest Programs and Services* 27 (June 1985).

Thirteen years after issuance of this report, Florida courts still have no framework for providing procedural information and assistance to unrepresented persons in family cases. In light of this, the Committee respectfully suggests that to delay consideration of a rule which would provide that framework is inappropriate and not in the best interests of the people of the State of Florida.

2. Access to legal services

The Florida Bar and this Court have taken steps to address the need for legal services for the indigent. In *Interest on Trust Accounts: A Petition to Amend The Rules Regulating the Florida Bar*, 538 So. 2d 448 (Fla. 1989), this Court created a mandatory interest on trust accounts (IOTA) program to generate funds to provide legal services for indigent litigants. In *Amendments to Rules*, 573 So. 2d 800 (Fla. 1990), this Court deferred a decision on whether to mandate that Florida lawyers provide *pro bono* services to the poor so that it might consider the *Report of the Florida Bar/Florida Bar Foundation Joint Commission on the Delivery of Legal Services to the Indigent in Florida*. In *In re Amendments to Rules Regulating the Florida Bar – 1-3.1(a) and Rules of Judicial Administration – 2.065 (Legal Aid)*, 598 So. 2d 41 (Fla. 1992), this Court elected not to mandate the performance of *pro bono* legal services and instead to approve the Commission's recommendations for a voluntary *pro bono* reporting plan. In *Amendments to Rules Regulating the Florida Bar – 1-3.1(a) and Rules of Judicial Administration – 2.065 (Legal Aid)*, 630 So. 2d 501 (Fla. 1993), the Court adopted rules to implement those recommendations.

3. Simplified procedures

To further open the courts to the residents of the state, this Court approved a simplified dissolution of marriage procedure. *The Florida Bar re Amendment to Florida Rules of Civil Procedure (Dissolution of Marriage)*, 450 So. 2d 810 (Fla. 1983). This procedure has dramatically decreased the cost and time necessary for litigants in family law cases to obtain an uncontested dissolution of marriage. The procedure, however, is available only to parties who have no children together and who have resolved all issues by written agreement.

This Court, as it has in the past, must address the above and related issues in order to ensure that the state's residents have access to an available and affordable family courts legal system. The proposed self-help rule, which provides appropriate guidance to the personnel of court based self-help programs, is a natural continuation of this Court's historical mission to improve access to the courts while simultaneously protecting the public from the unauthorized practice of law. The Committee, which is comprised of lawyers, judges, hearing officers and administrative officials, recognizes and values the services of lawyers in family law cases. The experience of the years, however, and particularly that of the last decade, has taught that: (a) the number and percentage of self-represented litigants in family law cases is increasing; (b) a Florida resident is more likely to interact with the judicial system in a family law case than in any other type of case; and (c) regrettably, the bulk of the state's self-represented residents are unable to secure affordable legal representation in such cases. The Committee believes that the proposed rule is necessary now to address the reality of the situation. The Committee fully supports the Family Law Section of The Florida Bar in its effort to develop new and innovative approaches for providing family law legal services. However, there are no such services on the immediate horizon and the current flood of undirected, unassisted *pro se* litigation is reaching crisis proportions. Even if the approaches under discussion ultimately provide affordable legal services on a low-fee or sliding-scale basis, this Court should continue to provide limited court based procedural assistance for those who cannot use other available services (because, for example, fewer services are available than are needed by the populace). Both court based self-help procedural assistance and lawyer assistance are needed and both should be pursued. The

Family Court Steering Committee respectfully urges this Court not to delay consideration of this proposed rule.

B. The proposed rule was submitted pursuant to the request of this Court.

This Court, in *In re Report of the Commission on Family Courts*, 633 So. 2d 14, 19 (Fla. 1994), directed the Family Court Steering Committee, *inter alia*, to recommend how courts can best address the problems posed by the increased numbers of *pro se* litigants in family law matters. The proposed rule replies to that directive by establishing the parameters within which court personnel may respond, in a carefully limited manner, to the basic non legal informational needs of self-represented litigants in family cases.

By administrative order the Chief Justice also directed the Family Court Steering Committee to recommend ways courts can assist self-represented litigants in gaining access to family courts through the use, as appropriate, of standardized simplified forms, self-help centers, technological innovations, and other mechanisms. *In re: Family Court Steering Committee* (Administrative Order, Aug. 22, 1996). Further, in 1997, then-Chief Justice Kogan forwarded to the Family Court Steering Committee Access Workgroup² a discussion draft of a rule relating to court based *pro se* programs for the subcommittee's consideration. (See July 2, 1997, letter from Chief Justice Kogan to The Honorable George Reynolds.) This was the basis of the current proposed rule.

This Court has declared 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

² Now designated the Self-Help Subcommittee.

the appropriate judge, and/or to the appropriate judicial or community-based services.” *In re Report of Commission on Family Courts*, 633 So. 2d 14, 17 (Fla. 1994) (emphasis added). The proposed rule establishes guidance for such staff in assisting families at the point of initial contact with family courts and, equally important, clarifies the firm boundaries beyond which such staff may not stray, lest they embark upon the unauthorized practice of law and potentially subject court staff to liability.

The Florida Bar has been aware of and participated in the recent work of the Family Court Steering Committee in developing this proposed rule. In 1996, a representative of the Family Law Section was appointed as a member of the Committee. *See In re Family Court Steering Committee* (Administrative Order, Aug. 22, 1996). Representatives of the Family Law Section have also served as members of the Self-Help Subcommittee and many of their comments and suggestions were incorporated into the proposed rule.³

C. Other involved entities agree that guidelines for court based self-help services must be addressed.

As noted in the original petition, this Court, the Committee and The Florida Bar are not alone in their concern for the needs of 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*

³ This proposed rule is the negotiated product of lengthy discussion among Committee and Self-Help Subcommittee members who have varying philosophies about the extent to which courts should provide self-help services to unrepresented litigants.

(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. (California's answer to the needs of self-represented family court litigants.)

D. Self-help programs are currently operational in nineteen of twenty circuits.

Nineteen circuits currently offer some type of self-help program.⁴ These programs have evolved in an effort to address the significant, often overwhelming, number of self-represented litigants in family law cases. These programs are currently operating without *any* guidelines or parameters established by this Court. The Committee is concerned that unless the activities are appropriately outlined, self-help staff may cross the divide between providing limited procedural information and providing legal advice, leading to potentially undesirable consequences for both the litigants and the staff members. The proposed rule will minimize that potential by providing uniform operating guidance for court based self-help staff.

E. The existence of the pilot programs lends urgency to the need for adoption of the rule.

The Florida Bar Board of Governors and Dade County Legal Aid contend that this Court should delay its consideration of this rule until completion of the two existing self-help pilot

⁴ In October 1997, the Office of the State Court Administrator, on behalf of the Self-Help Subcommittee of the Family Court Steering Committee, conducted a statewide survey of existing court based family law self-help resources. Information obtained from this survey revealed that nineteen of the twenty circuits have some type of self-help services available in at least one county.

projects. The Committee suggests, to the contrary, that considered speed rather than delay is appropriate. The two self-help pilot programs are actually already existing programs that were partially funded by the Legislature to measure whether they enable unrepresented litigants and the court to more efficiently process family law cases to conclusion.⁵ The two pilot programs – *and* the other self-help programs currently operating in all but one circuit – need this Court's direction as to the self-help services they may properly provide. As a practical matter, if additional funding from the Legislature for court based self-help programs is to be forthcoming, a rule should be in place that establishes guidelines for services which will simultaneously help unrepresented litigants to navigate the foreign waters of family court procedures while assisting self-help staff members in avoiding the unauthorized practice of law.

II. The Committee agrees that this Court – in response to substantive and technical comments received – should slightly modify the proposed rule.

The Committee recommends that this Court, in response to the suggestions received, slightly modify the substance and form of the proposed rule. All of the modifications that the Committee recommends are reflected in the proposed rule attached as Appendix A.

A. Substantive Comments

1. Scope of the rule

Issue:

The proposed rule applies to all family law self-help programs under the auspices of the court but not to other services for self-represented litigants. The Family Law Rules Committee

⁵ The funds appropriated by the 1998 Legislature were given to enable two circuits to better determine the demographics of litigants using self-help services and to measure how the availability of those services affects the progress of their cases.

and Dade County Legal Aid recommended deleting the phrase “under the auspices of the court” from subdivision (a) in the proposed rule. They suggested that all family law self-help programs should be governed by the same rules.

On the other hand, Central Florida Legal Services and the Legal Aid Society of Palm Beach County expressed a concern that if legal services providers are required to comply with the rule it would undermine the types of legal advice and assistance that these programs routinely provide to *pro se* litigants.

Response:

The Committee only considered court based programs in fashioning the proposed rule and did not consider legal forms providers or legal aid services. There may be activities that are appropriate for court personnel to perform that are not appropriate for legal forms providers to perform. Similarly, there may be activities that are appropriate for legal services providers to perform that are not appropriate for court personnel to perform. In determining the activities that are appropriate for performance by staff of court based programs, the Committee considered, among other factors, the court’s potential liability for improper information that might be provided. For that reason (and others), the Committee proposes a rule that seeks to avoid creating an attorney client relationship between a litigant and an employee of a court based program. The Committee proposal also seeks to avoid establishing a legal advocacy program in the court system. Because the rule was intended to apply to only court based programs, the Committee recommends that the rule be expressly limited to programs operating under the auspices of the court and permit other providers to continue to rely on the Rules Regulating the Florida Bar for governance of their conduct.

2. Advice about the appropriate form

Issue:

The rule as proposed does not allow self-help personnel to advise a self-represented litigant about the proper form to use. The rule allows self-help personnel to advise the litigant generally about available forms but not to advise a litigant that a particular form is or is not the correct form for that litigant's particular situation.

Comments from all six respondents suggested that self-help personnel should be able to advise a self-represented litigant about the appropriate form to use for his or her situation. The comments suggested that a restriction prohibiting this would impair the effectiveness of the programs and slow the judicial process for everyone.

Response:

The Committee previously considered this issue and rejected it because case precedent indicated that telling a litigant what form to use constituted the practice of law. *See The Florida Bar v. Brumbaugh*, 355 So. 2d 1186 (Fla. 1978) and *The Florida Bar v. Catarcio*, 709 So. 2d 96 (Fla. 1998). The Committee readily acknowledges that self-help programs may be more effective if self-help personnel are permitted to direct a litigant to a particular form. The Committee does not object if this Court elects to authorize court personnel to recommend a particular form to a self-represented litigant.

3. Local forms

Issue:

The proposed rule allows the chief judge of a circuit to approve additional forms not included in or inconsistent with the Supreme Court approved forms. Forms thus approved by the

chief judge could be used by self-help programs in the same manner as Supreme Court approved forms until the Supreme Court rejects the local form or adopts another form addressing that issue.

The Family Law Rules Committee recommended that chief judges not be allowed to develop additional forms for use in their respective circuits. It suggested that additional forms should be approved through the mechanism provided by this Court and be consistent statewide.

On the other hand, Central Florida Legal Services, the Legal Aid Society of Palm Beach County, and Chief Judge Orfinger recommended expanding the use of forms approved by a chief judge. They suggested that any limitation on the authority of the chief judge to approve additional forms would defeat innovation and might hinder access to the judicial system. They further suggested that a chief judge should be permitted to approve any form, provided the form is consistent with Supreme Court forms. Finally, they observed that it may be impractical to have uniform procedures and opined that the process for approving new forms is not responsive to local needs.

Response:

The rule as proposed by the Committee balances the need for innovation with the need for statewide consistency. The Committee recognizes that, although the Supreme Court approved forms address many family law issues, they are not all inclusive and they do not address issues of local practice. The Committee also recognizes that the current process for form approval is lengthy. As a result, the Committee's opinion is that, as a practical matter, a chief judge should have the authority to approve additional forms for temporary use in the circuit during the time

that it takes to process a proposed form through existing channels for approval. The proposed rule addresses this practical need.

The Committee is interested in promoting statewide consistency. Permitting the use of local forms until they are acted upon by the Supreme Court should eventually result in statewide uniformity, while allowing the immediate needs of a self-help program to be addressed.

4. Information on legal terminology

Issue:

The rule as proposed authorizes self-help personnel to provide, either orally or in writing, definitions of legal terminology from widely accepted legal dictionaries or other general dictionaries. The Family Law Rules Committee recommends that self-help personnel not be allowed to provide definitions of legal terminology; however, the Rules Committee has no objection to self-help personnel providing a dictionary or other definitions included in the written instructions for a form. Dade County Legal Aid suggested that this section is irrelevant because all definitions available for the self-represented litigant will either be in Supreme Court approved forms or forms approved by the chief judge.

Response:

The proposed rule of the Family Court Steering Committee is consistent with the recommendation of the Rules Committee; the proposed rule authorizes self-help personnel to provide definitions from widely accepted legal dictionaries or other general dictionaries. If the concern is that the self-help personnel would then proceed to advise the self-represented litigant that a particular definition applied to the litigant's situation, the phrase "without advising whether

or not a particular definition is applicable to the self-represented litigant's situation" could be added to the rule.

5. Notice of limitation of services provided

Issue:

The proposed rule contains an extensive disclaimer that is to be provided to every self-represented litigant. The rule requires the self-represented litigant to sign the disclaimer and to indicate whether or not the self-represented litigant read the disclaimer in English. If the self-represented litigant cannot read the notice in English, the disclaimer must indicate who read the disclaimer to the self-represented litigant and in what language it was read.

The Family Law Rules Committee suggests adding language to the Notice of Limitation of Services Provided that informs the self-represented litigant that the forms are not binding on the court. The Family Law Rules Committee also suggests that the Notice of Limitation of Services Provided be reproduced in the language of the litigant if the person does not read English.

Response:

The Committee agrees with the substance of these comments and offers the following alternative language:

SELF HELP PERSONNEL ARE NOT ACTING ON BEHALF OF THE COURT OR ANY JUDGE. THE PRESIDING JUDGE IN YOUR CASE MAY REQUIRE AMENDMENT OF A FORM OR SUBSTITUTION OF A DIFFERENT FORM. THE JUDGE IS NOT REQUIRED TO GRANT THE RELIEF REQUESTED IN A FORM.

The Committee recommends that the Notice of Limitation of Services Provided be available in commonly used languages in Florida such as Spanish, French and Creole. However,

it is not practical to require that the Notice be available in *all* possible languages. If a person comes to a self-help program with a translator, that translator should be permitted to read the Notice to the self-represented litigant.

B. Technical Comments

The Committee recommends that one technical comment from Dade County Legal Aid be incorporated into the rule. The Committee recommends that this Court reject certain other technical changes suggested and provides below a brief explanation of its rationale for that recommendation. If the Committee in this response fails to address a “technical” comment, it is because it found the comment unclear or ambiguous or because the Committee has no position on the comment.

Dade County Legal Aid has suggested a modification to subsections (c)(1) and (c)(2) of the proposed rule. The intent of the proposed rule is to permit self-help personnel to use forms approved by the chief judge (while those local forms are being considered for approval by this Court) in the same manner as they would use forms approved by the Supreme Court. The proposed rule, however, does not plainly say that. Dade County Legal Aid's suggestion is meritorious and its suggestion has been incorporated into the modified proposed rule attached as Appendix A.

Dade County Legal Aid also suggested that the word “fair” should be deleted from subdivision (a) where the rule states that the purpose of the program is “to achieve fair and efficient resolution of their family law case.” Legal Aid suggested that the use of the word “fair” implies a certain level of advocacy on the part of the program. The Committee disagrees. The rule states “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 rule carefully delineates permissible acts and excludes acts that could be considered as advocacy. Judges should be fair, which by definition excludes advocating one position over another.⁶

Dade County Legal Aid further suggests that child support enforcement proceedings should be added to the definition of family law cases in subdivision (b)(1). The Committee disagrees because child support enforcement is already included within the definition of family law cases set forth in Florida Family Law Rule of Procedure 12.010(a)(1).

Dade County Legal Aid also suggests adding the phrase “or any litigant whose lawyer has withdrawn by court order” to the definition of a self-represented litigant in subdivision (b)(2). The Committee disagrees with the need to add this phrase because a litigant whose lawyer has withdrawn is by definition a self-represented litigant.

Dade County Legal Aid currently assists self-represented litigants by recording information on forms for the litigant and suggests that it is sometimes necessary to add information to the form that applies to a particular litigant. It suggests that the phrase “only if the self-represented litigant is unable to do so by reason of language barrier or disability,” should be deleted from subdivision (c)(5). This would result in self-help personnel being permitted to record information on forms for *all* self-represented litigants. The Committee disagrees with this suggested modification to the proposed rule. The proposed rule permits self-help personnel to record information on forms for persons who are unable to do so because of language barrier or disability. The Committee considered the limited resources of the judicial system and

⁶ "Fair" is defined as "marked by impartiality and honesty; free from self-interest, prejudice, or favoritism." *Webster's New Collegiate Dictionary*.

determined that it is not a good use of limited resources for self-help personnel to record information on forms for self-represented litigants who are able to do so themselves.

Dade County Legal Aid and the Legal Aid Society of Palm Beach County suggest that subdivision (c)(7) of the proposed rule be amended or removed. This subdivision permits self-help personnel to “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.” The comments noted that it is not clear why self-help personnel would provide rules or citations of statutes that are inapplicable to the litigant’s situation. The Committee asserts that no change to this section is necessary. Self-help personnel should have information about statutes and rules and should be permitted to provide information about them to self-represented litigants. Self-help personnel, of course, should *not* be able to take the next step to advise a litigant that a particular rule or statute applies to his or her situation because to do so may constitute the practice of law.

Dade County Legal Aid also suggests adding the phrase “except when that information is limited or protected by statute” to subsection (f) on confidentiality. The Committee disagrees with this suggestion. This comment seems to suggest that self-help personnel would convey privileged or confidential information to a self-represented litigant. Such communication is prohibited by subsection (d)(3) of the proposed rule.


Finally, Dade County Legal Aid suggests that subsection (i) should be amended to exempt self-help personnel from the requirements of Florida Family Law Rule of Procedure 12.100, which requires that nonlawyers who assist in the preparation of legal documents place identifying information on those forms. They note that this requirement is unnecessary because:

(a) each pleading that is reviewed by its program is stamped, and (b) no pleading will be accepted by the Clerk of the Court without this stamp. The Committee disagrees with the comment. In those instances where nonlawyer self-help personnel record information on a form for a litigant, the nonlawyer should comply with rule 12.100 by providing the necessary identifying information.⁷ Dade County is apparently unique in its requirement that self-help personnel review documents filed by self-represented litigants. The Committee has been unable to locate a similar policy in any other circuit. The proposed rule does not require self-represented litigants to use court based self-help programs.

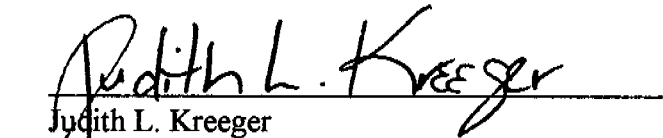
⁷ If the safety of courthouse personnel is an issue, the personnel can use the courthouse address as their address on the form.

CONCLUSION

For the reasons stated above, the Family Court Steering Committee respectfully requests that this Court adopt the proposed (slightly modified) Florida Family Law Rule of Procedure ("self-help rule") attached as Appendix A.



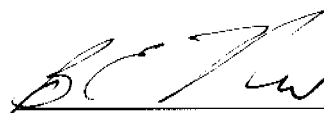
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the Foregoing Response of the Family Court Steering Committee to Comments on the Proposed Florida Family Law Rule of Procedure Regarding Self-Help Services was provided by U.S. Mail to Mr. John F. Harkness, Jr., Executive Director, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida, 32399; to The Honorable George Reynolds, Chair, Family Law Rules Committee of The Florida Bar, Leon County Courthouse, Room 365-K, Tallahassee, Florida; to Karen S. McLead, Esquire, Chair, Unauthorized Practice of Law Committee of The Florida Bar, P. O. Box 6025, Clearwater, Florida 34618; to Jim Dulfer, Esquire, Managing Attorney, Central Florida Legal Services, Inc., 128-A Orange Avenue, Daytona Beach, Florida 32114-4301; to Carmen R. Pintado, Esquire, Supervising Attorney, Family Court Self-Help Project, 175 N.W. 1st Avenue, 24th Floor, Miami, FL 33128; to The Honorable Richard Orfinger, Chief Judge of the Seventh Judicial Circuit, 251 North Ridgewood Avenue, Suite 200, Daytona Beach, Florida 32114; and to Ross L. Baer, Esquire, Legal Aid Society of Palm Beach County, Inc., 423 Fern Street, Suite 200, West Palm Beach, Florida 33401 this 30th day of September, 1998.



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APPENDIX

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~~,¹
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 information about and 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);

¹ The Committee has no objection to this deletion if this Court determines it is appropriate to authorize this activity. Simply deleting this phrase will only implicitly give the self help personnel authorization to tell a self represented litigant to appropriate form to use.

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 without advising whether or not a particular definition is applicable to the self represented litigant's situation;²
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;

² The Committee has no objection to this addition, if this Court determines it is necessary.

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.

SELF HELP PERSONNEL ARE NOT ACTING ON BEHALF OF THE COURT OR ANY JUDGE. THE PRESIDING JUDGE IN YOUR CASE MAY REQUIRE AMENDMENT OF A FORM OR SUBSTITUTION OF A DIFFERENT FORM. THE JUDGE IS NOT REQUIRED TO GRANT THE RELIEF REQUESTED IN A FORM.

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, and except for advising a litigant about the appropriate form. 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.