

COMMENTS CONCERNING PROPOSED
UNBUNDLED LEGAL SERVICES RULE

CASE NO. SC-02-2035

The undersigned submits the following comments concerning the proposed rule on unbundling of legal services:

1. Many family litigants are already hiring attorneys for specific tasks. The use of attorneys in this manner will increase with the adoption of the proposed rule.

Although there will be numerous procedural problems which arise as this practice becomes more widespread, I have concerns over a notice issue which I believe can be corrected.

2. If attorneys are involved in a case for a short duration, proper service of a notice for hearing from the court or opposing side will be very difficult under this proposed rule and, specifically, Section 12.040(f). In family litigation, many hearings are set with relatively short notice due to the nature of the practice including numerous emergency and temporary hearings. With so many pro se litigants in a family division, it is left to the court to notice most of the hearings. The unfortunate reality is that the court files are not generally current.

If an attorney files an appearance for a limited purpose or a limited duration, that appearance may likely be missing from the court file at the time of the court's review of the court file. Similarly, if an attorney files a notice that he or she no longer represents the litigant, that may also be missing from the court file.

The rule should require the address and telephone numbers of both the litigant and the attorney to be on all pleadings, hearing notices and notices of limited appearance.

3. Additionally, it appears to me that if a litigant intends to secure representation of this nature, that service on a litigant at the address last provided to the court file should be deemed sufficient notice. It should be the litigant's obligation to deliver notices and pleadings to his or her attorney if the litigant hires an attorney (or attorneys) for limited purposes. There may be matters that the court or the opposing party needs to schedule for hearing or to which they need to respond that are not within the scope of limited appearance. As presently worded, 12.040(e) does not require both addresses. I can also anticipate much confusion on what is within the scope of the limited appearance. The burden of

this determination should be on the party engaging an attorney for a limited appearance and not on the court and opposing party.

If the burden is to be placed on the court and the opposing party, any appearance by an attorney for a limited appearance must include the address and telephone number for both the attorney and the litigant. In that event, I would suggest that the following paragraph be inserted in lieu of the present Section 12.040(c):

(c) Scope of Representation. If an attorney appears "of record" for a particular limited proceeding or matter, as provided by this rule, that attorney shall be deemed "of record" for only that particular proceeding or matter. Any such appearance shall include both the name, address and telephone number of the attorney and name, address and telephone number of the party. At the conclusion of such proceeding or matter, the attorney's role terminates without the necessity of leave of court, upon the attorney filing notice of completion of limited appearance. The notice, which shall be titled "Termination of Limited Appearance," shall include the name and last known address of the party represented by the withdrawing attorney. All future notices to the last known address shall be deemed proper service on the person(s) previously represented until such time as the party files a sufficient change of address with the clerk of the court with copies to all other parties.

Similarly, paragraph 12.040(e) should state as follows:

(e) Notice of Limited Appearance. Any pleading or other document filed by a limited appearance attorney shall state in bold type on the signature page of that pleading or other document: "Attorney for [Petitioner][Respondent] [attorney's address and telephone number] for the limited purpose of [matter or proceeding]." The limited appearance shall be followed by the name of the petitioner or respondent represented and current address and telephone number of that party.

Please note that without the correction to Section 12.040(e), the service as required by Section 12.040(f) is not possible.

4. I believe that the partially represented party should be responsible to provide all pleadings and notices to their own attorney. This would avoid placing the additional burden on the court and the opposing party. This would also alleviate much of the problem with the court files not being current enough to deal with attorneys appearing for a short duration and then filing a termination of limited appearance. I would, therefore, suggest that Section 12.040(f) read as follows:

(f) A party who has engaged an attorney for a limited purpose shall be responsible to provide all notices, orders and pleadings to his or her attorney so engaged.

Thank you for your consideration.

Respectfully submitted,

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