

IN THE SUPREME COURT OF FLORIDA

IN RE: AMENDMENTS TO THE RULES
REGULATING THE FLORIDA BAR
AND THE FLORIDA FAMILY LAW
RULES OF PROCEDURE
(UNBUNDLED LEGAL SERVICES)

CASE NO. SC02-2035

SUPPLEMENTAL COMMENTS ON ISSUES RAISED BY THE COURT

The following comments are offered on behalf of the 2000-2002 Family Court Steering Committee and the current Steering Committee on Families and Children in the Court in response to the Court's questions on unbundled legal services:

- 1) Whether the rule envisions that both the attorney and the pro se litigant may appear before the court at a single hearing where multiple issues are being addressed.

A litigant and an attorney may appear before the court at the same time on different issues in the same proceeding, just as two attorneys may represent a party on different aspects of their case.

The most common example in family law is when the Department of Revenue appears on behalf of a parent to establish, modify, or enforce child support and the parents represent themselves on other issues involved in the

litigation. The Department's attorney presents evidence and argument on child support and the parents present evidence and argument on the other issues.

For example, in a dissolution of marriage proceeding, the Department may intervene to establish child support. If alimony, primary physical residence and parenting time are not disputed, the Department may present evidence on child support and be excused. If the parents are litigating alimony, primary physical residence or substantial shared parenting, the Department must have the court's decisions on these issues to calculate child support. The Court is required to decide equitable distribution before deciding alimony, so it is possible that the Department will have to present their case last. In either situation, the court must hear from both the Department and the self-represented litigant.

Courts use common sense scheduling and control over the presentation of evidence to avoid wasting the attorney's time.

- 2) When an attorney is retained to represent a pro se litigant in a limited matter, must the court hear from both the pro se litigant and the attorney on the limited matter?

The court does not have to hear from both the self-represented litigant and the attorney on the same limited matter. When one side of a case has multiple attorneys, judges customarily limit participation in specific tasks or issues. *See Mora v. State*, 814 So. 2d 322, 329 (Fla. 2002) (approved court allowing self-

represented defendant to argue issues not addressed by his attorney); *Davis v. State*, 586 So. 2d 1038 (Fla. 1991) (approved trial judge allowing only one attorney for each side to approach the bench, examine and cross-examine witnesses, and make objections).

A litigant does not have a constitutional right to represent himself or herself on an issue and at the same time to be represented by counsel on the same issue. *Mora*, 814 So. 2d at 328 (Fla. 2002) *citing McKaskle v. Wiggins*, 465 U.S. 168, 183 (1984). However, the judge has discretion to allow both a litigant and the attorney to make arguments to the court. *State v. Tait*, 387 So. 2d 338, 340 (Fla. 1980).

Although the cases cited involve criminal defendants, these general rules apply to civil cases. *See Kuba v Leb*, 464 So. 2d 601 (Fla. 3d DCA 1985) (in a civil case, court permitted a defendant who had an attorney to cross-examine plaintiff's expert). Furthermore, judges are capable of exercising discretion in these situations based on the unique facts and circumstances of individual cases.

- 3) What have been the experiences of other jurisdictions that have adopted similar unbundled rules?

At least five states have amended rules of procedure and professional practice to authorize and promote unbundled legal services: Colorado, CO. R.C.P.

11, CO. R. C. P. 121, §1.1 (comment), CO. R. C. P. 311, CO. R. P. C. 1.2, CO. R. P. C. 4.2 (comment), CO. R. P. C. 4.3 (comment); Maine, ME. Code of Prof. Resp. 3.4(I), ME. R. Civ. P. 5(b), 11(b); Nevada, Rules of Practice for the Eighth Judicial District Court of the State of Nevada 5.28; NM. R. P. C. 16-102, 16-303; and Wyoming, WY. R. P. C. 1.2. The Committees could not find any case law or law review articles that describe the experiences of these states.

However, Michael Millemann, director of the Clinical Law Program at the University of Maryland conducted a seventeen month study of unbundled legal services. *The Maryland Experiment*, 70 Wisc. Lwyr. 9 (1997). The clinic offered discrete legal services to approximately 4,400 people, of low or moderate income levels, who were representing themselves in domestic cases. Sixty percent of the clients had tried to obtain an attorney, but were unsatisfied because lawyers did not offer limited representation. The experiment was successful and the clients reported a high level of satisfaction with the services.

Also, the American Bar Association proposed changes to Rule 1.2(c) of the Model Rules of Professional Conduct to clearly allow unbundled legal services. The American Bar Association maintains a web page dedicated to unbundled legal services. www.abanet.org/legalservices/delivery/deunbund.html.

4) Whether amendments to Florida Rule of Judicial Administration 2.060 and

Fla. R. App. P. 9.360 would be necessary.

It appears that the Court will need to amend both rules, but the Committees are not prepared to offer specific suggestions. Rules adopted in other jurisdictions provide some guidance and should make the process easier.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the COMMENTS IN SUPPORT OF PROPOSED AMENDMENTS has been furnished by the U.S. Mail, this 25th day of April, 2003, to John F. Harkness, Executive Director, The Florida Bar, 650 Apalachee Parkway, Tallahassee, FL 32399, the Honorable Hugh Starnes, Circuit Judge, Twentieth Judicial Circuit, Lee County Justice Center, 1700 Monroe Street, Fort Myers, Florida 33901, Ms. Adele I. Stone, Atkinson, Diner and Stone, 1946 Tyler Street, Hollywood, Florida 33020-4517, and the Honorable Linda Vitale, Circuit Judge, Seventeenth Judicial Circuit, Broward County Courthouse, Room 998, 201 SE 6th Street, Fort Lauderdale, Florida 33301.

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