

**REPORT  
OF THE  
UNBUNDLED LEGAL  
SERVICES  
MONITORING  
COMMITTEE**

**By:  
Merrie-Roxie Crowell, Chair  
March 3, 2005**

## INTRODUCTION

On November 13, 2003, the Supreme Court of Florida adopted new rules which allow lawyers to provide limited legal services to their clients in family law cases. *Amendments to the Rules Regulating The Florida Bar and the Florida Family Law Rules of Procedure (Unbundled Legal Services)*, 860 So. 2d 394 (Fla. 2003). In adopting the rules, the Court ordered The Florida Bar “to monitor the implementation of the rule and any difficulties that arise, and report back to [the] Court within two years from the effective date of [the] amendments with recommendations for improvements or changes, if any.” *Id.* at 402. While the amendments approved by the Court were to both the Rules Regulating The Florida Bar and the Florida Family Law Rules of Procedure, the request to monitor was as to the Florida Family Law Rule of Procedure only.

In order to comply with the Court’s request, President Kelly Overstreet Johnson appointed the Unbundled Legal Services Monitoring Committee (hereinafter “the Committee”). The members of the Committee are:

Magistrate Merrie-Roxie Crowell, Chair  
Tampa, Florida

The Honorable Linda Leslie Vitale  
Ft. Lauderdale, Florida

The Honorable Raymond Thomas McNeal  
Ocala, Florida

The Honorable Judith L. Kreeger  
Miami, Florida

Sharon Lynne Langer, Esq.  
Dade County Leal Aid Society  
Miami, Florida

Magistrate Joe David Lovelace  
Clearwater, Florida

Kim Watson Torres, Esq.  
Family Law Mediator  
Indialantic, Florida

Kenneth L. Mann, Esq.  
Orlando, Florida

Terrence Patrick O'Connor, Esq.  
Ft. Lauderdale, Florida

James M. Coombs, Esq.  
Legal Services of North Florida  
Panama City, Florida

Jeffery Toney, Esq.  
Legal Services of North Florida  
Shalimar, Florida

All of the members of the Committee have experience in family law matters  
or with the unbundled rule.

### FIRST SURVEY

The Committee first met on September 22, 2004, and decided that the  
best way to monitor the implementation of the rule as ordered by the Court

was to survey judges and members of The Florida Bar regarding their experience with the rule. Thereafter, surveys were mailed to the following groups:

- All Chief Judges of all judicial circuits with a request that the survey be copied and disseminated to the judges in the circuit
- All local bar associations and many voluntary bar associations in Florida
- The Florida Inns of Court
- The major Legal Services office in Florida
- The Executive Committee of the Family Law Section. The surveys were presented to the Section by Chair Crowell at a meeting

In addition, the survey was published in The Florida Bar *News* and on The Florida Bar's website. A copy of the survey and the comments received is attached hereto in Appendix "A."

#### Responses To First Survey

The first survey was sent to the leaders of various groups who were asked to provide copies to others. Therefore, the Committee does not know how many surveys were distributed. Twenty-four (24) judges responded and 25 lawyers responded.

## Responses from Judges

Of the 24 judges that responded, 11 have not had experience with lawyers appearing on a limited basis. Two (2) of the judges responding commented that based on the experience of their circuit, the Bar should promote this practice because they feel that the services provided by the lawyer in unbundled cases are much greater and the practice gives litigants more access to private lawyers. One (1) commented that based on the experience of their circuit, all lawyers are not aware of this new change. Two also felt that based on the experience of their circuit, the rule is too complicated and confusing, especially in family law cases, and that one lawyer should handle the entire case.

Thirteen (13) of 24 judges that responded have had experience with lawyers appearing on a limited basis. Six (6) have had a positive experience with limited representation. These judges feel that lawyers need to emphasize that they are only giving partial representation. They also feel the rule keeps attorneys' fees under control and help with clients who have limited funds. Four (4) have had a negative experience with limited representation. Some feel that the scope of representation is unclear and that clients do not receive true legal representation on cases, only limited aspects.

## Responses From Lawyers

Of the lawyers responding, 8 have not had experience with unbundled legal services. One (1) commented that he or she foresees ethical dilemmas regarding the scope of representation and regarding malpractice and does not intend to provide this service in the future. Another commented that even though he or she did not have the experience, he or she felt it was a good idea. Two (2) commented that they thought it would be too difficult to make worth while to implement and that it would ultimately cause client injury unless lawyers learn through CLE and printed materials to warn clients that important matters may remain unattended and could require attention elsewhere.

Of the 17 lawyers who did have experience with unbundled legal services, 12 have had a positive experience with limited representation. Many feel it provides a client with the appearance that they require which keeps fees low for clients with limited resources and does not require the lawyer to be involved in the entire case. Some mentioned though, that they think there are legal hazards because it can complicate issues. One comment stated that the process should be simplified and that in some cases lawyers charge too much for their unbundled services. Two (2) had both a positive and negative experience. One lawyer commented that he or she feels that it

allows unspecialized lawyers to seek help when needed, but that it causes higher fees because both lawyers have to bill the client. One (1) had a negative experience and felt that the rule should be abolished because a judge may inquire about another issue which cannot be brought up due to the limited appearance of only one of the lawyers. The remaining 2 did not provide comments.

### SECOND SURVEY

After reviewing the responses, the Committee decided to add a question to the survey asking lawyers who are not providing unbundled legal services, why they are not providing the services. The new survey as published in *The Florida Bar News* and on The Florida Bar's website and was distributed to members at The Florida Bar's Midyear Meeting in January, 2005. In addition to providing surveys at the Midyear Meeting Information desk, surveys were distributed to the following committees:

- The Standing Committee on the Unlicensed Practice of Law
- The Professional Ethics Committee
- The Legal Needs of Children Committee
- The Family Law Rules Committee
- The Juvenile Court Rules Committee
- The Delivery of Legal Services Committee

A copy of the survey and the comments received is attached hereto as Appendix "B."

### Responses To Second Survey

Although the number of surveys distributed at the Midyear Meeting is unknown, sixteen (16) responses were returned. Eight (8) of the lawyers who responded have not provided unbundled legal services. Three (3) have not provided this service due to the concern of malpractice claims. Five (5) have not provided this service because they are either employed by the government or have not encountered the need to provide this service. One was also concerned about getting dragged into litigation without payment. All knew about the existence of the rule. This may be due to the fact that the survey was distributed, in part, to groups who are involved in family law.

Eight (8) of the lawyers who responded to the survey have provided limited legal services. Six (6) have had a positive experience providing the services. These lawyers appreciate the advantage of being able to enter a case under limited appearance without committing to representation of the underlying case and to represent clients who otherwise would not be able to afford the services of a lawyer. Two (2) have had negative experiences. One of the lawyers stated that there should be a limit on how many attorneys can file limited appearance in the same case. It was also mentioned that

judges should grant more continuances when good cause exists, so that a litigant can have competent counsel.

### DISCIPLINARY EXPERIENCE

Lori S. Holcomb, staff to the Committee, surveyed the disciplinary offices of The Florida Bar and the disciplinary offices of other states who have unbundled rules. The Florida Bar has not received any complaints regarding lawyers providing unbundled legal services. The other states either had no negative experience or had rules which were too new to gauge.

### OTHER OBSERVATIONS

In addition to the surveys, members of the Committee had informal conversations with colleagues regarding the rule. While the charge to the Committee was limited to monitoring the implementation of the unbundled rule and reporting any difficulties to the Court, the conversations have led the Committee to the conclusion that more education needs to be done on the availability and use of the rule. There needs to be more outreach and education with regard to the rule. For lawyers, information regarding the availability of the rule and the proper use of the rule should be included in Continuing Legal Education courses. Committee members have observed that the average lawyer is not reading the rule or signing the proper forms. Most lawyers who are providing unbundled legal services are newer

members of The Florida Bar and many are not following the rule. Although several of the members of the Committee are in the judiciary, only two members have seen a Notice of Limited Appearance. One member who had received a notice noted that the requirement of Florida Family Law Rule of Procedure 12.040(e) that the lawyer put the limited purpose of the appearance in bold on all pleadings is not being met and that this requirement should be emphasized.

For consumers, although the Bar has made available consumer information on unbundled legal services, it is not clear whether litigants know that they may hire a lawyer to provide unbundled legal services. The Committee observed that not all of the clerk's offices have personal contact with litigants. Each circuit is different in the extent the clerks work with litigants and in how much assistance they will provide. For those circuits providing no or very limited assistance, the clerks have lost the ability to educate the litigants and to learn what problems or difficulties the litigants may be having. As there is not always face to face contact, some members of the Committee felt that it would be helpful to have information in the clerk's offices regarding unbundled legal services, including a listing of lawyers in the area who are willing to provide the services.

The Committee also noted that there is confusion regarding the application of the rule in child support enforcement actions being brought by the Department of Revenue (DOR). Although DOR brings the cases on a regular basis, the department lawyers are not filing a notice of limited appearance. The Committee believes that this leads to confusion for the litigant in that the person may not realize that the appearance is limited. However, the Committee was unsure whether Florida Family Law Rule of Procedure 12.040 was intended to apply to DOR and seeks clarification from the Court on this issue.

To the extent that lawyers are reluctant to provide the services because of malpractice concerns, the Committee felt that it may be helpful to have a form malpractice policy, perhaps drafted with input from Florida Lawyers Mutual Insurance Company (FLMIC). The Committee also felt that a form retainer agreement, drafted with input from the Family Law Section or Family Law Rules Committee and The Florida Bar's Professional Ethics Committee, may be helpful.

### CONCLUSION

Of those responding to the Committee's surveys, the majority have had a positive experience with the rule. However, the Committee has the following recommendations:

- 1) Include information about unbundled legal services in Florida Bar Continuing Legal Education courses. The Committee discussed the lack of knowledge about the rule at great length. The Committee believes that until members of The Florida Bar are educated about the availability and proper use of the rule, the rule will not be utilized to its fullest potential. Including information in a basic family law course would be helpful.
- 2) Request the Family Law Section or Family Law Rules Committee and the Professional Ethics Committee of The Florida Bar to consider drafting a form retainer agreement to be used in unbundled cases.
- 3) While the Committee believes sample language to include in a malpractice policy may be helpful, the Committee recognizes that proposing such language is beyond the scope of The Florida Bar. However, the Committee wanted to bring the issue to the Court's attention.
- 4) Make information regarding unbundled legal services available in the offices of the various clerk's of court for distribution to litigants. The information should include a listing of lawyers in the area who are willing to provide limited legal services.
- 5) Clarify whether the rule was intended to apply to the Department of Revenue in child support enforcement cases.

On the whole, the Committee believes that the rule allowing lawyers to provide unbundled legal services in family law matters will benefit both lawyers and litigants. However, without additional outreach and education the rule will not be utilized to its full potential. Although no changes to the rule are recommended at this time, future changes may be suggested by the appropriate rules committee during the regular review cycles.

Respectfully submitted,

Merrie-Roxie Crowell, Chair  
Unbundled Legal Services Monitoring Committee