

## **Policies Enabling Lawyers to Serve Pro Se Litigants**

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The ABA and some states have adopted policies, through the rules of ethics and civil procedure, that clarify the role of lawyers in pro se litigation. These changes remove obstacles for lawyers who provide a limited scope of representation. This workshop looks at the specific issues that create barriers and the processes and the policies that have emerged to overcome them.

### **Topical Outline:**

- I. The Evolution of Pro Se Litigants
  - a. Use to be gadflies, malcontents and lawyer-haters
  - b. Increased percentage of litigants in family law matters
  - c. Now, dominant method of appearing in court in some jurisdictions
  
- II. Stress of Increased Pro Se Litigants on the Courts Resulted in Retooling
  - a. Courthouse Facilitators
  - b. Information Centers, with Concierge Service
  - c. Self-Help Centers
  
- III. Legal Profession is at the Beginning of its Response to Pro Se Litigation
  - a. Part of Collaborate State Efforts
  - b. Pro Bono Efforts
  - c. Increased Dialogue
  - d. New Policies – Creating Clarification about the Lawyer’s Role
  
- IV. Policies Involve Rules of Ethics and Civil Procedure
  - a. Defining the Scope of Representation – Rule 1.2(c)
  - b. Clarifying Communications between Counsel and Parties – Rules 4.2 and 4.3
  - c. Document Preparation, a/k/a Ghostwriting
  - d. Limited Appearances and Expedited Withdrawals
  - e. Excused Conflicts Checks – Rule 6.5
  
- V. Defining the Scope of Representation
  - a. Some lawyers do not believe it is ethical to limit the scope of representation

- b. MR 1.2(c) clarifies the right of the lawyer to provide limited scope representation, with the client's informed consent
- VI. Clarifying Communications Between Counsel and Parties
- a. MR 4.2 and 4.3 govern the communications between counsel and unrepresented parties.
  - b. State rules clarify the obligations of lawyers who assist pro se litigants and those who represent parties adverse to pro se litigants
  - c. Generally places burden of notice on lawyer assisting pro se litigant
- VII. Document Preparation
- a. Some lawyers are apprehensive about ghost-writing because they believe it will obligate them to continue the representation.
  - b. Some judges believe that pro se litigants take advantage of their status and the willingness of the court to be lenient when they have a lawyer prepare their documents.
  - c. Some state rules clearly permit lawyers to prepare documents, but require the lawyer to include name and contact information, informing the court that the documents were prepared by a lawyer.
- VIII. Limited Appearances and Expedited Withdrawals
- a. Pro se litigants can benefit by having counsel appear for a discrete part of the litigation, e.g. order of protection as part of a divorce.
  - b. In most states, withdrawal is limited and procedures time-consuming and costly.
  - c. Some states permit appearances for limited representation and have expedited withdrawal procedures.
- IX. Excused Conflicts Checks – MR 6.5
- a. Applied to non-profit and court-annexed services
  - b. No on-going representation
  - c. No knowledge of a conflict
  - d. No requirement to check for conflicts
- X. Some States Have Addressed Some of These Issues, but None Have Addressed Them All
- XI. ABA Delivery Committee White Paper
- a. Brings the Issues and Solutions Together
  - b. Includes a Checklist for Policy-Makers
  - c. Includes the Specific State Rules
- XII. A State Case Study – North Carolina Bar Association
- XIII. State Milestones
- a. 1990s Studied “Modest Means”
  - b. 2000 Unbundling Conference in MD

- c. 2001 Pivotal Year
    - 1. Pro Se initiatives included in NCBA Long Range Plan
    - 2. NC Equal Justice Conference
  - d. 2002 Pro Se Task Force
  - e. 2004 Modest Means Access Committee
- XIV. Balancing Competing Interests
- a. The Bar
  - b. Practitioners
  - c. The Judiciary
  - d. Trial Court Administrators
  - e. Liability Insurance Providers
  - f. Ethics Obligations
- XV. Overcoming Practitioners' Responses
- a. Taking Money from Lawyers
  - b. Ethical Concerns
  - c. Aggravating the Legal Problem
- XVI. Statewide Conferences
- a. 2001 Conference
    - 1. Formal introduction of the topic
    - 2. Training for lawyers and judges
  - b. 2004 Conference
    - 1. Formal roll-out of the Pro Se Task Force Report
- XVII. Caught in the Middle
- a. Task Force Report
  - b. 18 month study
  - c. Unbundled Legal Services and Ethical Issues
  - d. Forms, Centralization and Models
  - e. Recommendations
- XVIII. Statewide Self-Help System
- a. Presidential Initiative
  - b. State-wide Self-Help Centers
  - c. Committee and Section Activities

## **Bibliography & Website Links:**

1. The ABA White Paper: *An Analysis of Rules Enabling Lawyers to Serve Pro Se Litigants*  
<http://www.abanet.org/legalservices/downloads/delivery/prosewhitepaperfeb2005.pdf>
2. ABA Pro Se/Unbundling Resource Center  
<http://www.abanet.org/legalservices/delivery/delunbund.html>
3. Self Help Support, a collaborative serving courts, community and legal aid self-help practitioners, <http://www.selfhelpsupport.org>