

SCOPE OF REPRESENTATION

Background & Analysis

In In re Amendments to Florida Rules of Judicial Admin., 132 So.3d 1114 (Fla., 2014), the court adopted Fla. Fam. L.R.P. 12.003 which provides that

all related cases must be handled before one judge unless impractical. Likewise, Fla. Fam. L.R.P. 12.003(b)(1) allows the court to “order joint hearings or trials of any issues in related family cases.” The number of attorneys offering unbundled legal services has grown greatly in recent years. Often, unbundled legal services encompass many types of family cases. Family cases may also have attorneys appointed by the court for specific limited purposes. In family court, dealing with attorneys who have limited obligations with respect to a party or a case may present additional challenges. Fla. Fam. L.R.P. 12.040 was created to deal with issues related to limited representation and unbundled legal services. This rule requires the attorney to file a notice of the limits of the attorney’s appearance, among other provisions. In Amendments to the Florida Family Law Rules of Procedure, 883 So.2d 1285 (Fla. 2004), the Supreme Court also adopted three new Family Law Forms in the Family Law Rules of Procedure:

- Form 12.900(b) Notice of Limited Appearance
- Form 12.900(c) Consent to Limited Appearance by Attorney
- Form 12.900(d) Termination of Limited Appearance

In 2008, two more forms were adopted in In re Amendments to Florida Family Law Rules, 995 So.2d 407 (Fla., 2008):

- Form 12.900(g) Agreement Limiting Representation
- Form 12.900(h) Notice of Related Cases

All petitioners must now use Form 12.900(h) Notice of Related Cases, to comply with Fla. R. Jud. Admin. 2.545(d), which requires the petitioner in a family law case to file a notice of related cases with the court. This form can also be filed by a party to request coordination when it “appears to a party that two or more pending cases present common issues of fact and that assignment to one judge ... will significantly promote the efficient administration of justice, conserve judicial resources, avoid inconsistent results, or prevent multiple court appearances by the same parties on the same issues.” Fla. R. Jud. Admin. 2.545(d)(6).

Fla. Fam. L.R.P. 12.040(d) also requires attorneys to add form 12.900(e), Acknowledgement of Assistance by Attorney, to pro se pleadings and papers when an attorney assists a party with preparing pleadings or other documents, and attorneys must add Form 12.900(f), Signature block for Attorney Making Limited Appearance, to pleadings and papers when an attorney is making a limited appearance.

The court may also limit the obligations of court appointed counsel through appointment on a particular type of case, or aspect of a case. For example, a child charged with a delinquent act may be appointed legal counsel pursuant to §§27.52 and 985.033, Florida Statutes. Pursuant to such an appointment, the attorney is obligated to represent the child only in the proceedings for which he or she was appointed. If that same child also has a dependency case, the attorney appointed for the child in the delinquency case would not be authorized to represent the child in the dependency matter under the original appointment.

Another situation involving limited representation may arise during the course of dependency proceedings if a determination is made that the child should be placed in a residential treatment center. If the child objects to the placement determination, either on his or her own if of an appropriate age or through a guardian ad litem, then pursuant to Fla. R. Juv. P. 8.350, the court must appoint an attorney to represent the child and oppose the Department’s motion to place the child in a residential treatment center. Here, the court appointed attorney has a limited obligation to represent the child with regard to a particular aspect of the dependency case, namely the issue of placement in a residential treatment center. The attorney may be appointed for subsequent hearings addressing that placement if the child does not agree with the continued placement, but may not be authorized to represent the child in other aspects of the dependency case.

Similar scenarios may arise with attorneys who are privately retained to represent a client in a specific aspect of a case or for a specific proceeding. For example, in the Rules Regulating the Florida Bar, Rule 4-1.2(c) states: “...a lawyer and client may agree to limit the objectives or scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent in writing.”

On November 13, 2003, the Supreme Court issued its opinion in 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). This opinion provides the court with guidance and direction on this issue of counsel with limited obligations. Justice Pariente indicated in the Court’s opinion that “[t]he litigant’s understanding of the scope of the limited representation is important in preventing unrealistic expectations on the part of the litigant, especially in connection with the extent of the attorney’s role during in-court proceedings. An attorney who decides to offer limited in-court representation in a family law matter must ensure that the pro se litigant understands the attorney’s obligations to the litigant.” Id. at 400. While the Court was specifically speaking about an attorney and client contracting for limited services in a family case, the situation is analogous to other court appointed counsel with limited obligations. Accordingly, it should be incumbent upon both retained and appointed counsel to explain to the client the scope and obligations of their legal representation. In addition, the court issuing the order of appointment should state for the record the limited obligations for which the attorney is being appointed.

Note: In In re Amendments to Florida Family Law Rules, 995 So.2d 407 (Fla., 2008), the court amended the Fla. Fam. L.R.P. 12.040(c)(2) to clarify that the state’s Title IV-D child support enforcement agency attorneys must file a notice stating that they represent only the Title IV-D agency and not the recipient of the IV-D services when they appear in a family law case. These attorneys may only address issues concerning determination of paternity, and establishment, modification, and enforcement of child support obligations.

In Practice:

The public defender is appointed to represent a child charged with a lewd and lascivious act on a neighborhood child. Simultaneously, the parent of the child victim files for an ex parte injunction against sexual violence.

The family court judge becomes aware of the pending delinquency case when the ex parte injunction is issued, and at the return hearing explains the parallel cases. To avoid questioning the child witnesses multiple times, the court may schedule the return hearing on the injunction at the same time as the adjudicatory hearing in the delinquency case, as long as the judge is still able to ensure that the time frames for injunction and delinquency adjudicatory hearings are met. Before the trial begins, the court should identify both proceedings, explain the differing burdens of proof, clarify the roles of the attorneys, and explain the process that will be followed.

The prosecutor and public defender would perform their usual jobs in the hearing. Their closing arguments in the criminal matter would not address the injunction. At the conclusion, the court announces the outcome of each case.