

**REPORT
OF THE
JOINT
IOWA JUDGES ASSOCIATION
AND
IOWA STATE BAR ASSOCIATION
TASK FORCE
ON
PRO SE LITIGATION
MAY 18, 2005**

INTRODUCTION

The challenges posed by the increasing number of citizens who choose to represent themselves in court proceedings have resulted in a number of states taking steps similar to Iowa to attempt to define the issues and design solutions that will increase citizen access to the courts and legal services while minimizing disruption to an already overburdened court system. One notable effort resulted in a report authored by the New Hampshire Supreme Court Task Force on Self-Representation. Their statistics showed that in well over half of the domestic relations cases, at least one party was self-represented. Though our Task Force did not gather specific statistics, anecdotal evidence strongly suggests that the proportion of self-represented litigants is of similar proportions in Iowa. For example, information pulled from a random survey of a week of district court schedules in Woodbury County (district judges only), showed there were 72 cases where at least one party was not represented by counsel out of a total of 125 cases set for that week, or 58% of the cases (week of June 7, 2004). Other judges and court personnel report similar information. In addition to the New Hampshire project, the Task Force reviewed the efforts of Idaho and Minnesota to establish guidelines (“protocols”) for judges hosting pro se litigants in their courtrooms and the establishment of ethical rules authorizing limited representation (“unbundled legal services”) by lawyers in states such as Florida, California and Nevada. Members of the Task Force have also reviewed numerous articles on various aspects of the pro se issue and consulted with staff of the American Judicature Society and William Hornsby, a leading writer in the area and a member of the ABA Standing Committee on the Delivery of Legal Services. A majority of the Task Force also attended the Bench-Bar conference in Okoboji in May of 2004, where a major focus of the gathering was the challenge of self-represented litigants in court. Task Force members found the presentation by the manager of the Hennepin County, Minnesota Self Help Center (court based) extremely helpful.

The New Hampshire Report identified seven areas where specific recommendations were made: (1) Expanded access to low-cost legal services; (2) Limited representation (unbundling); (3) Case Managers; (4) Public access to forms and information; (5) Alternative dispute resolution; (6) Protocols for judges and staffs; (7) Simplified court rules. Our Task Force has concentrated our efforts on addressing access to forms, unbundled legal services and protocols. We will address our support for the expansion of access to legal services for Iowans who cannot afford them in the Full Funding recommendation and discuss case managers in the context of effective use of forms provided to the public. Alternative dispute resolution and simplification of court rules are being addressed by other stakeholders in the court system. We also recognize that, in certain respects, our recommendations may have a certain district court bias in the sense that we do not address at any length some of the unique problems that judges and lawyers face in courts with high volumes and mostly self-represented litigants such as traffic court and small claims. Though our endorsement of unbundled legal services could certainly be helpful in these areas, we also realize that most counties have developed their own forms and procedures for these cases. We also have not addressed juvenile court, where parties have a right to court-appointed counsel, and criminal court where, in addition to the right to court-appointed counsel, local practice and appellate court cases have already weighed in heavily on the issue of self-representation.

SUMMARY

The Joint Task Force Recommends:

I. Accessible Forms, Instructions and Information.

The Supreme Court of Iowa should promulgate and disseminate required forms, instructions, and information sheets that will provide pro se litigants with basic information and assistance on certain family law matters. Judicial districts should be required to experiment with different means of providing assistance to pro se litigants. (Pages 4 - 6).

II. Clear Directives for Pro Se Parties and Flexibility for Judges.

Self-represented parties should be given clear directives as to what is expected of them when they appear in front of a judge. Judges must be given the flexibility to intervene in the presentation of evidence. The Supreme Court of Iowa should adopt and promulgate a model set of clear, written directives for self-represented litigants that are made available to them as early as practical in the litigation process. Judicial Districts should be required to develop procedures, such as pre-trial conferences, to ensure that pro se litigants are prepared to present their cases. The Code of Judicial Conduct and the Rules of Evidence should be amended to provide judges guidance and flexibility in presiding over matters involving pro se litigants. (Pages 7 - 9).

III. Facilitate Limited Legal Representation (Unbundled Legal Services).

Iowa Rule of Professional Conduct 31: 1.2(c), the Iowa Rules of Civil Procedure, and local court rules should facilitate and guide limited legal representation of clients. Recommended changes include: (1) Requiring a written agreement delineating the agreed-upon scope of services and acknowledging the client's consent; (2) Clarifying ethics rules regarding an attorney's communications with an opposing party who has received limited legal representation; (3) Clarifying ethics rules in limited representation cases regarding an attorney's requirement to conduct conflict checks; (4) Amending procedural rules with regard to preparation of court documents, appearances and withdrawals to facilitate unbundled legal services; (5) Bar Association sponsored education on the issues surrounding limited legal representation. (Pages 10 - 14)

IV. Full Funding of Legal Aid Services.

Increased private and public funding is needed to maintain and expand legal services for low income Iowans. The bench and bar should take steps necessary to work for and maintain sufficient funding for civil legal aid to allow low-income Iowans reasonable access to legal services. The Supreme Court of Iowa should adopt a pro hac vice rule that would require the

payment of \$250 per lawyer per case for admission pro hac vice. Proceeds from this fee should go to existing legal aid entities. (Pages 15 - 16).

I. Accessible Forms, Instructions and Information

Recommendation: The Supreme Court of Iowa should promulgate and disseminate forms, instructions, and information sheets that will provide pro se litigants with basic information and assistance on certain family law matters.

Although the court system works best when both parties are represented by attorneys, the current reality is that frequently one and often both parties are appearing pro se. These pro se parties are using forms they have obtained from various sources. More recently the internet has become a major source of forms. Frequently the forms found are more appropriate for use in other states. As a result, judges spend additional time and effort determining whether the paper that was filed meets the requirements of Iowa law. For example, a judge may try to determine whether a person seeking custody has alleged the appropriate jurisdictional requirements, oftentimes requiring repeated interventions to obtain basic information. Incomplete or indecipherable court documents may add to the problem. Counsel for the opposing party may have similar problems in attempting to determine what the pro se party is seeking. Court staff also face increased demand from pro se litigants with frequent questions about how to file a case, seeking forms or instructions.

Forms that are state specific and include appropriate information can address some of these problems. Forms are helpful to guide pro se litigants in providing the information the court (and opposing party) needs to make a decision in the case. They allow court staff to point to the forms and tell the litigant what is needed, uniformly and with less expenditure of time. Forms make it much easier for the judges to review the pro se pleadings. They know where to find the information, and do not have to wonder each time they look at pro se pleadings what basic information is missing or where that information may be buried in the rambling statements. The forms and instructions can inform a pro se party that they cannot or should not be filing the case or motion. For example, a form can prompt a pro se litigant to state how long the person has resided in Iowa and the instruction can note that a dissolution of marriage cannot usually be filed before a person has resided in Iowa for at least one year. Without the information provided in the instruction and the specific request included in the form, the pro se party will be more likely to misunderstand the requirements for filing a dissolution action.

Many states have addressed this issue by providing various forms to assist pro se litigants, primarily in the family law area. See the attached link for a listing of the states. http://www.ncsconline.org/WC/Publications/KIS_ProSeCtFormsStLnks.pdf. Although there has been some concern expressed that the availability of forms would increase pro se filings, the findings in at least one state do not support that concern. See “Caught in the Middle”, 2003 Report and Recommendations of the North Carolina Bar Association Pro Se Task Force to the Board of Governors for the North Carolina Bar Association, p. 14. The Conference of Chief Justices and Conference of State Court Administrators in a Final Report of the Joint Task Force on Pro Se Litigation, submitted on July 29, 2002, noted that many courts have been prompted to move towards greater reliance on sample/model forms, and to periodically revise those forms and their instructions to make them more comprehensible to laypersons. The Report encourages

a continuance of this trend and states: “state Supreme Courts and Judicial Councils should be encouraged to use their rule-making authority to advance the use of standard forms”. See Report, p. 12. In 1996, the Iowa Supreme Court Commission on Planning for the 21st Century, noted in Recommendation 4.3 that the Judicial Branch should develop education programs designed to assist persons not represented by a lawyer. The report stated that, “The court should develop informational materials in easy-to-understand language to aid pro se litigants”. See also American Judicature Society, Revised Pro Se Policy Recommendations, p. 6.

The area in which most pro se appearances are found seems to be in family law.¹ In order to facilitate participation on basic issues, the committee recommends that forms be drafted in the area of family law, including a dissolution of marriage petition with and without children, custody petition, petition to modify child support, sample decrees, and also include basic forms to facilitate meeting procedural requirements such as filing in forma pauperis, serving other parties, and an answer form. In addition to the forms, instructions must be included in order to assist pro se persons with filling out the forms. Forms alone without some instructions will likely generate additional questions for court staff. Most of the websites that include forms have some instructions to assist in completing the forms.

The forms should be approved by the Iowa Supreme Court and, if possible, hosted on its website. A petition for name change is already included on the court website, www.judicial.state.ia.us/faq/misc.asp. The court does not need to prepare the forms, but could appoint a committee to approve the forms and instructions. Bar committees or sections, as well as interested parties such as law schools or legal aid, could submit forms and instructions for review and inclusion.

Forms don’t work without assistance and monitoring. A natural result of providing forms is additional questions. In addition to these measures, the committee believes that judicial districts or counties within judicial districts should experiment with different mechanisms to improve the handling of cases involving pro se litigants. Various ideas have been tried around the country. These include a self-help desk, presentations by attorneys on a particular topic area followed by brief individual consultations, personal assistance to help fill out forms, personal assistance to access information on a website, placement of computers to be available for use by the public and others. Coordination of these efforts should be encouraged so that best practices can be shared around the state.²

Recommendations:

1. The Iowa Supreme Court should adopt model family law forms and instructions for use by litigants and make them available on the court website, as well as in hard copy form for distribution at the Clerk of Court’s office and other appropriate locations. Parties who are not represented should be required to use the court-approved forms.

2. The model forms should be accompanied by easily understood instructions that will assist pro se litigants as they complete the form.

3. Model orders should be made available and used in cases where there are pro se parties to assist the pro se parties in preparing a case for trial.

4. The Iowa Supreme Court should require judicial districts to experiment with different means of providing assistance to pro se litigants, such as self help desks, videotapes on court procedure, personal assistance to fill out forms and others.

II. Clear Directives for Pro Se Parties and Flexibility for Judges

Recommendation: Self-represented parties should be given clear directives as to what is expected of them when they appear in front of a judge. Judges must be given the flexibility to intervene in the presentation of evidence.

In addition to forms, further intervention by the court system is necessary to maximize preparation for trial or final hearing by pro se litigants. Various reports have noted that providing forms only begins the process. As the American Judicature Society, Revised Pro Se Policy Recommendation, p. 8 noted: “No matter how small, a court system should be able to initiate uniform court protocols to make case processing more efficient.” In particular, specific orders should be issued which direct that the parties prepare lists of witnesses and exhibits, and describe the issues that are contested.³ Case progress conferences are strongly recommended for cases with pro se litigants. At the conference, a neutral third party, such as a clerk or volunteer lawyer, would check to make sure that all information required by the order has been prepared. Once the neutral third party finds that appropriate information has been submitted, the case will be set for trial. If mediation is available in the area, mediation must be completed before the case is set for trial. The court could exercise its authority in cases where there is willful noncompliance with these directives.

Some states have recommended that formal protocols be enacted to guide judges in dealing on a consistent basis with self-represented parties. The value of such guidelines lay in giving judges a list of what is permissible when assisting a self-represented party and providing predictability for lawyers representing clients against self-represented parties as to what to expect from the judge.⁴ However, recommending that judges instruct a pro se party as to burdens of proof and all but the basic evidentiary rules at the outset of the case may be too time consuming in a high volume court setting. Further, the represented party or his or her lawyer may sense a lack of neutrality in a judge providing this level of help to the party who has chosen to represent him or herself. These problems may be ameliorated to some extent by providing written guidelines to self-represented parties before the anticipated proceeding, such as at the pre-trial conference described below.

The concern over the lack of the appearance, at least, of judicial neutrality is most pronounced when a judge is either contemplating or requested to question a witness or solicit a certain type of evidence on behalf of a self-represented party.

Iowa R. Ev. 5.614(b) allows a court “for good cause in exceptional circumstances” to call its own witness. Iowa R. Ev. 5.614(a) allows a court to question a witness “when necessary in the interest of justice.” In Mills v. State, 383 N.W.2d 574 (Iowa 1986), the Court addressed a trial court’s discretion to question a witness. It noted that the loss of the appearance of impartiality was a major risk to a judge “joining the fray.” The Iowa Code of Judicial Conduct only addresses this issue in the most general fashion.

However, there is an increasing amount of thoughtful legal literature that underscores the substantial risk to the judge's ultimate duty, pursuing justice between the parties, that can be the unintended result of judicial non-participation in the name of neutrality, especially where parties are self-represented.⁵ Thus, especially in an equity case where neither party is represented and the rules of evidence are much less strict, it may be appropriate or even best practice for a judge to ask questions of the parties or their witnesses or inquire as to whether a party has documentation, such as an income tax return, in their possession. Further, with the consent of the parties, a judge may even do the majority of the questioning of the parties and then allow them to supplement with other information they believe is relevant. This has the advantages of moving the proceeding along, getting to the legally relevant facts and modeling proper questioning techniques for the parties when they call witnesses. A judge may also find that, for many of the same reasons, the represented party may prefer that the judge conduct the questioning of the self-represented party. The judge must still allow the non-testifying party or his or her lawyer to cross-examine the other party and should remind the pro se examiner that cross-examination is not a time for them to testify or argue with the witness.

This basic approach finds support in Standard 2.23 of the ABA Standards of Judicial Administration which states that, "[W]hen a litigant undertakes to represent himself, the court should take whatever measures may be reasonable and necessary to insure a fair trial." Although consent of the parties to these procedures is preferable, the Task Force agrees with the Commentary to Standard 2.23 that, "it is ultimately the judge's responsibility to see that the merits of a controversy are resolved fairly and justly. Fulfilling that responsibility may require that the court, while remaining neutral in consideration of the merits, assume more than a merely passive role in assuring that the merits are adequately presented." This may include the judge asking questions or suggesting the presentation of evidence "as may be necessary to supplement or clarify the litigant's presentation of the case," especially where there is a concern that this necessary information may not otherwise get into the record. The key to the appropriateness of judicial involvement in the presentation of the evidence is the judge maintaining a neutral demeanor in carrying out the task.

However, the Task Force believes that the most important factor in integrating self-represented parties successfully into the court process is a system of clear expectations that the parties are required to follow before they get to see a judge. Thus, mandating use of form pleadings that are available and insistence on written pre-trial statements is essential. It is also important that any contested proceeding that is anticipated to take more than an hour or two be preceded by at least a week before with a pre-trial conference conducted by a person cloaked with the authority of the court to ensure compliance with mandatory discovery and either resolve or alert the court to disputes that must be settled before trial.

We should view the challenge of self-represented litigants as an opportunity to develop a more flexible, yet efficient system to administer justice to all persons who come before the court, whether with or without a lawyer. The expansion of self-represented parties exposes for us in the court system the flaws in our day-to-day administration of cases. Through training and

experience, lawyers have learned how to adapt to these flaws. A pro se party attempting to prosecute his or her only case is not likely to be as adaptive.

Recommendations:

1. The Supreme Court of Iowa should adopt and promulgate a model set of clear, written directives for self-represented litigants that are made available to them as early as practical in the litigation process. These should include an explanation of the process and the expectations the judge will have of them at the time of hearing. These expectations should, where possible, be accompanied by a pre-trial conference where a judge or another person cloaked with the authority of the court can help determine the issues and monitor compliance with discovery and other expectations. Both represented and self-represented parties must be made aware that the judge has the final discretion as to when and how to solicit evidence to carry out his or her role to provide each litigant a fair trial with a just and legal result.

2. The Court should direct each district to develop procedures, such as pre-trial conferences, to ensure that pro se litigants are prepared to present their cases.

3. The Court should adopt ABA Standard 2.23 of the ABA Standards of Judicial Administration and the Commentary as part of the Iowa Code of Judicial Conduct.

4. The Court should amend Rule of Evidence 5.614(b) textually or by comment to define “necessary in the interest of justice” to include judicial intervention to place material facts in the record that would not otherwise be made part of the record without that intervention.

III. Facilitate Limited Legal Representation (Unbundled Legal Services)

Recommendation: Iowa Rule of Professional Conduct 31: 1.2(c), the Iowa Rules of Civil Procedure, and local court rules should facilitate and guide limited legal representation of clients.

Iowa Rule of Professional Conduct 31: 1.2(c), effective July 1, 2005, provides: “A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.”

Promulgating forms and directions is an important first step in addressing the challenges posed by the proliferation of litigants who represent themselves. Pro se litigants, however, often need more help than the forms and directions can provide. Two examples are deciding whether to commence a legal action and what to include in the pleadings, and presenting evidence in court. These are tasks traditionally performed best by attorneys. Legal services may be less available, however, as it becomes more expensive for lawyers to provide legal services and for clients to afford them. We believe that we must shift from thinking of legal services as a dichotomy of represented/unrepresented, or “all or nothing,” to conceptualizing and facilitating legal services delivery along a continuum. Indeed, Iowa attorneys already engage in limited scope representation where, for example, an attorney is court-appointed to handle a contempt of court hearing for a client who has a multitude of divorce-related issues. Rule 31:1.2(c) recognizes this reality. Our report and recommendations seek to encourage and regulate the practice. We are not limiting our recommendations to the family law area because the Rule is not so limited.

We believe that many more prospective clients would seek lawyers’ services if they were free to contract with lawyers for the completion of limited and designated tasks. Called “unbundled legal services” in those states that have followed this trend, these may include consultation (including the provision of legal information as well as legal advice); drafting of legal documents; and representation at some, but not all, court proceedings. Limited representation by the private bar offers a way to expand legal services to people of limited financial means. This will leave these litigants better prepared and should relieve judges and other court staff from the pressures of giving advice or advocacy. It can also offer lawyers an opportunity to adapt a law practice that offers “all or nothing” services into one in which they may enter agreements with litigants to limit the scope of their representation to discrete legal tasks, as they often do with their transactional clients.

We believe that facilitating unbundled legal services will increase lawyers’ willingness to participate in pro bono programs administered by non-profit organizations, such as bar associations and legal aid, and by the courts. To encourage such participation, we have recommended more relaxed standards for pro bono attorneys providing unbundled legal service in the specific areas of document certifications and whether written agreements are required.

Not all Iowa attorneys will be comfortable with limiting the scope of legal representation, and each attorney should weigh the risks and benefits before making the shift. No attorney

should be forced into a limited representation practice. While attorneys might capture some of the client base that would otherwise go unrepresented, there might be unacceptable costs. A client who merely came for consultation would nonetheless be a “client” for successive conflict of interest purposes, for example. Other issues, such as the potential impact on malpractice insurance premiums, should be explored and perhaps communicated to attorneys through the Bar Association. However, for those lawyers who are willing to offer legal services along a continuum, it is necessary to clarify or amend existing rules of professional conduct and civil procedure to define the parameters of unbundled legal services and to give guidance on the ethical⁶ and procedural issues it presents. Fortunately, as these policy questions are discussed and resolved, those charged with drafting rule changes have access to the rules adopted by states that have embraced unbundled services as well as to resources such as the American Bar Association’s Division of Legal Services and the American Judicature Society.

The Task Force has identified five important issues that arise out of the approval of limited representation by lawyers. We have reviewed how other states have responded to those challenges and have chosen approaches that we believe are the soundest. They are:

1. Requiring a written agreement delineating the agreed-upon scope of services and acknowledging the client’s consent.

While Rule 31: 1.2 (c) approves of agreements limiting the scope of representation if reasonable and upon the client’s consent, it does not address whether these agreements need be, or should be, in writing and whether their existence may or should be provided to the court or others. We recommend that a comment to Iowa Rule of Professional Conduct 31: 1.2(c) make explicit that limited scope legal representation may be provided, including information, advice, consultation, preparation of legal documents, and court appearances. Furthermore, we recommend, with two exceptions, that the court require that the agreement for limited representation be in writing, and suggest for consideration a form promulgated by the Supreme Court for this purpose, similar to that used in Maine. (Appendix B) As one exception, we recommend that written agreements for limited legal service representation should not be required in connection with services provided by a lawyer employed by a nonprofit legal services program or participating in a nonprofit or court-annexed legal services program, where lawyers provide information or advice or prepare court-approved legal forms. The second exception would not require a written agreement when the scope of representation is limited to telephone consultations. We recommend that Iowa adopt Wyoming’s approach as set out in Appendix A. Finally, we recommend that agreements for limited legal services not be required to be disclosed to the court or others, with the exceptions addressed below under preparation of pleadings and appearances and withdrawals.

2. Clarifying ethics rules regarding an attorney’s communications with an opposing party who has received limited legal representation.

Iowa Rules 31: 4.2 and 4.3 do not directly address the ethics of communicating with a person who has had limited legal representation. We recommend that these rules be clarified to

allow counsel to presume the opposing party is unrepresented (and thus allow counsel to communicate with the opposing party) unless the lawyer for the otherwise self-represented party informs counsel otherwise.

3. Clarifying ethics rules regarding conflicts of interests ethical requirements in limited representation cases.

Iowa Rule of Professional Conduct 31: 6.5 excuses a lawyer who provides only short-term and limited legal services through a program run by non-profit organization or a court, without expectation of continuing representation, from the strictures of conflicts checks, stating instead that they are not prohibited from providing services unless they have actual knowledge of a conflict. The apparent aim of this rule change is to remove a potential disincentive that prevents lawyers from participating in such programs. We recommend that the scope of the excuse anticipated by the proposed rule is sufficient, that is, that no such excuse should be provided for attorneys who provide limited scope representation outside of such non-profit or court-sponsored programs.

4. Making procedural rule changes to facilitate unbundled legal services.

We recommend that the Supreme Court initiate changes to certain identified rules of procedure, and promulgate forms as indicated, to address the following areas of practice: preparation of pleadings and other documents filed in court; appearances; presence in court; and withdrawals.

a. Preparation of court documents. We believe that judges often prefer to know whether pleadings were prepared by an attorney, in part to determine how much leeway to give an otherwise unrepresented party. We recommend that Iowa R. Civ. P 1.411 (Caption and signature) and 1.413 (Verification abolished; affidavits; certification) be changed to reflect different signature and certification requirements for attorneys who provide limited legal services by drafting pleadings and other court documents. These limited scope representation signature and certification requirements should delineate two different standards, depending on whether the attorney is drafting the documents under the auspices of a court or legal aid-sponsored program or under a private, for-fee agreement for limited legal services.

Specifically, we recommend that a court-filed document that has been prepared by a private, for-fee attorney indicate clearly that it was prepared with the assistance of an attorney, name the attorney, and indicate the extent of the representation. Furthermore, the attorney should be required to sign the pleading, which certifies that the pleading is grounded in fact and law and is not for an improper purpose. In so doing, the attorney is entitled to rely on the otherwise pro se party's representation of facts unless the attorney has reason to believe the recitation is false or materially insufficient, in which case the attorney must make a reasonable inquiry into the facts. Colorado St. RCP 11(b) and NV. St. 8 Dist. Ct. R. 5.28(a) (included in Appendix A) and are good models for this approach. Other states that have authorized this

practice take different approaches on this question.

We recommend a slightly different requirement for attorneys who prepare court documents as part of services offered by a nonprofit legal services organization or a volunteer component of a nonprofit or court-annexed legal services program. In this instance, the court document should indicate that it was prepared by an attorney and name the program in which the attorney volunteered, but should not require the attorney to be identified or to certify the pleading as grounded in fact or law and for an improper purpose. Such a notation may be made by means of a legend stamped at the end of the document much like a certificate of service by mail. For guidance in drafting this rule change, see the Colorado rules included in Appendix B.

b. Appearances. We believe that changes to Iowa R. Civ. P 1.404 (Appearances) should be made to reduce, if not eliminate, the risk that an attorney who has reached an agreement for limited legal services for a limited court appearance be expected or required by a clerk of court or judge to provide representation that exceeds the agreed-upon limited scope.

We recommend Washington's approach and urge its adaptation for our use. Included in appendix A, Washington Court Rules for Superior Court, 70.1(b) provides for a "notice of limited appearance." To be filed and served prior to or simultaneous with the proceeding, this notice acknowledges that the attorney's role may be limited to one or more individual proceedings in the action. It further clarifies that service upon that attorney is valid only in conjunction with the specific proceedings for which the attorney appeared.

We recommend that this rule apply equally to attorneys who provide limited legal services either on a private for-fee basis or under the auspices of a pro bono program.

c. Withdrawals. When an attorney has filed an appearance, albeit for limited purposes, it is wise to provide a mechanism to signal clearly to courts, clerks, parties and other attorneys that the attorney's work on a legal matter is complete and therefore that leave of court to withdraw is not required. We recommend that Iowa R. Civ. P. 1.404 (Appearances) be amended to facilitate such a withdrawal and provide such notice.

In our review of other states' rules that have addressed these matters, we again find Washington's approach to be best, if modified to incorporate certain aspects of Nevada's parallel rule. Washington Court Rules for Superior Court, 70.1(b) (included with Appendix A) provides that an attorney may file a "notice of completion of limited appearance" at the conclusion of any limited representation proceedings. The notice must contain certain client contact information. Nevada further requires that the client be given notice of the withdrawal, and that a "Substitution of Attorney" be filed with the court, for reason that the attorney is withdrawing because the attorney has completed work under a limited scope legal services agreement. The "Substitution" notice should be served on the client, the clerk, and all other parties on their action. Unlike Nevada's rule, however, we do not recommend that a copy of the limited services agreement be

attached to the “Substitution of Attorney” form. Finally, we recommend that attorneys be required to forward any court orders, scheduling orders or any other documents received after withdrawal to the client or new attorney.

5. Educating the Bar about Unbundling

Given the general bar’s unfamiliarity with unbundled legal services and the necessity for uniformity in practice, we recommend that the Iowa State Bar Association offer a series of regional seminars to explain the concept of limited representation, the ethical considerations involved and the regulations necessary to facilitate those wishing to avail themselves of this option while protecting the interests of the courts and the public.

Recommendations:

1. The Supreme Court of Iowa should amend the Iowa Rules of Professional Conduct to require a written agreement delineating the agreed-upon scope of services and acknowledging the client’s consent in limited representation cases except where the representation is in connection with services provided by a lawyer employed by a nonprofit legal services program or participating in a nonprofit or court-annexed legal services program, and for all other attorneys, when phone consultation is the extent of legal services provided.

2. The Court should clarify ethical rules regarding an attorney’s communications with an opposing party who has received limited legal representation and the requirement to conduct conflict checks.

3. The Court should amend procedural rules with regard to preparation of court documents, appearances and withdrawals to facilitate unbundled legal services.

4. The Iowa State Bar Association should sponsor educational events on the issues surrounding limited legal representation.

IV. Full Funding and Support for Civil Legal Aid

Recommendation: Increased private and public funding is needed to maintain and expand legal services for low income Iowans.

There are more and more litigants appearing pro se in Iowa's courts. Because of their unfamiliarity with the law and court procedures, pro se litigants have trouble negotiating the court system and require judicial staff to spend additional time explaining and assisting litigants through the process. From information pulled from a random survey of a week of district court schedules in Woodbury County (district judges only), there were 72 cases where at least one party was not represented by counsel out of a total of 125 cases set for that week, or 58% of the cases (week of June 7, 2004). Other judges and court personnel report similar information. Legal services programs serving low-income Iowans are forced to routinely turn away large numbers of applicants for services due to limited staff or are only able to provide clients with advice over the telephone or through a pamphlet. While no Iowa specific survey has been done to gauge the unmet need for civil legal services, an American Bar Association national study and surveys in other states have found that legal services and pro bono programs generally meet only from 25% to 30% of the overall need. Although the increase in pro se litigants may be attributable to many factors, the limited and decreasing availability of legal services to low-income Iowans is clearly a significant factor.

Over the past two decades, federal funding from the Legal Services Corporation for legal services for low-income Iowans has been declining. In real dollars (cost of living adjusted) the current federal investment equals roughly half of 1980 funding levels. Although there have been vigorous efforts to supplement funding from other sources, such as state and local grants, community funding, private donations and Interest on Lawyer Trust Accounts, the funding has not kept up with the need. During the last few years, a combination of factors has led to a decrease in funding available to provide legal services to Iowa's low-income community. As a result, there are now fewer attorneys available to provide legal services to Iowa's most needy population than at any time since Iowa Legal Aid's predecessor organization, the Legal Services Corporation of Iowa, was founded in 1977. While there are measures that can be taken and have been recommended to permit better access to the courts for pro se litigants, representation by a competent attorney is still the best alternative. However, decreased access to an attorney forces many desperate litigants to approach the legal system pro se. Consequently, additional funding must be obtained to improve the likelihood that those who are not financially able to hire a private attorney can access an attorney either through a legal services program or through a pro bono project.

One of the keys to success in efforts to develop more resources for the provision of legal services to low-income people is increasing awareness of the work that is done by legal aid programs. By actively promoting the work of legal aid and the contributions that access to the system of justice make to the quality of life in the community and to the justice system, additional support can be generated in both public and private avenues. The bar and the courts are the most important voices in enhancing this awareness.

The Iowa State Bar Association has continued to be supportive of efforts to increase funding for legal services. It has consistently supported state funding for legal services and has encouraged lawyers to make financial contributions to support legal aid. Due to the need, this year a grant in the amount of \$1.2 million is being requested from the state. Iowa Legal Aid has embarked on a significant fundraising campaign to raise funds from Iowa lawyers and from the larger community. These activities are fully supported by the committee. Additional avenues for obtaining more consistent, stable funding are necessary. Various alternatives have been tried in other states to provide additional and more consistent revenue streams. For example, some states have added a surcharge/increase to bar dues or attorney registration fees, to pro hac vice fees, or to court fees/fines. All of these alternatives provide a more secure funding source. The Iowa State Bar Association is also investigating the possibility of establishing a legal services insurance company where profits would go to fund legal services for low-income Iowans.

The courts also play a vital role in increasing awareness of the problem. The Iowa Supreme Court has established a mandatory Interest on Lawyers' Trust Account program which helps support civil legal services. Judges have been supportive of civil legal services in various ways, including providing letters of supports for grants and encouraging pro bono activities. Courts in other states have also taken active roles with regard to support for state funding for civil legal aid. For instance, courts in several states have, by court rule, created a pro hac vice fee to benefit civil legal aid. Supreme courts in several states have created access to justice commissions to more directly study the problems confronted by low-income people in accessing the justice system in those states. Others have created a task force on civil legal aid funding. Other ways to highlight the issues is involvement in events that address issues of access to the courts for low-income people such as keynoting conferences, participation in local events, etc. These activities could focus on the issue of ways to secure more consistent funding for civil legal services.

Recommendations:

1. The Task Force recommends that bench and bar should take whatever steps are necessary to work for and maintain sufficient funding for civil legal aid to allow low-income Iowans reasonable access to legal services. Alternatives adopted by other states should be considered for adoption in Iowa.
2. The Task Force recommends that the Supreme Court of Iowa adopt a pro hac vice rule that would require the payment of \$250 per lawyer per case any time that an attorney not licensed to practice in Iowa seeks admission pro hac vice. Proceeds from this fee should go to existing legal aid entities.
3. The Iowa State Bar Association shall encourage and educate its membership in providing limited legal representation to low and moderate income Iowans.

V. Conclusion

This report represents just the first step in meeting the challenge of pro se representation in Iowa courts. It is the product of many hours of study, discussion and drafting. The Iowa State Bar Association is preparing a bound archive of many of the materials that we have consulted throughout this process. Copies will be provided to the Iowa Supreme Court and the Iowa Judges Association.

However, the process cannot stop here. We envision an implementation phase of our recommendations directed by a commission or task force established by the Supreme Court of Iowa with representation from the staff of the Court, lawyers, judges, clerks of court and, possibly, citizens interested in the issue of pro se litigation. This group would monitor and recommend approval of forms, recommend changes to Court rules and monitor the efforts of judicial districts to comply with the Task Force's recommendations.

We request that the Iowa Judges Association and the Iowa State Bar Association adopt resolutions approving the report of the Task Force and forwarding it on to the Supreme Court of Iowa for approval and implementation.

It is our sincere belief that the challenge of increasing numbers of pro se litigants in our courts can no longer be met with a piecemeal response. Innovative, organized leadership from the bench and bar under the auspices of our Supreme Court is necessary to maintain equal justice for all who enter our courts.

ENDNOTES

¹The committee determined not to include small claims court or domestic abuse petitions under Iowa Code Chapter 236 in these discussions.

² Iowa Legal Aid has obtained partial funding for a pro se coordinator position. If the remaining funds are secured, this position will be available to assist the various volunteer groups working on this issue.

³ A sample order is included in the Appendix as Exhibit E.

⁴ A copy of the [Proposed Protocol to be Used by Idaho Judges During Hearings Involving Self-Represented Litigants](#) appears at Appendix D.

⁵ See “The Disconnect Between the Requirements of Judicial Neutrality and Those of the Appearance of Neutrality when Parties Appear *Pro Se*: Causes, Solutions, Recommendations and Implications.” 17 Georgetown Journal of Legal Ethics, 423 (Fall 2004).

⁶ For example, the adopted rules seem to require a full-scale conflict of interest check by a private attorney even if the representation is limited to providing limited legal information during a phone call.

Appendix A

Limited Scope of Representation

1. Maine Professional Conduct Rule 3.4: Commencement and Continuation of Representation

(i) Limited Representation. A lawyer may limit the scope of representation if the limitation is reasonable under the circumstances and the client provides informed consent after consultation. If, after consultation, the client consents in writing (the general form of which is attached to these Rules), an attorney may enter a limited appearance on behalf of an otherwise unrepresented party involved in a court proceeding. A lawyer who signs a complaint, counterclaim, cross-claim or any amendment thereto which is filed with the court, may not thereafter limit representation as provided in this rule.

See <http://www.mebaroverseers.org/PDF/Code%20of%20Professional%20Responsibility.pdf>

2. Wyoming Rule of Professional Conduct 1.2: Scope of Representation

(c) A lawyer may limit the objectives or means of the representation pursuant to Rule 6.5, or if :

(1) the limitation(s) are fully disclosed and explained to the client in a manner which can reasonably be understood by the client; and

(2) the client consents thereto.

(3) Unless the representation of the client consists solely of telephone consultation, the disclosure and consent required by this subsection shall be in writing.

(4) The use of a written notice and consent form approved by, or substantially similar to, a form approved by the Board of Judicial Policy and Administration shall create the presumptions that:

(a) the representation is limited to the attorney and the services described in the form; and

(b) the attorney does not represent the client generally or in any matters other than those identified in the form.

Communication with Unrepresented Party

3. Maine 3.6 Conduct During Representation

(f) Communicating With Adverse Party. During the course of representation of a client, a lawyer shall not communicate or cause another to communicate on the subject of the representation with a party the lawyer knows to be represented by another lawyer in that matter unless the lawyer has the prior consent of the lawyer representing such other party or is authorized by law to do so. An otherwise unrepresented party to whom limited representation is being provided or has been provided in accordance with Rule 3.4(i) is considered to be unrepresented for purposes of this rule, except to the extent the limited representation attorney provides other counsel written notice of a time period within which other counsel shall communicate only with the limited representation attorney.

4. Florida 4-4.2 Communication With Person Represented by Counsel

(b) An otherwise unrepresented person to whom limited representation is being provided or has been provided in accordance with Rule Regulating the Florida Bar 4-1.2 is considered to be unrepresented for purposes of this rule unless the opposing lawyer knows of, or has been provided with, a written notice of appearance under which, or a written notice of time period during which, the opposing lawyer is to communicate with the limited representation lawyer as to the subject matter within the limited scope of the representation.

Preparation of Court Documents

5. Colorado 11(b): Limited Representation. An attorney may undertake to provide limited representation in accordance with Colo.RPC 1.2 to a pro se party involved in a court proceeding. Pleadings or papers

filed by the pro se party that were prepared with the drafting assistance of the attorney shall include the attorney's name, address, telephone number and registration number. The attorney shall advise the pro se party that such pleading or other paper must contain this statement. In helping to draft the pleading or paper filed by the pro se party, the attorney certifies that, to the best of the attorney's knowledge, information and belief, this pleading or paper is (1) well-grounded in fact based upon a reasonable inquiry of the pro se party by the attorney, (2) is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law, and (3) is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. The attorney in providing such drafting assistance may rely on the pro se party's representation of facts, unless the attorney has reason to believe that such representations are false or materially insufficient, in which instance the attorney shall make an independent reasonable inquiry into the facts. Assistance by an attorney to a pro se party in filling out pre-printed and electronically published forms that are issued through the judicial branch for use in court are not subject to the certification and attorney name disclosure requirements of this Rule 11(b).

Limited representation of a pro se party under this Rule 11(b) shall not constitute an entry of appearance by the attorney for purposes of C.R.C.P. 121, section 1-1 or C.R.C.P. 5(b), and does not authorize or require the service of papers upon the attorney. Representation of the pro se party by the attorney at any proceeding before a judge, magistrate, or other judicial officer on behalf of the pro se party constitutes an entry of an appearance pursuant to C.R.C.P. 121, section 1-1. The attorney's violation of this Rule 11(b) may subject the attorney to the sanctions provided in C.R.C.P. 11(a).

6. Nevada Rules of Practice for the Eighth Judicial District Court, Part V. Family Division Matters; Guardianships. (NV. St. 8 Dist. Ct. R. 5.28(a))

5.28(a) An attorney who contracts with a client to limit the scope of representation shall state that limitation in the first paragraph of the first paper or pleading filed on behalf of that client. Additionally, if the attorney appears at a hearing on behalf of a client pursuant to a limited scope contract, the attorney shall notify the court of that limitation at the beginning of that hearing.

Appearances

7. Washington Court Rules for Superior Court 70.1(b) CRLJ 70.1 – Appearance by Attorney.

(b) Notice of Limited Appearance. If specifically so stated in a notice of limited appearance filed and served prior to or simultaneous with the proceeding, an attorney's role may be limited to one or more individual proceedings in the action. Service on an attorney who has made a limited appearance for a party shall be valid (to the extent permitted by statute and rule 5(b)) only in connection with the specific proceedings for which the attorney has appeared, including any hearing or trial at which the attorney appeared and any subsequent motions for presentation of orders. At the conclusion of such proceedings the attorney's role terminates without the necessity of leave of court, upon the attorney filing notice of completion of limited appearance which notice shall include the client information required by rule 71(c)(1).

See <http://www.wsba.org/info/crlj70-1.doc>

Withdrawals

8. Washington Court Rules for Superior Court 70.1(b) CRLJ 70.1 – Appearance by Attorney.

(b) Notice of Limited Appearance. If specifically so stated in a notice of limited appearance filed and served prior to or simultaneous with the proceeding, an attorney's role may be limited to one or more individual proceedings in the action. Service on an attorney who has made a limited appearance for a party shall be valid (to the extent permitted by statute and rule 5(b)) only in connection with the specific

proceedings for which the attorney has appeared, including any hearing or trial at which the attorney appeared and any subsequent motions for presentation of orders. At the conclusion of such proceedings the attorney's role terminates without the necessity of leave of court, upon the attorney filing notice of completion of limited appearance which notice shall include the client information required by rule 71(c)(1).

See <http://www.wsba.org/info/crlj70-1.doc>

9. NV. St. 8 Dist. Ct. Rules 5.28(b)

Rule 5.28. Withdrawal of attorney in limited services ("unbundled services") contract.

(b) An attorney who contracts with a client to limit the scope of representation shall be permitted to withdraw from representation before the court by filing a Substitution of Attorney with the clerk's office. The Substitution of Attorney shall state that the attorney is withdrawing from the case because the attorney was hired to perform a limited service, that service has been completed, and shall include a copy of the limited services retainer agreement between the attorney and the client. The Substitution of Attorney shall also state that the client will be representing himself or herself in proper person unless another attorney agrees to represent the client and shall contain the client's address, or last known address, and telephone number at which the client may be served with notice of further proceedings taken in the case. The attorney must serve a copy of the Substitution of Attorney upon the client and all other parties to the action or their attorneys.

Appendix B

Limited Scope of Representation

1. Maine Professional Conduct Rule 3.4(i) Attachment

Promulgation Order of May 15, 2001

(Used in conjunction with Rule 3.4(i) the following form shall be sufficient to satisfy the rule. The authorization of this form shall not prevent the use of other forms consistent with this rule.)

LIMITED REPRESENTATION AGREEMENT **To Be Executed In Duplicate**

Date:

1. The client, , retains the attorney, _____, to perform limited legal services in the following matter: _____ v. _____.

2. The client seeks the following services from the attorney (indicate by writing “yes” or “no”):

- a. Legal advice: office visits, telephone calls, fax, mail, e-mail;
- b. Advice about availability of alternative means to resolving the dispute, including mediation and arbitration;
- c. Evaluation of client self-diagnosis of the case and advising client about legal rights and responsibilities;
- d. Guidance and procedural information for filing or serving documents;
- e. Review pleadings and other documents prepared by client;
- f. Suggest documents to be prepared;
- g. Draft pleadings, motions, and other documents;
- h. Factual investigation: contacting witnesses, public record searches, in-depth interview of client;
- i. Assistance with computer support programs;
- j. Legal research and analysis;
- k. Evaluate settlement options;
- l. Discovery: interrogatories, depositions, requests for document production;
- m. Planning for negotiations;
- n. Planning for court appearances;
- o. Standby telephone assistance during negotiations or settlement conferences;
- p. Referring client to expert witnesses, special masters, or other counsel;
- q. Counseling client about an appeal;
- r. Procedural assistance with an appeal and assisting with substantive legal argument in an appeal;
- s. Provide preventive planning and/or schedule legal check-ups;
- t. Other:

3. The client shall pay the attorney for those limited services as follows:

a. Hourly Fee:

The current hourly fee charged by the attorney or the attorney’s law firm for services under this agreement are as follows:

- i. Attorney: \$
- ii. Associate: \$
- iii. Paralegal: \$
- iv. Law Clerk: \$

Unless a different fee arrangement is established in clause b.) of this paragraph, the hourly fee shall be payable at the time of the service. Time will be charged in increments of one-tenth of an hour, rounded off for each particular activity to the nearest one-tenth of an hour.

b. Payment from Deposit:

For a continuing consulting role, client will pay to attorney a deposit of \$ _____, to be received by attorney on or before _____, and to be applied against attorney fees and costs incurred by client. This amount will be deposited by attorney in attorney trust account. Client authorizes attorney to withdraw funds from the trust account to pay attorney fees and costs as they are incurred by client. The deposit is refundable. If, at the termination of services under this agreement, the total amount incurred by client for attorney fees and costs is less than the amount of the deposit, the difference will be refunded to client. Any balance due shall be paid within thirty days of the termination of services.

c. Costs:

Client shall pay attorney out-of-pocket costs incurred in connection with this agreement, including long distance telephone and fax costs, photocopy expense and postage. All costs payable to third parties in connection with client case, including filing fees, investigation fees, deposition fees, and the like shall be paid directly by client. Attorney shall not advance costs to third parties on client behalf.

4. The client understands that the attorney will exercise his or her best judgment while performing the limited legal services set out above, but also recognizes:

- a. the attorney is not promising any particular outcome,
- b. the attorney has not made any independent investigation of the facts and is relying entirely on the client limited disclosure of the facts given the duration of the limited services provided, and
- c. the attorney has no further obligation to the client after completing the above described limited legal services unless and until both attorney and client enter into another written representation agreement.

5. If any dispute between client and attorney arises under this agreement concerning the payment of fees, the client and attorney shall submit the dispute for fee arbitration in accordance with Rule 9(e)-(k) of the Maine Bar Rules. This arbitration shall be binding upon both parties to this agreement.

WE HAVE EACH READ THE ABOVE AGREEMENT BEFORE SIGNING IT.

Signature of client

Signature of attorney

2. Wyoming Rule of Professional Conduct 1.2, App.1: Notice and Consent Form.

See <http://courts.state.wy.us/RULES/Professional%20Conduct%20for%20Attorneys.html#Appendix>

NOTICE AND CONSENT TO LIMITED REPRESENTATION

NOTICE

To help you with your legal problems, a lawyer may agree to give you some of the help you want, but not all of it. In other words, you and the lawyer may agree that the lawyer will limit his representation to helping you with a certain legal problem for a short time or for a particular purpose. Limited representation is available only in civil cases.

When a lawyer agrees to help you for a short time or for a particular purpose, the lawyer must act in your best interest and give you competent help. When a lawyer and you agree that the lawyer will provide such limited help,

- The lawyer DOES NOT HAVE TO GIVE MORE HELP than the lawyer and you agreed.
- The lawyer DOES NOT HAVE TO help with any other part of your legal problem.

If short-term limited representation is not reasonable, a lawyer may give advice, but will also tell you of the need to get another lawyer.

If you agree to have this lawyer give you limited help, sign your name at the bottom of this form. The lawyer will also sign to show that he or she agrees. If you and the lawyer both sign, the lawyer agrees to help you by performing the following limited services, and need not give you any more help.

Advise you about the following issues:

Write or read and advise you about the following legal documents:

Go to court to represent you only in the following matter(s):

Attorney's Name

CONSENT

I have read this Notice and Consent form and I understand what it says. I agree that the legal services specified above are the ONLY legal help this lawyer will give me. I understand and agree that the lawyer who is helping me with these services is not my lawyer for any other purpose and does not have to give me any more legal help. If the lawyer is giving me advice, or is helping me with legal or other documents, I understand the lawyer may decide to stop helping me whenever the lawyer wants. I also understand that if the lawyer goes to court for me, he or she does not have to help me after he goes to court unless we both agree in writing. I agree that the address I give below is my permanent address where I may be reached. I understand that it is important that both the opposing party and the court handling my case be able to reach me at this address in the event my attorney ends his limited representation. I therefore agree that I will inform the Court and the opposing party of any change in my permanent address.

Print Your Name

Mailing Address

Sign Your Name

City State and Zip Code

Date

Phone Number

Preparation of Court Documents

3. Florida Family Law Rules Procedural Form 12.900(f): *see*
http://www.flcourts.org/gen_public/family/forms_rules/900f.pdf

Instructions for Florida Family Law Rules of Procedure 12.900(f), Signature Block for Attorney Making Limited Appearance (09/04)

**INSTRUCTIONS FOR FLORIDA FAMILY LAW RULES OF PROCEDURE FORM 12.900(f),
SIGNATURE BLOCK FOR ATTORNEY MAKING LIMITED APPEARANCE**

When should this form be used?

This signature block should be used on any form filed with the court when the attorney is making a limited appearance under Florida Family Law Rule of Procedure 12.040.

Where can I look for more information?

See Florida Family Law Rule of Procedure 12.040(e). Florida Family Law Rules of Procedure Form 12.900(f), Signature Block for Attorney Making Limited Appearance (09/04)

Attorney for [only one] () Petitioner () Respondent for the limited purpose of *{specify matter or proceeding}*_____ .

Signature of Attorney
Printed Name: _____
Address: _____
City, State, Zip: _____
Telephone Number: _____
Florida Bar Number: _____

Petitioner/Respondent:
Name: _____
Address: _____
City, State, Zip: _____
Telephone number: _____

Appendix C

DRAFT: "UNBUNDLING RECOMMENDATIONS AT A GLANCE" April 22, 2005 PRO SE TASK FORCE	PAID/PRIVATE LEGAL SERVICES	PRO BONO PROGRAMS ¹
SCOPE OF SERVICES PERMITTED	Full range of legal services in family law cases	Full range of legal services in family law cases ²
WRITTEN AGREEMENT REQUIRED?	Yes. Can use a pre-approved checklist. No; if limited to telephone consultation only.	No, if service is limited to information, advice, or preparation of pre-approved forms
CONFLICT OF INTEREST CHECK REQUIRED?	Yes; unbundling does not relax requirements for conflict checks	Proposed Ia RPC 6.5 would excuse conflicts checks for lawyers who provide short-term and limited representation in pro bono programs. Lawyer can provide service as long as no actual knowledge of a conflict of interest
PREPARATION OF COURT DOCUMENTS a/ka/ "Ghostwriting"	Documents must indicate that they were prepared with the assistance of an attorney, name the attorney, and indicate the extent of the representation (may be by legend similar to certification of service)	Documents must indicate the name of the pro bono program under which the lawyer assisted in the preparation, without indentifying the individual lawyer.
REQUIREMENTS FOR LAWYERS APPEARING IN COURT	File "notice" of limited appearance that indicates extent of service. (See Washington.)	Same
REQUIREMENTS REGARDING WITHDRAWAL	Lawyer's role terminates without necessity of leave of court to withdraw upon lawyer's filing a certification of completion of limited appearance/services. (See Washington and Florida.) Can be in the form of a "substitution of counsel," substituting client. (See Nevada)	Same.

¹Definition per Iowa Rule Professional Conduct 6.5

Appendix D

PROPOSED PROTOCOL TO BE USED BY IDAHO JUDGES DURING HEARINGS INVOLVING SELF-REPRESENTED LITIGANTS¹

COMMITTEE TO INCREASE ACCESS TO THE COURTS HON. JOEL HORTON, CHAIR

Idaho Judges are encouraged to use the following protocol when conducting hearings involving at least one self-represented party:

1. Verify that the party is not an attorney, that the party understands he or she is entitled to be represented by an attorney, and chooses to proceed pro se. Explain the risks and difficulty of self-representation. Suggest that the party contact the nearest Court Assistance Office for lawyer referral or other assistance.

2. Explain the process. “I will hear both sides in this matter. First I will listen to what the Plaintiff wants me to know about this case and then I will listen to what the Defendant wants me to know about this case. The witnesses for Plaintiff and Defendant will come up to the witness stand, be sworn, and then will provide their testimony in response to questions asked by the party who called them, by the other party, and perhaps by me. I will try to give each side enough time and opportunity to tell me their side of the case, but I must proceed in the order I indicated. So please do not interrupt while the other party is presenting their evidence. Everything that is said in court is [recorded] [taken down by a court reporter] and in order to insure that the court record is accurate, only one person can talk at a time. Wait until the person asking a question finishes before answering and the person asking the question should wait until the person answering the question finishes before asking the next question.”

3. Explain the elements. For example, in summary proceedings for eviction cases: “Plaintiff is requesting a judgment for possession of rental property. If Plaintiff can show that she is the owner of the property and that the defendant has breached the lease by failing to pay rent or in some other respect, I will enter the judgment Plaintiff has asked for. Based on that judgment, a writ of restitution can be issued by the Court Clerk ordering the sheriff to remove the Defendant from Plaintiff’s property and to restore possession of the property to the Plaintiff.

4. Explain that the party bringing the action has the burden to present evidence in support of the relief sought. For example, in eviction cases: “Because the Plaintiff has requested this order, she has to present evidence to show that a court order is needed. I will not consider any of the statements in the complaint that has been filed in this matter. I can only consider evidence that is presented here in court today. If Plaintiff

¹ This proposed protocol is modeled after a protocol written by the Pro Se Implementation Committee of the Minnesota Conference of Chief Judges. It was adapted to Idaho court practices by Prof. Patrick D. Costello, Director of the Idaho Court Assistance Offices Project.

is unable to present evidence that an order is needed, then I must dismiss this action. When I am done with this explanation, I will ask Plaintiff to call her first witness. The witness can be anyone who has first-hand knowledge of the facts of this case, Plaintiff, another person, or Defendant. ”

5. Explain the kind of evidence that may be presented. “Evidence can be in the form of testimony from the parties, testimony from other witnesses, or exhibits. Everyone who testifies will be placed under oath and will be subject to questioning by the other party. All exhibits must first be given an exhibit number by the court clerk and then the witness who is testifying and who can identify the exhibit must briefly describe it. The exhibit is then given to the other party who can look at the exhibit and let me know any reason why I should not consider that exhibit when I decide the case. I will then let you know whether the exhibit can be used as evidence.”

6. Explain the limits on the kind of evidence that can be considered. “I have to make my decision based upon the evidence that is admissible under the Rules of Evidence for courts in Idaho. If either party starts to present evidence that is not admissible, the other party may object. If I agree that the evidence is inadmissible I will sustain the objection, which means that I cannot consider that type of evidence. Some examples are irrelevant evidence and inadmissible hearsay. Irrelevant evidence is testimony or exhibits that do not help me understand or decide issues that are involved in this case. Hearsay is a statement made outside of court by a person who is not the opposing party which you want me to consider to be true; hearsay could be an oral statement that was overheard or a written statement such as a letter. Most hearsay is considered unreliable and is inadmissible.”

7. Ask both parties whether they understand the process and the procedure.

8. If non-attorneys are permitted to sit at counsel table with either party they may provide support but should not be permitted to argue on behalf of a party or to question witnesses.

9. Questioning by the judge should be directed at obtaining general information in order to avoid creating an appearance of advocacy. For example, in eviction cases: “Tell me why you believe the tenant has breached the lease. If you have specific incidents you want to tell me about, start with the most recent incident first and tell me when it happened, where it happened, who was present, and what happened.”

10. Whenever possible the matter should be decided and the order prepared immediately upon the conclusion of the hearing so it may be served on the parties.

Appendix E

IN THE IOWA DISTRICT COURT FOR _____ COUNTY

UPON THE PETITION OF _____ Petitioner, AND CONCERNING _____ Respondent.	EQUITY No. _____ PRETRIAL STIPULATION For DISSOLUTION (Forms A, B, and C to be completed Jointly by Parties)
--	--

The parties have met in compliance with the Pretrial Conference Order filed in this case and hereby request the Court to take into consideration the following:

FORM A

1. CHILD CUSTODY Children:

a) Name	D/O/B	Current Caretaker	Amount of Support	Paid By

b) Describe present physical and mental health of children:

c) Custody **is/is not** an issue.

The parties *agree* to joint physical care subject to the approval of the Court.

The parties *agree* to joint custody with physical care in the **wife / husband**, subject to the approval of the Court.

The parties *agree* that sole custody is to be awarded to **wife / husband**, subject to the approval of the Court.

The parties *agree* to split custody, as follows, subject to the approval of the Court:

Wife shall be awarded custody of _____

Husband shall be awarded custody of _____

The parties *cannot agree* on custody, each proposes the following:

Wife: _____

Husband: _____

2. VISITATION:

The parties *agree*, subject to the approval of the Court, to the following visitation rights to **Wife / Husband** : _____

The parties *cannot agree* on visitation rights. Each proposes the following:

Wife: _____

Husband: _____

3. CHILD SUPPORT:

The parties understand that child support will be determined by use of the Child Support Guidelines. They agree the Wife's net monthly income is \$_____ and the Husband's net monthly income is \$_____.

The parties *cannot agree* as to their net monthly incomes.* **(See Note below)**

The Wife claims hers is \$_____ and the Husband's is \$_____.

The Husband claims his is \$_____ and the Wife's is \$_____.

The **wife / husband** *disagrees* with the application of the child support guidelines and proposes as follows:

Wife: _____

Husband: _____

***Note:** If parties *cannot agree* as to net monthly income or application of Child Support Guidelines, Wife and Husband shall each complete their own child support guidelines worksheet and attach to Form A.

4. MEDICAL SUPPORT:

Current Provider: _____

Cost: _____

Persons Covered: _____

Noncovered Expenses Paid/Split: _____

Other Plan Options: _____

5. DEPENDENCY EXEMPTIONS:

The parties *agree*, subject to the approval of the court, as follows:

The parties *cannot agree* on dependency exemptions, each proposes as follows:

Wife: _____

Husband: _____

6. ALIMONY:

The parties *agree*, subject to the approval of the Court as follows:

The parties *cannot agree* on alimony, each proposes as follows:

Wife: _____

Husband: _____

7. INSURANCE:

Current status is as follows:

Company, Type of Policy	Premium Paid By	Name of Insured	Policy Owner	Cash Value	Name of Beneficiary

The parties *agree* (that the above status of the insurance policies will remain in effect) (that they jointly request the Court to adopt the following: _____

The parties *cannot agree* on the maintenance of the insurance, each proposes the following:

Wife: _____

Husband: _____

8. TAX CONSEQUENCES:

ARE / ARE NOT in issue.

The parties *agree* that significant tax consequences that may result from a decree are as follows: _____

The parties *cannot agree* on what significant tax consequences may result from a decree and each contends the following:

Wife: _____

Husband: _____

9. ATTORNEY FEES:

Attorney fees are *not in dispute*, the parties stipulate as follows: _____

The parties *cannot agree* on attorney fees, each proposes the following:

Wife: _____

Husband: _____

10. MISCELLANEOUS:

- a) Affidavit of Financial Status: Pursuant to Iowa Code Section 598.13 and Judicial Administration Court Rule 205, the parties contemporaneously file their current affidavits of financial status.
- b) The parties submit the Stipulation of Assets and Liabilities attached to this Pretrial Stipulation as Form B. (Attach as many copies of Form B as are necessary to list all assets and liabilities).

11. Date of Marriage: _____ Date of Separation: _____

12. HUSBAND

WIFE

D/O/B: _____
Current Address: _____

D/O/B: _____
Current Address: _____

Employer: _____

Employer: _____

Address: _____

Address: _____

I.D. NO.: _____

I.D. NO.: _____

13. SUMMARY OF ISSUES LEFT UNRESOLVED:

A) _____

B) _____

C) _____

D) _____

E) _____

F) _____

G) _____

H) _____

I) _____

J) _____

Dated this _____ day of _____, _____.

Husband

Wife

Attorney

Attorney

FORM B - STIPULATION OF ASSETS AND LIABILITIES

ASSETS*	HOW ACQUIRED	OWNER	AGREED RECEIPT.	AGREED VALUE	DISPUTED WIFE	VALUE HUSBAND
1.						
2.						
3.						
4.						
5.						
6.						
7.						
8.						
9.						
10.						
11.						
12.						
13.						
14.						
15.						
16.						
17.						
18.						
19.						
20.						

LIABILITIES	DEBTOR	ACCEPT LIABILITY	AGREED AMOUNT	DISPUTED WIFE	VALUE HUSBAND
1					
2					
3					
4					
5					
6					
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THESE SYMBOLS TO BE USED WHERE APPROPRIATE: I-Inherited G-Gift JT-Joint W-Wife
H-Husband M-Marital Asset PM-Premarital Asset D-Disputed N-None NA-Not Applicable
* Attach description of all real estate. REVISED 1/2005

FORM C

PENSION INFORMATION

If Wife or Husband is now or has ever been a participant in a retirement pension plan, each must, on an attached sheet, provide answers to the questions below for each plan. You are directed to contact the plan administrator for all necessary information.

1. Name and social security number of participant.
2. Name of plan.
3. Name, address and telephone number of administrator of plan.
4. Name and address of employer.
5. Date employee first became covered by the plan and past service date, if any.
6. Number of years, months or units of credited service.
7. If defined contribution plan, the current account balance and contribution rate of the plan.
8. If a defined benefit plan, the accrued benefit to date, the date the benefit is normally payable and any early commencement actual reduction applicable, based on current version of plan.
9. Does the plan honor assignment of benefits made by a qualified domestic relations order?
10. Is the account balance or accrued benefit vested and the current vested percent, if any,
11. Is the benefit currently in pay status and if so, the amount and method of payment and date of retirement or termination of service.
12. The current eligibility, break in service, vesting and early and normal retirement provisions of the plan.
13. Summary of plan description.
14. Attach copy of any employee information discussing plan.
15. Does the plan administrator have a form or directions for an assignment of benefits made by a qualified domestic relations order? If so, attach a copy of the proposed form or order.