

**Minnesota State Bar Association
Pro Se Implementation Committee**

**Recommendations and Report
June 12, 2002**

Introduction

The Pro Se Implementation Committee formed four subcommittees. This Report contains recommendations of the Judiciary Subcommittee. The Pro Se Implementation Committee anticipates submitting additional recommendations to the General Assembly in the future.

The Recommendations in this Report are intended to:

- enhance the ability of court personnel to effectively assist Self-Represented Litigants (Recommendations 1-2);
- simplify court procedures (Recommendation 3); and
- enhance the ability of attorneys to provide pro bono assistance on a limited advice basis (Recommendation 4).

Recommendation # 1

The subcommittee recommends that the Supreme Court Continuing Education Office develop a training program for judicial and non-judicial staff on best practices for cases involving pro se litigants, and that the program be mandatory, or strongly recommended. The subcommittee further recommends that the program address the legal and practical issues raised by the presence of self-represented parties, and provide a forum for sharing ideas and developing best practices.

Report

To promote effective courtroom practices, the Committee recommends that the Supreme Court initiate training for Judges and staff in best practices for cases involving pro se litigants. The presence of one or two pro se parties changes the expectations and needs of the courtroom participants. The Committee finds that the issues raised by the presence of pro se litigants in the courtroom have not been addressed in a systematic fashion in judicial training, and recommends education and a forum for sharing problems and solutions. Training programs in Wisconsin, Alaska and other locations should be reviewed and adapted for use in Minnesota. The Committee recognizes that education and training of judges, attorneys and court staff on best practices for dealing with pro se litigants may be as valuable as simplifying rules and procedures.

Recommendation #2

Amend the General Rules of Practice for the District Courts to authorize the establishment of facilitator programs in Minnesota courts. The Recommended Rule is attached as Appendix A.

Report

Florida, Oregon, California, Washington State and others have established family court facilitator programs. They have been authorized by statute (Oregon, California and Washington) and rule of civil procedure (Florida). These programs are supervised by the courts and have as their objective the provision of assistance in completing forms and providing information about court procedures. Minnesota has a family law facilitator program in the 4th Judicial District. This program has operated since 1998, without formal authorization by statute or court rule.

The Committee does not believe that adoption of a rule is required for operation of a court-based self help program. Furthermore, by recommending adoption of a Family Law Self Help Rule, the Committee does not intend to discourage courts from offering Self-Represented Litigants (SRLs) assistance with cases types other than family.

The adoption of a court rule serves three functions. First, it encourages courts to create programs by explicitly authorizing them. (Paragraph 1). Second, it imposes sound limitations on the programs and provides a framework for operation (Paragraphs 4-7). Third, it establishes protections for the lawyer and non-lawyer staff and volunteers of the program by addressing ethical and liability issues (Paragraphs 2, and 8-10).

Family Court has consistently been identified as the area of greatest need for SRL assistance and thus the Committee chose to start with a Rule addressing Family Court Programs.

This proposal was submitted for comment to the MSBA Family Law Section, chaired by Stephen Arnott, and the MSBA Court Rules and Administration Committee, co-chaired by Hon. Bruce Douglas and Mark Gardner. The Court Rules and Administration Committee formally endorsed the proposal. The Family Law Section has not taken formal action on the proposal.

Recommendation #3

That Minn. Rules of Family Court Procedure, Rule 302.01 be amended to permit use of a Combined Joint Petition, Agreement and Judgment and Decree for Dissolution of Marriage without Children. The recommended rule amendment and Comment to Rule is attached as Appendix B, and a proposed Joint Petition, Agreement and Judgment and Decree is attached to this Report as Appendix C.

Report

The Judiciary Subcommittee was charged in part with examining the desirability of creating simplified rules applicable only to pro se litigants. The subcommittee concluded that separate rules are not desirable because a two-tier system of justice could result. Simplification of court rules and procedures can improve access to justice for low income litigants, and reduce costs for all litigants; therefore, simplification is recommended.

The committee recommends amending Minn.Rules of Family Court Procedure, Rule 302.01(b) to permit completion of a Marriage Dissolution Without Children upon the filing of the following documents only:

1. A combined Joint Petition, Agreement, and Judgment and Decree for Marriage Dissolution Without Children.
2. A Confidential Information Statement (Form 11).
3. A Notice to the Public Authority, if required.

A recommended form petition/agreement/decree is attached to the proposed rule. The Joint Petition, Agreement and Judgment and Decree form would be made available to the Judicial Districts and the public by State Court Administration, which also would amend and update the form as necessary. Compared to the forms now available from court administrators for pro se divorces, the proposed form reduces the paperwork substantially.

An amendment to Rule 302.01(b) is required to eliminate the need for filing a separate Findings of Fact, Conclusions of Law, Judgment and Decree (required by Rule 306.02 of the Rules of Family Court Procedure), and a separate Affidavit of Non- Military Status and Form 10 Default Scheduling Request (required by Rule 306.01 of the Rules of Family Court Procedure), and a separate Certificate of Representation and Parties (required by Rule 104 of the General Rules of Practice). All of the information contained in these documents is included in the one form “Joint Petition, Agreement, and Judgment and Decree.”

It is anticipated that the State Court Administrator will delegate responsibility for producing , revising and updating the form Joint Petition to the State Forms and Procedures Committee, which in turn presents its work product to the Conference of Chief Judges for approval. Comments and suggestions to revise forms are accepted and acted upon by the Forms and Procedures Committee upon receipt.

This proposal was submitted for comment to the MSBA Family Law Section, chaired by Stephen Arnott, and the MSBA Court Rules and Administration Committee, co-chaired by Hon. Bruce Douglas and Mark Gardner. The Court Rules and Administration Committee formally endorsed the proposal. The Family Law Section has not taken formal action on the proposal.

Recommendation #4

Amend Rule 1.10 of the Rules of Professional Conduct to relax conflict of interest prohibitions for attorneys participating in non-profit or court-annexed limited legal service programs to prohibit counseling of program clients only in circumstances where the attorney has actual knowledge of a conflict of interest. The proposed Rule amendment is attached as Appendix D.

Report

The MSBA Rules of Professional Conduct Committee, chaired by Frederick Finch, has endorsed Recommendation #4. ABA Ethics 2000 Model Rule 6.5 is the basis for the proposed Rule 1.10 Amendment. The Pro Se Committee believes that the proposed amendment to Rule 1.10 will have an immediate impact on SRL issues and that the rule should be brought to the Supreme Court as soon as possible.

Court-annexed legal advice programs and many such programs sponsored by non-profit organizations rely upon volunteer attorneys to provide limited scope legal assistance to SRLs. Volunteer attorneys may be unaware of conflicts and may be unable to access records to determine whether a conflict of interest exists because of the attorney's association with a firm. In order to encourage attorneys to participate in these programs and relieve concerns that an attorney's counseling of program clients may inadvertently constitute a conflict of interest, an amendment to the Rules of Professional Conduct is needed.

CONCLUSION

The recommendations of the Pro Se Committee attempt to address some of the challenges related to SRLs without encouraging or unnecessarily restricting those litigants who choose to represent themselves or who are unable to retain counsel. The recommendations recognize the need to provide resources and information for SRLs without creating special rules or procedures that benefit SRLs to the detriment of represented litigants. It is apparent that the number of SRLs is increasing. The Committee's recommendations are intended to increase the knowledge and competence of SRLs, to improve the experience of judges, attorneys, and court administrators who become involved with SRLs, and to enhance the quality of justice for all litigants.

Respectfully Submitted,

Pro Se Implementation Committee
Justice Edward Toussaint and
Eric Magnuson, Co-chairs

1. A District Court for any county may establish a self-help program to facilitate access to family court. The purpose of the self-help program is to assist self-represented litigants, within the bounds of this rule, to achieve fair and efficient resolution of their family law case, and to minimize the delays and inefficient use of court resources that result from misuse of the court system by self-represented litigants uneducated in the law. There is a compelling state interest in resolving family law cases efficiently and fairly, regardless of the means of the parties.
2. The Self Help Program may be staffed by lawyer and non-lawyer personnel, and volunteers under the supervision of regular personnel. Self-help personnel act at the direction of the Judges of the County to further the business of the court.
3. Definitions:
 - (a) A “Family Law Case” includes dissolution of marriage, modification of dissolution matters such as child support, parenting plans, non-parental custody or visitation, and parentage actions by unmarried persons to establish paternity, child support, child custody and parenting time, and domestic abuse orders for protection.
 - (b) “Self-represented litigant” means any individual who seeks information to file, pursue, or respond to a family law case without the assistance of a lawyer authorized to practice before the court.
 - (c) “Self-help personnel” means lawyer and non-lawyer personnel and volunteers under the direction of paid staff in a self-help program.
 - (d) “Self-help program” means a program of any name established and operating under the authority of this rule.
4. Self Help personnel may, but are not required to:
 - provide forms and instructions;
 - assist in the completion of forms;
 - provide information about court process, practice and procedure;
 - offer educational sessions and materials on marriage dissolution and other family law case types;
 - answer questions about family law issues and how to proceed with a family law matter;
 - explain options within and without the court system;
 - assist in calculating guidelines child support based on information provided by the self-represented litigant;
 - assist with preparation of court orders under the direction of the court; and
 - provide other services consistent with the intent of this rule and the direction of the court, including programs in partnership with other agencies and organizations.
5. Self Help personnel shall:
 - educate self-represented litigants about available pro bono legal services, low cost legal services, legal aid programs, and lawyer referral services;
 - encourage self-represented litigants to obtain legal advice;

- provide information about mediation services;
- provide the same services and information to all parties to an action, if requested.

6. Self Help personnel shall not:

- represent litigants in court;
- perform legal research for litigants;
- deny a litigant's access to the court;
- lead litigants to believe that the self-help personnel are representing the litigant as lawyers in any capacity or induce the public to rely on them for personal legal advice;
- recommend one option over another option;
- offer legal strategy or personalized legal advice;
- tell a litigant anything she or he would not repeat in the presence of the opposing party;
- investigate facts pertaining to a litigant's case, except to help the litigant obtain public records. Services provided shall be based on an assumption that the information provided by the litigant is true.
- provide information that must be kept confidential by statute, rule, or case law.

7. Disclosure.

Self Help Programs shall give conspicuous notice that no attorney-client relationship exists between attorney personnel and self-represented litigants, that communications with self-help personnel are not privileged or confidential, that the self-help personnel must remain neutral and may provide services to the other party, and that self-help personnel are not responsible for the outcome of the case. Program materials should advise litigants to consult with their own attorney if they want personalized advice or strategy, confidential conversations with an attorney, or if they want to be represented by an attorney in court.

8. Unauthorized Practice of Law.

The services performed by self-help personnel in a court self-help program in accordance with this rule shall not be the unauthorized practice of law.

9. No Confidentiality.

Notwithstanding ethics rules that govern attorneys, certified legal interns, and other persons working under the supervision of an attorney, information given by a self-represented litigant to court administration staff or self-help personnel is not confidential or privileged.

10. No Conflict.

Notwithstanding ethics rules that govern attorneys, certified legal interns, and other persons working under the supervision of an attorney, there is no conflict of interest when self-help personnel provide services to both parties.

Appendix B

Rules of Family Court Procedure Proposed Rule Amendment to Rule 302.

Rule 302.01. Commencement of Proceedings

(b) Joint Petition.

- i. No summons shall be required if a joint petition is filed. Proceedings shall be deemed commenced when both parties have signed the verified petition.
- ii. The State Court Administrator shall make available a form “Joint Petition, Agreement, and Judgment and Decree for Marriage Dissolution Without Children”. Parties may use this form if they are in agreement on all property issues, they have no children together, wife is not pregnant, and wife has not given birth since the date of the marriage to a child who is not a child of the husband.
- iii. Upon filing of the “Joint Petition, Agreement and Judgment and Decree”, and Form 11 appended to these rules, and a Notice to the Public Authority if required by Minn.Stat.section 518.551, subd. 5(a), the court administrator shall place the matter on the default calendar for approval without hearing pursuant to Minn.Stat. Section 518.13, subd. 5. A Certificate of Representation and Parties and documents required by Rules 306.01 and 306.02 shall not be required if the “Joint Petition, Agreement and Judgment and Decree” made available by the State Court Administrator is used.
- iv. Court Administrators in each Judicial District shall make the “Joint Petition, Agreement and Judgment and Decree for Marriage Dissolution Without Children” available to the public at a reasonable cost, as a fill-in the blank form.

Proposed Comment to Rule

Subsections ii. and iii. of Rule 302.01 (b) are intended to provide a streamlined process for marriage dissolutions without children, where the parties agree on all property issues. The only forms required to complete the dissolution are Form 11 (Confidential Information) and the Joint Petition, Agreement, and Judgment and Decree for Marriage Dissolution Without Children. A Notice to Public Authority is required if a party is receiving public assistance. The Joint Petition, Agreement, and Judgment and Decree” shall include a statement regarding non-military status and a pro se waiver of right to be represented by a lawyer, thus satisfying the requirements of Rule 306.01(c). Court Administrators shall place the matter on the default calendar for final hearing without filing of Form 10 appended to the Rules. The Joint Petition, Agreement and Judgment and Decree may be used by parties represented by attorneys or parties representing themselves. The (Task Force) believes that the Joint Petition, Agreement, and Judgment and Decree procedure will reduce costs for litigants, reduce paper handling and storage expenses for the courts,

and improve access to the courts. Subsections ii., iii. and iv. are adopted pursuant to a recommendation of the Minnesota State Bar Association's Pro Se Implementation Committee. Said Committee also created a proposed Joint Petition, Agreement and Judgment and Decree form.

Appendix C

Instructions: Joint Petition for Dissolution of Marriage Without Children

Where Do We File?

File in the County where you or your spouse live now.

To file for Marriage Dissolution (Divorce) in Minnesota, you must have lived in Minnesota for at least the past 180 days.

Who Can Use this Form?

You can use this form if you and your spouse agree on everything and there are no children. This form may not address all of your needs or concerns. Please consult an attorney if you have questions.

Do not use this form if a) you and your spouse have children together, or b) if the wife has given birth to a child since the marriage date, or c) wife is pregnant.

Purpose of the form

The Joint Petition has two sections. In the first section you and your spouse give the court information about your marriage, your assets and your debts. In the second section, you and your spouse tell the court how you have agreed to divide everything.

Filling out the form:

- Print very neatly or the court may return your forms to you.
- Answer every question completely. You must disclose all financial information so the Judge can determine if your proposed division of property and debt is “fair and equitable”. Include property/debts you own separately and together. For example, if you have a car and only your name is on the title, list the car.

Information you will need:

Pay stubs or tax return for you and your spouse
Medical Insurance information
Records of bank accounts and investments
Pension information
Legal description of any real estate and details about the mortgage and value of the real estate
Descriptions of vehicles, their value and monthly payment amounts and total owed
Information about credit card and other debt.

Do You Want to Change Your Name?

You and/or your spouse can ask for a legal change of name in the Joint Petition. If you want to change your name and you have been convicted of a felony, you must get the handout “Felon Name Change Instructions” and follow the steps in the handout.

Answering the Income Questions:

Questions 13 and 14 ask for gross income (before taxes and deductions).

Do not guess at income. Look at your pay stub or tax return.* Are you paid once a month, every two weeks, weekly, or two times per month? You need to answer the question based on monthly income.

If you are paid monthly, enter the amounts shown on your paycheck for gross income.

If you are paid twice a month, multiply gross income and deductions by 2 to get the monthly amount.

If you are paid every two weeks, multiply gross income and deductions by 2.17 to get the monthly amount.

If you are paid every week, multiply gross income and deductions by 4.33 to get the monthly amount.

*If you are self-employed, or you work only part of the year, or your earnings vary, prorate your income to reach an average monthly income figure and write on the petition that you are averaging your income.

Modifying the Joint Petition

You may make changes to the Joint Petition to fit your situation, but do not omit any paragraphs.

What to Do After Completing the Forms

File:

1. The completed “Joint Petition, Agreement, and Judgment and Decree”, signed by both spouses and notarized, Asset Sheet, Debt Sheet, and Real Estate Attachments (if any).
2. “Form 11: Confidential Information” with names and social security numbers.

Pay: The District Court filing fee.

Wait: Wait to receive a letter from the Court telling you that you are divorced. You will not attend a court hearing unless the Judge decides a hearing is necessary.

You are not divorced until the Judge signs the Decree and the Court Administrator “enters” the Decree.

If you have real estate, there are additional steps required to transfer the title, including filing the “Joint Petition, Agreement, and Judgment and Decree” and all Attachments in the Real Estate Records, after the Decree is signed by the Judge and entered by the Court Administrator. In the alternative, you can file a Summary Real Estate Disposition Judgment and avoid putting all of your asset and debt information into the Real Estate Records. For more information about the Summary Real Estate Disposition Judgment, see Minnesota Statutes §518.191.

Questions?

If you have questions about the Joint Petition, you probably need to ask an attorney or accountant. Court staff can give you limited help with procedures. Only an attorney can give you legal advice.

STATE OF MINNESOTA
COUNTY OF _____

DISTRICT COURT
JUDICIAL DISTRICT _____

Wife's former or other names: _____
First Middle Last

First Middle Last

3. Husband's and Wife's social security numbers have been filed with the Court Administrator using Confidential Information Form (Form 11).

4. **Children** : "Child" means a living person under age 18, or under age 20 and still in highschool, or a person over 18 who by reason of a physical or mental condition is incapable of self support.

a. Are there any children born to or adopted by husband and wife together? YES NO

(If you answered YES, you are using the wrong form. Use Marriage Dissolution with Children.)

b. Has wife given birth since the date of marriage to a child who is not a child of the Husband?

YES NO (If YES, you are using the wrong form. Use Marriage Dissolution with

Children.)

c. Is wife pregnant? YES NO (If YES, you are using the wrong form. Use Marriage Dissolution with Children.)

5. **Our Marriage**

Husband and wife were married on : _____ at: _____
date city

county state country

6. **180 Day Requirement**

Husband has been living in Minnesota for the past six (6) months: YES NO

Wife has been living in Minnesota for the past six (6) months: YES NO

7. **Armed Forces**

Husband is a member of the armed forces: YES NO

Wife is a member of the armed forces: YES NO

8. **Other Proceedings**

A separate proceeding for dissolution, legal separation or annulment has already been started by husband or wife in Minnesota or another state: YES NO If YES, the type of

proceeding is: marriage dissolution, legal separation, annulment; the proceeding is in

_____ County in the State of _____ and the Court

file number is _____. (If a separate proceeding has been started, you must complete the other proceeding or have it dismissed before filing this Joint Petition.)

13. Husband's Income

Husband's **gross** income per month is: (See Instructions for information on calculating monthly income if paid weekly or bi-weekly.)

Source of Income	Amount per month <u>before</u> taxes
<input type="checkbox"/> Job-----	\$ _____
<input type="checkbox"/> Unemployment -----	\$ _____
<input type="checkbox"/> Social Security-----	\$ _____
<input type="checkbox"/> MFIP-----	\$ _____
<input type="checkbox"/> General Assistance-----	\$ _____
<input type="checkbox"/> Investments or Rental Income----	\$ _____
<input type="checkbox"/> Pension-----	\$ _____
<input type="checkbox"/> Other _____ identify source	\$ _____

Gross Income Total \$ _____ per month

14. Wife's Income

Wife's **gross** income per month is: (See Instructions for information on calculating monthly income if paid weekly or bi-weekly.)

Source of Income	Amount per month <u>before</u> taxes
<input type="checkbox"/> Job-----	\$ _____
<input type="checkbox"/> Unemployment -----	\$ _____
<input type="checkbox"/> Social Security-----	\$ _____
<input type="checkbox"/> MFIP-----	\$ _____
<input type="checkbox"/> General Assistance-----	\$ _____
<input type="checkbox"/> Investments or Rental Income----	\$ _____
<input type="checkbox"/> Pension-----	\$ _____
<input type="checkbox"/> Other _____ identify source	\$ _____

Gross Income Total \$ _____ per month

15. Medical Insurance (Medical Insurance does not include Minnesota Care or Medical Assistance.)

a. Wife has medical dental insurance **or** no insurance.

b. Husband has medical dental insurance **or** no insurance.

AGREEMENT OF HUSBAND AND WIFE

1. We have made this agreement to settle once and for all what we owe to each other and what we can expect to receive from each other. Each of us states that nothing has been held back, and that we have honestly included everything we could think of in listing our assets (everything we own and that is owed to us) and our debts (everything we owe) and that we believe the other has been open and honest in writing this agreement.
2. Each of us agrees to execute and exchange any papers that might be needed to complete this agreement before or after the divorce.

3. Real Estate

- a. Husband owns no real estate by himself or with anyone else.
- b. Wife owns no real estate by herself or with anyone else
- c. Husband and/or Wife own real estate as described on the Real Estate Attachment(s). (Use a separate Real Estate Attachment sheet for each parcel of real estate.) All Real Estate Attachments are part of this Joint Petition, Agreement, Judgment and Decree and we agree that the real estate shall be awarded as stated on the Real Estate Attachment(s).

4. Non-Marital Property

Non-marital Property means: (1) anything that you or your spouse owned before the marriage; (2) anything that you or your spouse received as a gift, bequest, devise, or inheritance; (3) anything that you or your spouse got in trade or in exchange for your non-marital property; (4) anything that is an increase in the value of non-marital property; (5) anything you or your spouse received after the valuation date set by the Court; or (6) anything included by a valid antenuptial contract (STOP: If you have an antenuptial contract, you should stop here and talk to an attorney.)

a. Husband owns non-marital property he wants awarded to him by the Court: YES NO.

If YES, Husband and Wife agree that that the following property is Husband's non-marital property and shall be awarded to Husband: _____

_____.

b. Wife owns non-marital property she wants awarded to her by the Court: YES NO.

If YES, Husband and Wife agree that the following property is Wife's non-marital property and shall be awarded to Wife: _____

_____.

5. Division of Marital Property

- Marital Property means almost anything that you or your spouse own that you or your spouse received during the marriage, even during the times that you and your spouse were separated. This includes real estate, boats, cabins, household goods, furniture, jewelry, and other things.

See attached Asset Sheet listing all assets. The Asset Sheet is part of this Joint Petition.

6. Division of Marital Debts

Marital Debts means debts incurred by you or your spouse during the marriage, even during the times that you and your spouse were separated. Do not include monthly expenses you pay in full each month, such as telephone and utilities.

See attached Debt Sheet listing all debts. The Debt Sheet is part of this Joint Petition.

7. Spousal Maintenance (alimony)

___ a. Each of us forever gives up any right to spousal maintenance (alimony) that we may have and the Court is divested of jurisdiction over spousal maintenance.

___ b. Husband Wife shall pay temporary spousal maintenance to the other party in the amount of \$ _____ per month by the first day of the month, starting the first month after entry of the judgment for divorce and ending on _____ (insert a date).

___ c. Husband Wife shall pay permanent spousal maintenance to the other party in the amount of \$ _____ per month by the first day of the month, starting the first month after entry of the judgment for divorce. Permanent spousal maintenance is needed because: _____

_____.

Husband's Wife's employer, trustee, or other payor of funds shall withhold this amount and forward it to Support and Collections. No arrearages in maintenance due under any previous Order of the Court shall merge with this Judgment and Decree.

___ d. Spousal Maintenance is reserved.

8. Insurance Coverage

Each party shall provide for his or her own health and dental insurance. Either party may be eligible to extend for a limited time, at his/her own expense, the dependent coverage available under the other party's insurance plan, pursuant to federal and state statutes.

9. Other:

We also agree to the following:

BASED UPON THE ABOVE INFORMATION, Husband and Wife request that the Court issue a final judgment and decree terminating our marriage and ordering the terms of this Agreement.

READ and SIGN the **Verification and Acknowledgments** below.

STATE OF MINNESOTA)
) SS
 COUNTY OF _____)
 (County where documents signed)

Verification and Acknowledgments

- a. I have read this document. To the best of my knowledge, information and belief the information contained in this document is well grounded in fact and is warranted by existing law.
- b. I have not been determined by any Court in Minnesota or in any other State to be a frivolous litigant and I am not the subject of an *Order* precluding me from serving or filing this document.
- c. I am not serving or filing this document for any improper purpose, such as to harass the other party or to cause delay or needless increase in the cost of litigation or to commit a fraud on the Court.
- d. I understand that if I am not telling the truth or if I am misleading the Court or if I am serving or filing this document for an improper purpose, the Court can order me to pay money to the other party, including the reasonable expenses incurred by the other party because of the cost of serving or filing this document, Court costs, and reasonable attorney’s fees.
- e. **WAIVER (Rule 306.01(c)):** I know I have the right to be represented by a lawyer of my choice. I hereby expressly waive that right and I freely and voluntarily sign the foregoing stipulation.

DATE: _____
 Month Day Year

 Signature of Husband
(Sign only in presence of notary public)

()

Daytime Telephone # of Husband

HUSBAND'S ATTORNEY

Husband is acting as his own attorney OR

Subscribed and sworn to
before me on _____(date)

is represented by the following attorney:

by _____,

_____ (Name)

Notary Public (seal)

_____ (Street Address)

_____ (City ,State, Zip Code)

_____ (Telephone)

_____ (Atty Reg. #)

DATE: ____/____/____
Month Day Year

Signature of Wife

(Sign only in presence of notary public)

()

Daytime Telephone Number of Wife

Signed and sworn to before me on _____(date)

by _____

Notary Public

General Rule of Practice 125 notwithstanding, let Judgment be entered immediately.

Dated: _____

Judge of District Court

The foregoing facts were found by me after due hearing and the Order thereon is recommended.

Date

Referee of District Court

Judgment

I certify the above constitutes the Judgment of the Court.

Court Administrator

Real Estate Attachment

Fill out a separate Attachment for each parcel of real estate.

Description of the Property

1. *Real Estate belongs to :*

_____ (List all owners)

2. *Address of the property is:*

3. *City* _____ *State* _____ *Zip Code* _____
The property is in _____ *County.*

4. *Legal Description is: (Use the full legal description from the deed. If the legal description is long, use an attachment. Type or print neatly.)*

5. *Purchase date:* _____ (month , day, year)

6. *Purchase price:* \$ _____

7. *Mortgage or loan amount currently owed:* \$ _____

8. *Current Market Value of this property:* \$ _____

9. *This property is the homestead:* _____ Yes _____ No

Division of the Property

• *This property shall be awarded to* *Husband* *Wife.*

• *The Mortgage or Loan on the property shall be paid by* *Husband* *Wife starting on the following date:* _____ (write "NONE" if there is no mortgage or loan).

• *Husband and Wife also agree that: (describe any other agreements about the use, sale of, or award of the property and attach additional pages if needed).*

Attachment "A"
DIVISION OF ASSETS AND VALUE OF ASSETS

We agree on how to divide our assets (everything we own and that is owed to us).
Each person shall receive as their own, all assets in their column and the other person shall have no further rights or responsibilities regarding these assets:

DESCRIPTION OF ASSETS (To avoid confusion at a later date, describe each item as clearly as possible and include account numbers, names of banks, & whose name is on the title or account)	Who Gets the Item	
	*HUSBAND	*WIFE
	*Enter the current fair market value of the item in the column of the person getting the item.	
<input type="checkbox"/> Cash (on hand)	\$	\$
<input type="checkbox"/> Cash (in banks/credit unions)	\$	\$
	\$	\$
	\$	\$
	\$	\$
	\$	\$
<input type="checkbox"/> Stocks/Bonds	\$	\$
	\$	\$
	\$	\$
	\$	\$
<input type="checkbox"/> Notes (money owed to you in writing)	\$	\$
	\$	\$

	\$	\$
<input type="checkbox"/> Money owed to you (not evidenced by a note)	\$	\$
	\$	\$
	\$	\$
<input type="checkbox"/> Real estate: (Home) Legal Description is:	\$	\$
<input type="checkbox"/> Real estate: (Other) Legal Description is:	\$	\$
<input type="checkbox"/> Business interests	\$	\$
	\$	\$
<input type="checkbox"/> Automobiles	\$	\$
	\$	\$
	\$	\$
<input type="checkbox"/> Boats	\$	\$
<input type="checkbox"/> Other vehicles	\$	\$
	\$	\$
<input type="checkbox"/> Retirement plans (Profit Sharing, Pension, IRA, 401(k)s, etc.)	\$	\$

	\$	\$
	\$	\$
<input type="checkbox"/> Furniture & furnishings in home	\$	\$
	\$	\$
	\$	\$
	\$	\$
	\$	\$
	\$	\$
	\$	\$
<input type="checkbox"/> Furniture & furnishings elsewhere	\$	\$
	\$	\$
	\$	\$
	\$	\$
<input type="checkbox"/> Collectibles	\$	\$
	\$	\$
	\$	\$
	\$	\$
<input type="checkbox"/> Jewelry	\$	\$
	\$	\$
	\$	\$
	\$	\$
<input type="checkbox"/> Life insurance (cash surrender value)	\$	\$
	\$	\$
	\$	\$
<input type="checkbox"/> Sporting & entertainment (TV, stereo, guns, etc.) equipment	\$	\$

Attachment "B"

DIVISION OF LIABILITIES/DEBTS

We divide our liabilities (everything we owe) as follows:

Each person shall pay as their own the debts listed in their column and the other person will not at any time ask the other person to pay these debts/bills:

LIABILITIES: DESCRIPTION OF DEBT(S) (To avoid confusion at a later date, describe each item as clearly as possible. List account numbers. Where applicable, include whether the name on any mortgage, note, or account described below is wife's, husband's or both.)	*Write the current amount owed in the column of the person who will pay it.	
	*HUSBAND	*WIFE
<input type="checkbox"/> Mortgages on real estate: (Home)	\$	\$
<input type="checkbox"/> Other	\$	\$
	\$	\$
<input type="checkbox"/> Charge/credit card accounts	\$	\$
	\$	\$
	\$	\$
	\$	\$
	\$	\$
	\$	\$
	\$	\$
<input type="checkbox"/> Auto loan	\$	\$

<input type="checkbox"/> Auto loan	\$	\$
<input type="checkbox"/> Bank/credit union loans	\$	\$
	\$	\$
	\$	\$
	\$	\$
	\$	\$
<input type="checkbox"/> Student loans	\$	\$
	\$	\$
	\$	\$
	\$	\$
<input type="checkbox"/> Money you owe (not evidenced by a note)	\$	\$
	\$	\$
	\$	\$
<input type="checkbox"/> Judgments	\$	\$
	\$	\$
	\$	\$
	\$	\$
<input type="checkbox"/> Other	\$	\$
	\$	\$
	\$	\$
Total Debts to be Paid by Each Person	Husband \$	Wife \$

Appendix D

RULE 1.10 IMPUTED DISQUALIFICATION: GENERAL RULE

(a) Except as provided in this rule, while lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7, 1.8(c), 1.9 or 2.2.

(b) When a lawyer becomes associated with a firm, the firm may not knowingly represent a person in the same or a substantially related matter in which that lawyer, or a firm with which the lawyer was associated, had previously represented a client whose interests are materially adverse to that person and about whom the lawyer had acquired information protected by Rules 1.6 and 1.9(b) unless there is no reasonably apparent risk that confidential information of the previously represented client will be used with material adverse effect on that client because:

- (1) any confidential information communicated to the lawyer is unlikely to be significant in the subsequent matter;
- (2) the lawyer is subject to screening measures adequate to prevent disclosure of the confidential information and to prevent involvement by that lawyer in the representation; and
- (3) timely and adequate notice of the screening has been provided to all affected clients.

(c) When a lawyer has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the formerly associated lawyer unless:

- (1) the matter is the same or substantially related to that in which the formerly associated lawyer represented the client; and
- (2) any lawyer remaining in the firm has information protected by Rules 1.6 and 1.9(b) that is material to the matter.

~~(d) A disqualification prescribed by this Rule may be waived by the affected client under the conditions stated in Rule 1.7.~~

Disqualifications prescribed by this rule are subject to the following exceptions: (1) they may be waived by the affected client under the conditions stated in Rule 1.7; (2) they do not apply to a lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter, unless the lawyer knows that the lawyer or another lawyer associated with the lawyer in a law firm is disqualified by Rule 1.7 or 1.9 (a) with respect to the matter.

Comment

Definition of "Firm"

For purposes of the Rules of Professional Conduct, the term "firm" includes lawyers in a private firm, and lawyers employed in the legal department of a corporation or other organization, or in a legal services organization. Whether two or more lawyers constitute a firm within this definition can depend on the specific facts. For example, two practitioners who share office space and occasionally consult or assist each other ordinarily would not be regarded as constituting a firm. However, if they present themselves to the public in a way suggesting that they are a firm or conduct themselves as a firm, they should be regarded as a firm for purposes of the Rules. The terms of any former agreement between associated lawyers are

relevant in determining whether they are a firm as is the fact that they have mutual access to confidential information concerning the clients they serve. Furthermore, it is relevant in doubtful cases to consider the underlying purpose of the rule that is involved. A group of lawyers could be regarded as a firm for purposes of the rule that the same lawyer should not represent opposing parties in litigation, while it might not be so regarded for purposes of the rule that information acquired by one lawyer is attributed to another.

With respect to the law department of an organization, there is ordinarily no question that the members of the department constitute a firm within the meaning of the Rules of Professional Conduct. However, there can be uncertainty as to the identity of the client. For example, it may not be clear whether the law department of a corporation represents a subsidiary or an affiliated corporation, as well as the corporation by which the members of the department are directly employed. A similar question can arise concerning an unincorporated association and its local affiliates.

Similar questions can also arise with respect to lawyers in legal aid. Lawyers employed in the same unit of a legal service organization constitute a firm, but not necessarily those employed in separate units. As in the case of independent practitioners, whether the lawyers should be treated as associated with each other can depend on the particular rule that is involved, and on the specific facts of the situation.

Where a lawyer has joined a private firm after having represented the government, the situation is governed by Rule 1.11(a) and (b); where a lawyer represents the government after having served private clients, the situation is governed by Rule 1.11(c)(1). The individual lawyer involved is bound by the Rules generally, including Rules 1.6, 1.7, and 1.9.

Different provisions are thus made for movement of a lawyer from one private firm to another and for movement of a lawyer between a private firm and the government. The government is entitled to protection of its client confidences, and therefore to the protections provided in Rules 1.6, 1.9, and 1.11. However, if the more extensive disqualification in Rule 1.10 were applied to former government lawyers, the potential effect on the government would be unduly burdensome. The government deals with all private citizens and organizations, and thus has a much wider circle of adverse legal interests than does any private law firm. In these circumstances, the government's recruitment of lawyers would be seriously impaired if Rule 1.10 were applied to the government. On balance, therefore the government is better served in the long run by the protections stated in Rule 1.11.

Principles of Imputed Disqualification

The rule of imputed disqualification stated in paragraph (a) gives effect to the principle of loyalty to the client as it applies to lawyers who practice in a law firm. Such situations can be considered from the premise that a firm of lawyers is essentially one lawyer for purposes of the rules governing loyalty to the client, or from the premise that each lawyer is vicariously bound by the obligation of loyalty owed by each lawyer with whom the lawyer is associated. Paragraph (a) operates only among the lawyers currently associated in a firm. When a lawyer moves from one firm to another, the situation is governed by paragraphs (b) and (c).

Lawyers Moving Between Firms

When lawyers have been associated in a firm but then end their association, however, the problem is more complicated. The fiction that the law firm is the same as a single lawyer is no longer wholly realistic. There are several competing considerations. First, the client previously represented must be reasonably assured that the principle of loyalty to the client is not compromised. Second, the rule of disqualification should not be so broadly cast as to preclude other persons from having reasonable choice of legal counsel. Third, the rule of disqualification should not unreasonably hamper lawyers from reforming new associations and taking on new clients after having left a previous association. In this connection, it should be recognized that today many lawyers practice in firms, that many to some degree limit their practice to one field or another, and that many move from one association to another several times in their careers. If the concept of imputed disqualification were defined with unqualified rigor, the result would be radical curtailment of the opportunity of lawyers to move from one practice setting to another and of the opportunity of clients to change counsel.

Reconciliation of these competing principles in the past has been attempted under two rubrics. One approach has been to seek per se rules of disqualification. For example, it has been held that a partner in a law firm is conclusively presumed to have access to all confidences concerning all clients of the firm. Under this analysis, if a lawyer has been a partner in one law firm and then becomes a partner in another law firm, there is a presumption that all confidences known by a partner in the first firm are known to all partners in the second firm. This presumption might properly be applied in some circumstances, especially where the client has been extensively represented, but may be unrealistic where the client was represented only for limited purposes. Furthermore, such a rigid rule exaggerates the difference between a partner and an associate in modern law firms.

The other rubric formerly used for dealing with vicarious disqualification is the appearance of impropriety proscribed in Canon 9 of the ABA Model Code of Professional Responsibility. This rubric has a two-fold problem. First, the appearance of impropriety can be taken to include any new client-lawyer relationship that might make a former client feel anxious. If that meaning were adopted, disqualification would become little more than a question of subjective judgment by the former client. Second, since "impropriety" is undefined, the term "appearance of impropriety" is question-begging. It therefore has to be recognized that the problem of imputed disqualification cannot be properly resolved either by simple analogy to a lawyer practicing alone or by the very general concept of appearance of impropriety. A rule based on a functional analysis is more appropriate for determining the question of vicarious disqualification. Two functions are involved: preserving confidentiality and avoiding positions adverse to a client.

Confidentiality

Preserving confidentiality is a question of access to information. Access to information, in turn, is essentially a question of fact in particular circumstances, aided by inferences, deductions or working presumptions that reasonably may be made about the way in which lawyers work together. A lawyer may have general access to files of clients of a law firm and may regularly participate in discussions of their affairs; it should be inferred that such a lawyer in fact is privy to all information about all the firm's clients. In contrast, another lawyer may have access to the files of only a limited number of clients and participate in discussion of the affairs of no other clients; in the absence of information to the contrary, it should be inferred that such a lawyer in fact is privy to information about the clients actually served but not those of other clients.

Application of paragraphs (b) and (c) depends on a situation's particular facts. In any such inquiry, the burden of proof should rest upon the firm whose disqualification is sought.

Paragraphs (b) and (c) operate to disqualify the firm only when the lawyer involved has actual knowledge of information protected by Rules 1.6 and 1.9(b). Thus, if a lawyer while with one firm acquired no knowledge of information relating to a particular client of the firm, and that lawyer later joined another firm, neither the lawyer individually nor the second firm is disqualified from representing another client in the same or a related matter even though the interests of the two clients conflict.

Independent of the question of disqualification of a firm, a lawyer changing professional association has a continuing duty to preserve confidentiality of information about a client formerly represented. *See* Rules 1.6 and 1.9.

Adverse Positions

The second aspect of loyalty to client is the lawyer's obligation to decline subsequent representations involving positions adverse to a former client arising in substantially related matters. This obligation requires abstention from adverse representation by the individual lawyer involved, but does not properly entail abstention of other lawyers through imputed disqualification. Hence, this aspect of the problem is governed by Rule 1.9(a). Thus, if a lawyer left one firm for another, the new affiliation would not preclude the firms involved from continuing to represent clients with adverse interest in the same or related matters, so long as the conditions of Rule 1.10(b) and (c) concerning confidentiality have been met.

Short-term Representation Exception

Legal services organizations, courts and various nonprofit organizations have established programs through which lawyers provide short-term limited legal services – such as advice or the completion of legal forms – that will assist persons to address their legal problems without further representation by a lawyer. In such programs, a client-lawyer relationship is established, but there is no expectation that the lawyer’s representation of the client will continue beyond the limited consultation. Such programs are normally operated under circumstances in which it is not feasible for a lawyer to systematically screen for conflicts of interest as is generally required before undertaking a representation. For that reason, compliance with Rules 1.7, 1.9(a) or 1.10(a) is required only if the lawyer knows that the representation presents a conflict of interest for the lawyer or another lawyer in the firm is disqualified by Rules 1.7 or 1.9(a) in the matter.

A lawyer who provides short-term limited legal services pursuant to this Rule must secure the client’s informed consent to the limited scope of the representation. See Rule 1.2 (b). If a short-term limited representation would not be reasonable under the circumstances, the lawyer may offer advice to the client but must also advise the client of the need for further assistance of counsel. Except as provided in this Rule, the rules of Professional Conduct, including Rules 1.6 and 1.9(b), are applicable to the limited representation.

If, after commencing a short-term limited representation in accordance with this Rule, a lawyer undertakes to represent the client in the matter on an ongoing basis, Rules 1.7, 1.9(a) and 1.10 (a)-(d) become applicable