



**COMMITTEE ON ACCESS TO FAMILY COURTS  
REVISED AGENDA**

**Office of State Courts Administrator  
121 Alameda Drive  
Conference Room B  
October 2, 2008 – 10:00 am - 2:00 pm**

**I. Call to Order**

**A. Approval of May 22, 2008 Meeting Minutes**

*Attachment Page 3*

**B. Introduction of Greg Linhares, State Courts Administrator and Cathy Zacharias, OSCA Legal Counsel and staff for the CAFC.**

**II. Status Updates**

**A. Rule 4-1.2 – Scope of Representation**

*Attachment Page 8*

**B. Rule 43.01(b)**

*Attachment Page 19*

**C. Rules 55.03 and 88.09**

*Attachment Page 26*

**III. Old Business**

**A. Conference Updates**

**i. Court Leadership Conference – Baltimore**

*Attachment Page 35*

**ii. Court Clerk College**

**B. Forms Update (Smith)**

**i. State Judicial Records Committee Report**

*Attachment Page 38*

**ii. Co-Chair's Response to State Judicial Records Committee Report**

*Attachment Page 41*

**iii. Family Court Committee Report**

*Verbal Update*

**iv. SFIG comments**

*Attachment Page 44*

- v. New software

**C. Judicial Education Update (Williamson)**

- i. Summer/Fall Judicial College

**D. Website Update (Norris)**

- i. Usage

- ii. Comments from users

**E. Litigant Awareness Program Update**

- i. Pamphlet for Clerk's Offices

- ii. Live Instruction

- 1. Course Syllabus

- 2. Instructor Training

- 3. Instructor Recruitment

- iii. DVD / Video Status

- iv. Booklets

- v. Proof of Completion / Certificate

**F. Communications (Cruse)**

**G. Alliance with State & Local Bar Associations / Pro Bono Initiative (Stewart)**

**H. Funding (Scaglia / McClure)**

**IV. New Business**

**A. Discussion Database (OSCA)**

**B. Goals/Strategic Plan (Smith / Levine / Defeo)**

- i. Format (Defeo)

**V. Subcommittee Breakout Sessions (if needed)**

**VI. Adjourn Meeting**

◇ Please mark you calendar for the next CAFC Meeting ◇

**December XX, 2008**

**SUPREME COURT OF MISSOURI  
COMMITTEE ON ACCESS TO FAMILY COURTS (CAFC)  
MINUTES  
MAY 22, 2008  
9:30 a.m.  
OSCA – ALAMEDA**

Members Present: Judge Dennis Smith, Judge Leslie Schneider, Judge Anne-Marie Clarke, Judge Charles Atwell, Judge Bennett Burkemper, Judge Miles Sweeney. Kathleen Bird, Karen Brown, Lou DeFeo, Beth Dessem, Richard Halliburton, Richard Holtmeyer, Charles Hutson, Lori Levine, Mary Ann McClure, Patricia Scaglia, Deanna Scott, Allan Stewart, J.D. Williamson

Members not Present: Fredrich Cruse

OSCA Staff Present: Gary Waint, Terri Norris, Kelly Cramer, and Debbie Eiken

Missouri Bar Staff  
Present: Robert Stoeckl

**I. CALL TO ORDER**

Lori Levine called the meeting to order at 9:30 on Thursday May 22, 2008.

**II. BACKGROUND OF COMMITTEE**

Committee members and OSCA staff each introduced themselves and provided a brief background of their work within the court system and experience with pro se litigants.

Gary Waint explained the differences between the new committee and the old commission, the new committee being a Supreme Court committee. He explained reimbursement for travel expenses and general budget issues.

**III. Rule 4-1.2 Limited Scope Representation**

**Rule 4-1.2(c)**

The Committee reviewed Rule 4-1.2 as previously adopted by the Supreme Court. After its adoption, the Court received comments regarding lack of clarity, as well as problems for entities which provide significant telephone advice, such as programs funded by the Legal Services Corporation. After much discussion regarding these concerns and others, it was proposed that Rule 4-1.2 (c) be amended as follows:

**4-1.2(c)** A lawyer may limit the scope of representation if the client gives informed consent in a writing signed by the client to the essential terms of the representation and the lawyer's limited role. The requirement of a writing signed by the client does not apply to the initial consultation or to pro bono services provided through a nonprofit organization, a court-annexed program, a bar association, or an accredited law school. The lawyer shall document the initial consultation or services in writing. Use of a written notice and consent form substantially similar to that contained in the comment to this Rule 4-1.2 creates the presumption ....

**Judge Williamson moved to adopt the rule as amended. Judge Burkemper seconded the motion. The motion passed with Judge Smith dissenting.**

The comment to the rule was then discussed and concern was raised that it was important to address when the initial consultation begins and ends. The comment was therefore amended as follows:

#### Comments

[2] A lawyer may assist a self-represented litigant on a limited basis without undertaking the full representation of the client on all issues related to the legal matter for which the lawyer is engaged. Any doubt about the scope of representation should be resolved in a manner that promotes the interests of justice and those of the client and opposing party. Use of a written agreement for limited representation is required, except as provided in the rule. The initial consultation ends when the lawyer and the client agree that the lawyer will or will not undertake the representation. A lawyer may provide legal advice during an initial consultation. The lawyer should explain to the client the risks and benefits of limited representation during consultation on limiting the scope of representation. An agreement for limited representation does not exempt a lawyer from the duty to provide competent representation; however, the limitation of the scope of representation is a factor to be considered when determining the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation as required in Rule 4-1.1.

**Judge Schneider moved to adopt the comment as amended. Judge Williamson seconded the motion.** The motion passed.

#### **Rule 55.03**

Rule 55.03 was discussed. In its current form, ability of an attorney to ghost write was unclear. The Court requested that the Committee revisit the language and clarify this issue. It was therefore proposed that the rule be amended as follows:

**55.03(a) Signature Required.** Every pleading, motion and other filing shall be signed by at least one attorney of record in the attorney's individual name or, if the party is not represented by an

attorney, shall be signed by the party. An attorney who assists in the preparation of a pleading, motion, or other filing for an otherwise self-represented person is not required to sign the document.

**Judge Williamson moved to adopt the rule as amended. Lou DeFeo seconded the motion. The motion passed with Judge Sweeney dissenting.**

#### **IV. Review of Rule 88.09**

The Committee discussed whether changes to Rule 88.09 should be presented to the Supreme Court. The Committee received numerous comments from the judiciary asking whether the judgment form was mandatory, as well as other comments. Changes were proposed, adopted, and will be submitted to the Court.

**CATHY: I CANNOT RECALL WHETHER IT WAS THIS MEETING OR THE JUNE MEETING WHERE WE MADE SIGNIFICANT CHANGES TO RULE 88.09. IF IT WAS THE JUNE MEETING THEN THIS SECTION SHOULD STAND WITH SIMPLY THE FIRST SENTENCE, FOLLOWED BY THE FOLLOWING:**

It was decided that the discussion on changes should be deferred until all comments can be reviewed.

##### **A. Litigant Awareness Education Program**

It was discussed that currently the only source for the Litigant Awareness Program is on the website and therefore the Committee needed to quickly proceed with at least one other delivery method. Kathleen Bird advised that she was nearly finished with a script for the DVD presentation and that additional funds had been approved to make the DVD a more professional looking product. She noted that she was in the process of arranging filming with the producer.

The Committee discussed whether the program was mandatory for all pro se litigants. The Committee acknowledged that this issue had been addressed at length in prior meetings and that the program should be considered mandatory unless waived by the court in a particular case.

The Committee then discussed the third delivery method anticipated for the litigant awareness program, i.e., an in person litigant awareness class. Issues such as appropriate class size, facility availability, who would train the trainers, whether the courts would become involved in selecting individuals to teach other trainers, how the training of the trainers would be conducted, i.e., in person, website, or print copies, who will issue the certificate of completion to the participants, etc. It was determined that there are many issues that will need further study by the subcommittee.

The subcommittee recommended and the Committee approved that the in-person class be a three hour program for dissolutions with children and a 90 minute program for dissolutions without children and that class size should be limited to 30 people. Each circuit would be free to decide how to conduct the litigant awareness program for their circuit, with each circuit deciding

whether the circuit would adopt all three delivery methods to give the litigants an option, or approve less than all methods. The frequency for live classes would clearly depend upon the need of the local court.

Once the in-person class process is further down the road, the Committee will approach the Missouri Bar to request that some CLE credit be given to the trainers. The subcommittee recommended and the Committee approved the policy that lawyers should not solicit clients during the litigant awareness class; however, once the class is completed, the lawyer could accept cases of the students.

## **B. Forms**

The committee discussed dissemination of the forms to the public. There was also discussion regarding the court clerks printing and distributing the forms. It was the consensus of the Committee that clerks are not required to print and distribute the forms and were free to refer people to the website. However, if a circuit chose to distribute forms, it would have to be done without providing advice regarding completion of the forms.

The forms will go to the State Judicial Records Committee and the Family Court Committee for review and comment. The Committee will then review any comments received, incorporate any changes this Committee endorses, and submit the forms to the Supreme Court with explanation of this Committee's response to the comments.

The Hispanic Bar has agreed to translate all forms into Spanish.

For the dissolution judgment, it was suggested to move the description of the property to No. 19 Property Division from No. 24 Other Orders.

## **IV. Representing Yourself Website**

Kathleen Bird and Terri Norris updated the committee on the status and changes to the website. The home page will be made more user friendly for clerks and lawyers. For users with dial up there will be an option to have text only. It was suggested that the webpage would have radio buttons. Information regarding resources available in each county still needs to be collected and added to the website. Kelly Martinez volunteered to collect state-wide information regarding domestic abuse.

Kathleen Bird moved to change the name of the website from Missouri Courts Help Center to Access to Family Courts. Lou DeFeo seconded the motion. The motion passed.

It was discussed whether the forms should be moved in front of the litigant awareness tutorial instead of behind it. Lori noted that initially the requirement was that the forms be behind the litigant awareness program; however, now that the rules have been adopted and the litigant awareness program is mandatory, they will both be accessible by the menu.

It was suggested that there be a drop down menu so users could click on the county to see what kind of legal resources are available and who is out there to provide legal assistance.

## **VI. Judicial Education Subcommittee**

There was no meeting for the Judicial Education Subcommittee. However, Judge Williamson explained that the Supreme Court decided there will be a three-hour ethics program on Thursday during the Presiding Judges/Leadership Development Conference that is mandatory. The program would be for two hours in the morning then one hour in the afternoon. The co-chairs of this Committee, as well as some other members will be presenters.

## **VII. Other Subcommittees & Appointments**

There were no updates.

## **VIII. Other Business**

### **Brochure**

Karen Brown will work on redoing the brochure. She will be adding new information to the brochure regarding:

- Missouri Bar Referral Services
- Kansas City resources
- St. Louis resources
- Springfield resources

### **Court Leadership and Self Represented Litigation Solutions Program, September 8-10, 2008, Baltimore, Maryland**

Lori requested that some of the judge-members of this committee attend the conference as it is a follow-up to a conference Chief Justice Stith, Lori, Judge Holliger, and others attended earlier and seems more directed towards the judiciary. She recommended that Judge Williamson, Judge Burkemper, and Judge Sweeney attend, and if any of them are unable to attend, then she requested that other judge committee members volunteer. Bob Stoeckl said that it was possible that the Missouri Bar would agree to fund one or more members of the committee and agreed to approach the necessary people to determine if some funding was available. Gary said that he would check into funding three committee members through OSCA.

### **Miscellaneous Issues:**

Janette Brickman resigned from the committee. Lori and Dennis will recommend to the Supreme Court that Kelly Martinez would be an appropriate replacement..

Patricia Scaglia and Mary Ann McClure agreed to co-chair the Funding Subcommittee.

The meeting was adjourned.



# **SUPREME COURT OF MISSOURI**

**en banc**

June 23, 2008

Effective July 1, 2008

In re:

Repeal of subdivision subdivision 4-1.2, entitled "Scope of Representation," and the Comment thereto, of Rule 4, entitled "Rules of Professional Conduct," and in lieu thereof adoption of a new subdivision 4-1.2, entitled "Scope of Representation," and the Comment thereto.

## ORDER

1. It is ordered that effective July 1, 2008, subdivision 4-1.2 and the Comment thereto be and the same are hereby repealed and a new subdivision 4-1.2 and Comment thereto adopted in lieu thereof to read as follows:

### 4-1.2 SCOPE OF REPRESENTATION

(a) A lawyer shall abide by a client's decisions concerning the objectives of representation, subject to Rule 4-1.2(c), (f) and (g), and shall consult with the client as to the means by which they are to be pursued. A lawyer shall abide by a client's decision whether to accept an offer of settlement of a matter. In a criminal case, the lawyer shall abide by the

client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.

(c) A lawyer may limit the scope of representation if the client gives informed consent in a writing signed by the client to the essential terms of the representation and the lawyer's limited role. Use of a written notice and consent form substantially similar to that contained in the comment to this Rule 4-1.2 creates the presumptions:

(1) the representation is limited to the lawyer and the services described in the form, and

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

(d) The requirement of a writing signed by the client does not apply to:

(1) an initial consultation with any lawyer, or

(2) pro bono services provided through a nonprofit organization, a court-annexed program, a bar association, or an accredited law school,

(3) services provided by a not-for-profit organization funded in whole or in part by the Legal Services Corporation established by 42 USC Sec. 2996b.

(e) An otherwise unrepresented party to whom limited representation is being provided or has been provided is considered to be unrepresented for purposes of communication under Rule 4-4.2 and Rule 4-4.3 except to the extent the lawyer acting within the scope of limited representation provides other counsel with a written notice of a time period within which other counsel shall communicate only with the lawyer of the party who is otherwise self-represented.

(f) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

(g) When a lawyer knows that a client expects assistance not permitted by the Rules of Professional Conduct or other law, the lawyer shall consult with the client regarding the relevant limitations on the lawyer's conduct.

## **COMMENT**

### **Scope of Representation**

[1] Both lawyer and client have authority and responsibility in the objectives and means of representation. The client has ultimate authority to determine the purposes to be served by legal representation, within the limits imposed by law and the lawyer's professional obligations. Within those limits, a client also has a right to consult with the lawyer about the means to be used in pursuing those objectives. At the same time, a lawyer is not required to pursue objectives or employ means simply because a client may wish that the lawyer do so. A clear distinction between objectives and means sometimes cannot be drawn, and in many cases the client-lawyer relationship partakes of a joint undertaking. In questions of means, the lawyer should assume responsibility for technical and legal tactical issues, but should defer to the client regarding such questions as the expense to be incurred and concern for third persons who might be adversely affected. Law defining the lawyer's scope of authority in litigation varies among jurisdictions.

[2] A lawyer may assist a self-represented litigant on a limited basis without undertaking the full representation of the client on all issues related to the legal matter for which the lawyer is engaged. Any doubt about the scope of representation should be resolved in a manner that promotes the interests of justice and those of the client and opposing party. Use of a written agreement for limited representation is required, except as provided in this Rule 4-1.2. If a written agreement is not required by Rule 4-1.2, the

better practice is for the attorney to memorialize in writing the contact and services provided. The initial consultation ends when the lawyer and the client agree that the lawyer will or will not undertake the representation. A lawyer may provide legal advice during an initial consultation. The lawyer who undertakes limited representation should explain to the client the risks and benefits of limited representation during consultation on limiting the scope of representation. An agreement for limited representation does not exempt a lawyer from the duty to provide competent representation; however, the limitation of the scope of representation is a factor to be considered when determining the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation as required in Rule 4-1.1.

The following is a notice and consent to limited representation form that is appropriate:

### **Notice and Consent to Limited Representation**

To help you with your legal matters, you, the client, and \_\_\_\_\_, the lawyer, agree that the lawyer will limit the representation to helping you with a certain legal matter 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 limited help:

- The lawyer DOES NOT HAVE TO GIVE MORE HELP than the lawyer and you agreed; and
- The lawyer DOES NOT HAVE TO HELP WITH ANY OTHER PART of your legal matter.

While performing the limited legal services, the lawyer:

- Is not promising any particular outcome; and
- Is relying entirely on your disclosure of facts and will not make any independent investigation unless expressly agreed to in writing in this document.

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

I, the lawyer, agree to help you by performing the following limited services listed below and no other service, unless we revise this agreement in writing.

[INSTRUCTIONS: Check every item either **Yes** or **No** - do not leave any item blank. Delete all text that does not apply.]:

**Y N**

- a)         Give legal advice through office visits, telephone calls, facsimile (fax), mail or e-mail
- b)         Advise about alternate means of resolving the matter including mediation and arbitration
- c)         Evaluate the client's self-diagnosis of the case and advise about legal rights and responsibilities
- d)         Review pleadings and other documents prepared by you, the client
- e)         Provide guidance and procedural information regarding filing and serving documents
- f)         Suggest documents to be prepared
- g)         Draft pleadings, motions and other documents
- h)         Perform factual investigation including contacting witnesses, public record searches, in-depth interview of you, the client

- i)   Perform legal research and analysis
- j)   Evaluate settlement options
- k)   Perform discovery by interrogatories, deposition and requests for admissions
- l)   Plan for negotiations
- m)   Plan for court appearances
- n)   Provide standby telephone assistance during negotiations or settlement conferences
- o)   Refer you, the client, to expert witnesses, special masters or other attorneys
- p)   Provide procedural assistance with an appeal
- q)   Provide substantive legal arguments in an appeal
- r)   Appear in court for the limited purpose of \_\_\_\_\_  
\_\_\_\_\_
- s)   Other: \_\_\_\_\_

I will charge to the Client the following costs: \_\_\_\_\_  
\_\_\_\_\_

I will charge to the Client the following fee for my limited legal representation:  
\_\_\_\_\_

\_\_\_\_\_  
(Type Lawyer's name) Date: \_\_\_\_\_

**CLIENT'S CONSENT**

I have read this Notice and Consent form and I understand it. I agree that the legal services listed above are the ONLY legal services to be provided

by the lawyer. 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 more legal help. If the lawyer is giving me advice or is helping me with legal or other documents, I understand the lawyer will stop helping me when the services listed above have been completed. The address I give below is my permanent address where I can be reached. I understand that it is important that the court handling my case and other parties to the case be able to reach me at the address after the lawyer ends the limited representation. I therefore agree that I will inform the Court and other parties of any change in my permanent address.

In exchange for the Lawyer's limited representation, I agree to pay the attorney's fee and costs described above.

Sign your name: \_\_\_\_\_

Print your name: \_\_\_\_\_

Print your address: \_\_\_\_\_

Phone number: \_\_\_\_\_ FAX: \_\_\_\_\_

Message Phone: \_\_\_\_\_ Name: \_\_\_\_\_

Email address: \_\_\_\_\_

[3] In a case in which the client appears to be suffering a mental disability, the lawyer's duty to abide by the client's decisions is to be guided by reference to Rule 4-1.14.

**Independence From Client's Views or Activities**

[4] Legal representation should not be denied to people who are unable to afford legal services or whose cause is controversial or the subject of popular disapproval. By the same token, representing a client does not constitute approval of the client's views or activities.

**Services Limited in Objectives or Means**

[5] The objectives or scope of services provided by a lawyer may be limited by agreement with the client or by the terms under which the lawyer's services are made available to the client. For example, a retainer may be for a specifically defined purpose. Representation provided through a legal aid agency may be subject to limitations on the types of cases the agency handles. When a lawyer has been retained by an insurer to represent an insured, the representation may be limited to matters related to the insurance coverage. The terms upon which representation is undertaken may exclude specific objectives or means. Such limitations may exclude objectives or means that the lawyer regards as repugnant or imprudent.

[6] An agreement concerning the scope of representation must accord with the Rules of Professional Conduct and other law. Thus, the client may not be asked to agree to representation so limited in scope as to violate Rule 4-1.1 or to surrender the right to terminate the lawyer's services or the right to settle litigation that the lawyer might wish to continue.

### **Criminal, Fraudulent and Prohibited Transactions**

[7] A lawyer is required to give an honest opinion about the actual consequences that appear likely to result from a client's conduct. The fact that a client uses advice in a course of action that is criminal or fraudulent does not, of itself, make a lawyer a party to the course of action. However, a lawyer may not knowingly assist a client in criminal or fraudulent

conduct. There is a critical distinction between presenting an analysis of legal aspects of questionable conduct and recommending the means by which a crime or fraud might be committed with impunity.

[8] When the client's course of action has already begun and is continuing, the lawyer's responsibility is especially delicate. The lawyer is not permitted to reveal the client's wrongdoing, except where permitted by Rule 4-1.6. However, the lawyer is required to avoid furthering the purpose, for example, by suggesting how it might be concealed. A lawyer may not continue assisting a client in conduct that the lawyer originally supposes is legally proper but then discovers is criminal or fraudulent. Withdrawal from the representation, therefore, may be required.

[9] Where the client is a fiduciary, the lawyer may be charged with special obligations in dealings with a beneficiary.

[10] Rule 4-1.2(d) applies whether or not the defrauded party is a party to the transaction. Hence, a lawyer should not participate in a sham transaction; for example, a transaction to effectuate criminal or fraudulent escape of tax liability. Rule 4-1.2(d) does not preclude undertaking a criminal defense incident to a general retainer for legal services to a lawful enterprise. The last clause of Rule 4-1.2(d) recognizes that determining the validity or interpretation of a statute or regulation may require a course of action involving disobedience of the statute or regulation or of the interpretation placed upon it by governmental authorities.

2. It is further ordered that the portions of this Court's December 21, 2007, order relating to subdivision 4-1.2(c) and the Comment to subdivision 4-1.2 are vacated.

3. It is ordered that notice of this order be published in the Journal of The Missouri Bar.

4. It is ordered that this order be published in the South Western Reporter.

Day – to – Day

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MARY R. RUSSELL  
Acting Chief Justice



# **SUPREME COURT OF MISSOURI**

**en banc**

June 23, 2008

Effective January 1, 2009

In re:

(1) Repeal of subdivision (b) of subdivision 17.03, entitled "Referral, Notification and Appointment," of Rule 17, entitled "Alternative Dispute Resolution," and in lieu thereof adoption of a new subdivision (b) of subdivision 17.03, entitled "Referral, Notification and Appointment."

(2) Repeal of subdivision 43.01(b), entitled "Service on Attorney," of Rule 43, entitled "Service of Pleadings and Other Papers," and in lieu thereof adoption of a new subdivision 43.01(b), entitled "Service on Attorney."

(3) Repeal of subdivision 56.01(b)(4), entitled "Trial Preparation: Experts," of Rule 56, entitled "General Provisions Governing Discovery," and in lieu thereof adoption of a new subdivision 56.01(b)(4), entitled "Trial Preparation: Experts."

(4) Repeal of subdivision (a) of subdivision 84.035, entitled "Appeals from Orders Granting or Denying Class Certification," of Rule 84, entitled "Procedure in All Appellate Courts," adoption of a new subdivision (a) and a new subdivision (j) of subdivision 84.035, entitled "Appeals from Orders Granting or Denying Class Certification."

(5) Correction of reference to "The defenses specifically enumerated (1) - (12) in subdivision (a)" contained in subdivision 55.27(c), entitled "Preliminary Hearings," of Rule 55, entitled "Pleadings and Motions."

ORDER

1. It is ordered that effective January 1, 2009, subdivision 17.03(b) of Rule 17 be and the same is hereby repealed and a new subdivision 17.03(b) adopted in lieu thereof to read as follows:

17.03 REFERRAL, NOTIFICATION AND APPOINTMENT

\* \* \*

(b) If counsel for any party, after conferring with their respective clients, all other attorneys, and unrepresented parties, conclude that referral to alternative dispute resolution has no reasonable chance of being productive, they may opt out by so advising the court, in writing, within thirty days before the deadline to begin the alternative dispute resolution. The matter shall not thereafter be referred by the court to alternative dispute resolution absent compelling circumstances, which shall be set out by the court in any order referring the matter to alternative dispute resolution.

\* \* \*

2. It is ordered that effective January 1, 2009, subdivision 43.01(b) of Rule 43 be and the same is hereby repealed and a new subdivision 43.01(b) adopted in lieu thereof to read as follows:

43.01 SERVICE OF PLEADINGS AND OTHER PAPERS

\* \* \*

(b) Service on Attorney. Whenever under these rules or any of the statutes of this state service is required or permitted to be made upon a party represented by an attorney of record, the service shall be made upon the attorney unless service upon the party is ordered by the court. When a party is represented by more than one attorney, service may be made upon any such attorney. If an attorney has filed a notice of limited appearance for an otherwise self-represented person, service shall be made on the self-represented person and not on the attorney unless the attorney acting within the scope of limited representation serves the other party or the other party's attorney with a copy of the notice of limited appearance setting forth a time period within which service shall be upon the attorney.

\* \* \*

3. It is ordered that effective January 1, 2009, subdivision 56.01(b)(4) of Rule 56 be and the same is hereby repealed and a new subdivision 56.01(b)(4) adopted in lieu thereof to read as follows:

## 56.01 GENERAL PROVISIONS GOVERNING DISCOVERY

\* \* \*

(b) Scope of Discovery. Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

\* \* \*

(4) Trial Preparation: Experts. Discovery of facts known and opinions held by experts, otherwise discoverable under the provisions of Rue 56.01(b)(1) and acquired or developed in anticipation of litigation or for trial, may be obtained only as follows:

(A) A party may through interrogatories require any other party to identify each person whom the other party expects to call as an expert witness at trial by providing:

(i) Such expert's name, address, occupation, place of employment and qualifications to give an opinion. If the expert's curriculum vitae contains this information, the information may be provided by attaching a copy of the expert's curriculum vitae to the interrogatory answers;

(ii) The general nature of the subject matter on which the expert is expected to testify;

(iii) A list of the expert's publications with sufficient information to permit the publications to be located, including, the title, name of publisher, and date of each publication;

(iv) court name, cause number, parties' names and the name and address of the retaining law firm for all cases in which the expert has testified in court, testified by deposition or within the past forty-eight months has given a report pursuant to Rule 26(a)(2)(B) of the Federal Rules of Civil Procedure:

(v) the amount the retaining lawyer, the retaining law firm and the retaining party in the aggregate paid the expert and the expert's consulting firm during the past forty-eight months;

(vi) The terms of the compensation agreement with the expert, including the amount to be paid to the expert; and

(vii) The expert's hourly deposition fee.

(B) A party may discover through a deposition the facts and opinions to which the expert is expected to testify and information relevant to the expert's bias and credibility. All documents prepared, reviewed or received by the expert in the case, shall be produced at the beginning of the expert's deposition. Unless manifest injustice would result, the court shall require that the party seeking discovery from an expert pay the expert a reasonable hourly fee for the time such expert is deposed.

(C) The trial court may authorize production of additional material only for good cause shown and specifically set forth in the order authorizing production.

\* \* \*

4. It is ordered that effective January 1, 2009, subdivision 84.035(a) of Rule 84 be and the same is hereby repealed and a new subdivision 84.035(a) and a new subdivision 84.035(j) adopted to read as follows:

**84.035 APPEALS FROM ORDERS GRANTING OR DENYING CLASS CERTIFICATION**

(a) A party seeking permission to appeal from an order granting or denying class action certification shall file a petition for permission to appeal with the court of appeals within ten days of the entry of the order of which the party complains.

\* \* \*

(j) If the petition to appeal is denied, further review, if any, of the trial court's order granting or denying class action certification shall be by petition for original remedial writ filed directly in this Court.

5. It is further ordered that effective July 1, 2008, the reference to: "The defenses specifically enumerated (1) - (12) in subdivision (a)" contained in subdivision 55.27(c) of

Rule 55 be changed to refer to: "The defenses specifically enumerated (1) - (11) in subdivision (a)".

6. It is further ordered that notice of this order be published in the Journal of The Missouri Bar.

7. It is further ordered that this order be published in the South Western Reporter.

Day – to – Day

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MARY R. RUSSELL  
Acting Chief Justice



# **SUPREME COURT OF MISSOURI**

**en banc**

June 23, 2008

Effective July 1, 2008

In re:

(1) Correction of order of December 21, 2007, repealing subdivision 55.03, entitled "Signing of Pleadings, Motions and Other Papers; Appearance and Withdrawal of Counsel; Representations to Court; Sanctions," of Rule 55, entitled "Pleadings and Motions."

(2) Correction of order of December 21, 2007, adopting subdivision 88.09, entitled "Parties not Represented Counsel," of Rule 88, entitled "Dissolution, Legal Separation and Child Support."

## **O R D E R**

1. By order of December 21, 2007, this Court adopted a new subdivision 55.03 of Rule 55 to be effective July 1, 2008. The order is included in the February 19, 2008, advance sheets of the South Western Reporter, Third, Missouri Cases series, beginning at page Ct.R-8. The Court hereby corrects the order so that as corrected, effective July 1, 2008, subdivision 55.03 shall read as follows:

55.03 SIGNING OF PLEADINGS, MOTIONS AND OTHER PAPERS;  
APPEARANCE AND WITHDRAWAL OF COUNSEL;  
REPRESENTATIONS TO COURT; SANCTIONS

(a) Signature Required. Every pleading, motion and other filing shall be signed by at least one attorney of record in the attorney's individual name or, if the party is not represented by an attorney, shall be signed by the party. An attorney who assists in the preparation of a pleading, motion, or other filing for an otherwise self-represented person is not required to sign the document. Every filing made electronically must add a certificate verifying that the original was signed by the attorney or party shown as the filer. The original signed filing must be maintained by the filer for a period of not less than the maximum allowable time to complete the appellate process.

Each filing shall state the filer's address, Missouri bar number, if applicable, telephone number, facsimile number, and electronic mail address, if any.

An unsigned filing or an electronic filing without the required certification shall be stricken unless the omission is corrected promptly after being called to the attention of the attorney or party filing same.

(b) Appearance and Withdrawal of Counsel. An attorney who appears in a case shall be considered as representing the parties for whom

the attorney appears for all purposes in that case, except as otherwise provided in a written notice of limited appearance. If a notice of limited appearance is filed, service shall be made as provided in Rule 43.01(b).

An attorney appears in a case by:

(1) Participating in any proceeding as counsel for any party unless limited by a notice of limited appearance;

(2) Signing the attorney's name on any pleading, motion, or other filing except that an attorney who assisted in the preparation of a pleading, motion, or other filing and whose name appears on the pleading, motion, or other filing solely in that limited capacity has not entered an appearance in the matter; or

(3) Making a written appearance. A written entry of appearance may be limited by its terms to a particular proceeding or matter by filing a notice of limited appearance.

An attorney who files a notice of limited appearance withdraws when the attorney has fulfilled the duties set forth in the notice and files a termination of limited appearance with the court.

(c) Representation to the Court. By presenting and maintaining a claim, defense, request, demand, objection, contention, or argument in a pleading, motion, or other paper filed with or submitted to the court, an attorney or party is certifying that to the best of the person's knowledge,

information, and belief, formed after an inquiry reasonable under the circumstances, that:

(1) The claim, defense, request, demand, objection, contention, or argument is not presented or maintained for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(2) The claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(3) The allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery. An attorney providing drafting assistance may rely on the otherwise self-represented person's representation of facts, unless the attorney knows that such representations are false; and

(4) The denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

(d) Sanctions. If after notice and a reasonable opportunity to respond the court finds that Rule 55.03(c) has been violated, the court,

subject to the conditions below, may impose an appropriate sanction upon the lawyers, law firms, or parties that have committed or are responsible for the violation.

(1) *How Initiated.*

(A) *By Motion.* A motion for sanctions under this Rule 55.03 shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate Rule 55.03(c). The motion shall be served as provided in Rule 43.01. The motion shall not be filed with or presented to the court unless, within 30 days after service of the motion, the challenged claim, defense, request, demand, objection, contention, or argument is not withdrawn or appropriately corrected. If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in representing or opposing the motion. Absent exceptional circumstances a law firm shall be held jointly responsible for violations committed by its partners, associates, or employees.

(B) *On Court's Initiative.* On its own initiative the court may enter an order describing the specific conduct that appears to violate Rule 55.03(c) and directing a lawyer, law firm or party to withdraw or correct the questioned claim, defense, request, demand, objection, contention or argument or to show cause why it has not violated the rule

with respect thereto.

(2) *Nature of Sanction - Limitations.* A sanction imposed for violation of this Rule 55.03 shall be limited to that which is sufficient to deter repetition of the conduct or comparable conduct by others similarly situated. Subject to the limitations in Rule 55.03(d)(1), the sanction may consist of or include directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorney's fees and other expenses incurred as a direct result of the violation.

(A) Monetary sanctions shall not be awarded against a represented party for a violation of Rule 55.03(c)(2).

(B) Monetary sanctions shall not be awarded on the court's initiative unless the court issues its order to show cause before a voluntary dismissal or settlement of the claims made by or against the party that is, or whose lawyers are, to be sanctioned.

(3) *Order.* When imposing sanctions, the court shall describe the conduct determined to constitute a violation of this Rule 55.03 and explain the basis for the sanction imposed.

(e) *Inapplicability to Discovery.* This Rule 55.03 does not apply to disclosures and discovery requests, responses, objections, and motions that

are subject to the provisions of Rules 56 to 61.

(f) Sanctions for Conduct in Prior Action. If conduct constituting a violation of Rule 55.03(c) occurs but the civil action is dismissed and if a civil action based upon or including the same claim against the same party is thereafter filed, the court on its own motion or on motion of a party to the first action may impose an appropriate sanction in the second action for the violation of Rule 55.03(c). The sanction shall be imposed in the manner provided by Rule 55.03(d). In determining the sanction to impose, the court shall consider the costs and expenses incurred in the action previously dismissed, including the reasonable attorney's fees incurred in the first action.

2. By order of December 21, 2007, this Court adopted a new subdivision 88.09 of Rule 88 to be effective July 1, 2008. The order is included in the February 19, 2008, advance sheets of the South Western Reporter, Third, Missouri Cases series, beginning at page Ct.R-8. The Court hereby corrects the order so that as corrected, effective July 1, 2008, subdivision 88.09 shall read as follows:

## 88.09 PARTIES NOT REPRESENTED BY COUNSEL

Every party not represented by counsel who participates in a proceeding for dissolution of marriage, legal separation, parentage or the modification of a judgment in any such proceeding shall:

(a) Complete a litigant awareness program that includes an explanation of the risks and responsibilities of self-representation, unless waived by the circuit court. The awareness program shall be prepared by a committee designated by this Court, but each circuit may determine the manner and means by which the training shall be provided and the proof of compliance; and

(b) Unless such use is waived by the trial court, use the pleadings, forms, and proposed judgment prepared by a committee designated by this Court that have been approved by this Court. These forms shall be accepted by the courts of this state, until disapproved or superseded by this Court.

(c) Nothing in this Rule 88.09 prevents a court from determining the legal sufficiency of any pleading nor prevents a court from entering judgment in a form different from the judgment form approved pursuant to Rule 88.09(b).

3. It is ordered that notice of this order be published in the Journal of The Missouri Bar.

4. It is ordered that this order be published in the South Western Reporter.

Day – to – Day

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MARY R. RUSSELL  
Acting Chief Justice

**Committee on Access to Family Courts  
2008 Court Solutions Conference – Baltimore, Maryland  
Self-Represented Litigation Solutions Track**

**Summary:**

Judges J.D. Williamson, Leslie Schneider and Bennett Burkemper along with Patricia Scaglia and Kelly Cramer attended the Court Solutions Conference from September 8 – 10, 2008. This group compiled the Missouri State Team at the conference.

After the welcoming session of the conference the attendees received an introduction to the general purpose and structure of the gathering. There was a brief review from various courts across the nation summarizing the problems they encountered trying to implement different programs to resolve the self-represented litigation crisis' they were facing and the solutions they came up with to the resolve those problems.

Afterwards the team met briefly and discussed similar problems Missouri is facing to those discussed during the session. The team agreed that Missouri needs to focus on establishing Self-Help Centers and gaining judicial support for the SRL program. Additional items to focus on are the education of attorneys, revision of legal malpractice insurance policies to allow unbundled services and the creation of a Pro Se Document Checklist similar to that created by the state of Texas. Secondary items to focus on is the dissemination of educational information, use of basic signs and symbols throughout courthouses, a possible concierge desk to answer general questions from courthouse patrons and “pod-casts” to cell phones to educate litigants. The team agreed the ultimate priority innovation areas for Missouri would be Self-Help Centers and expansion of law libraries.

The second day included an introduction to the 15 different working modules to establish and implement solutions to the SRL crisis. They were the following:

- 1 – Challenge, Models, Court Self-Diagnosis and Strategies for Getting a Court Moving;
- 2 – Establishing and Operating a Court-Based Self Help Center;
- 3 – Designing and Modifying Physical Space for Access;
- 4 – Establishing Justice Corps and Volunteer Programs;
- 5 – Ethical Guidelines for Clerks and Court Staff;
- 6 – Developing and Deploying Plain Language Forms and Instructions;
- 7 – Deploying automated Forms for Access;
- 8 – Caseflow Management for Access;
- 9 – Working with Judges for Access;
- 10 – Courtroom Staffing and Services for Access;
- 11 – The Court Role in Establishing and Supporting Discrete Task Representation;
- 12 – Supporting and Integrating Law Library Services;
- 13 – Distance Services for the Self-Represented;
- 14 – Promoting Access for those with Limited English Proficiency;

### 15 – Access Innovations to Enhance Compliance.

Additionally the team members broke off into small groups to discuss leadership activities and get feedback on how to use the models to engage their fellow leaders about the value and possibilities of a range of solutions such as educational programs, seminars and leadership meetings. Last, the state team met and assessed Missouri's current status in relation to each of the models and identified which areas of innovation should be a priority. The assessment chart is included.

The last day of the conference was dedicated to consulting with experts in each of the 15 solution modules and specifically those areas chosen as the highest interest to Missouri. Each member had two opportunities to visit different experts.

A conference handbook was provided that contained PowerPoint presentations for each solution module and an introduction to the companion DVD materials that accompany the modules. Also included is a list of principal products available from the SRL Network. Each attendee received a CD that included an Activity Guide, the Resource Handbook, Best Practices in Self-Represented Litigation Innovation and Program Profiles. These materials are available for use and copying by courts and non-profit access to justice organizations.

**Court Leadership and Self-Represented Litigation  
Conference Review and Strategic Planning Priority Chart  
Baltimore, Maryland      September 8 - 10, 2008**

General Areas current status rated on a scale of 0 - 5 by CAFC members.  
0 = Not within CAFC control.      1 = Needs serious work.      5 = Excellent.

No.	General Area	Current Status	Priority	Notes / Comments
1	Challenge, Models, Court Self-Diagnosis and Strategies for Getting Moving (Status of Strategic Planning)	5		Already moving, established CAFC.
2	Establishing and Operating a Court-Based Self Help Center	1	1	Combine #2, 12 and 13 as they work together.
3	Designing and Modifying Physical Space for Access	0	0	No control over county building space availability.
4	Establishing Justice Corps and Volunteer Programs	N/A		Not feasible in Missouri.
5	Ethical Guidelines for Clerks and Court Staff	4 - 5		MO. has a more advanced program for clerk ed.
6	Developing and Deploying Plain Language Forms and Instructions	2		MO. forms generally follow statutory language.
7	Deploying Automated Forms for Access	4		Have Dissolution Forms, need remainder of forms.
8	Caseflow Management for Access	2 - 3	0	Not all courts are on a dedicated track for case management.
9	Working with Judges for Access	2+		Continue educating about benefits of SRL.
10	Courtroom Staffing and Services for Access	1		
11	The Court Role in Establishing and Supporting Discrete Task Representation	4		Already have support of MO. Supreme Court.
12	Supporting and Integrating Law Library Services for the SRL	1	1	Combine #2, 12 and 13 as they work together.
13	Distance Services for the Self-Represented	1	1	Combine #2, 12 and 13 as they work together.
14	Promoting Access for Those with Limited English Proficiency	3		OSCA pays interpreter for delinquency offenses only otherwise they are county paid.
15	Access Innovations to Enhance Compliance	1	N/A	An issue for attorneys.



## State Judicial Records Committee

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P. O. BOX 104480  
JEFFERSON CITY, MISSOURI  
65110

PHONE (573)751-4377  
FAX (573)522-5961

August 14, 2008

Honorable Mary Sheffield  
Judge, 25<sup>th</sup> Judicial Circuit  
200 N. Main St.  
Rolla, MO 65401  
**Sent via E-mail**

Dear Judge Sheffield:

The Committee on Access to Family Court has submitted several forms approved by its committee to the State Judicial Records Committee (SJRC) for comment. The Committee on Access to Family Courts has been charged with the responsibility of drafting forms for use in domestic matters by self-represented litigants.

The SJRC reviewed the following forms at our July 18, 2008 meeting: Petition for Dissolution of Marriage, Respondents Answers Parenting Plan, Part A and Part B and a Judgment of dissolution. I am asking that the Family Court Committee review the forms and report back to the SJRC with comments from your committee. I would appreciate very much if the FCC take up this matter at its September 26, 2008.

Attached you find a summary of the comments and concerns that the SJRC has with the forms.

Please let me know if you have any comments or concerns. We look forward to having your comments.

Sincerely,

  
Jimmie M. Edwards, Chair  
State Judicial Records Committee

JME/cz  
Attachment

Cc: Norma Rahm  
The Honorable Dennis Smith  
Lori Levine

## COMMENTS/RECOMMENDATIONS REGARDING COMMITTEE ON ACCESS TO FAMILY COURT FORMS

The State Judicial Records Committee reviewed the forms intended for use by self-represented parties in matters of dissolution of marriage submitted by the Committee on Access to Family Court on July 18, 2008. The following is a summary of their comments and recommendations regarding those forms. The forms reviewed were the Petition for Dissolution of Marriage, Statement of Property and Debt and Proposed Separation Agreement, Statement of Income and Expenses, Respondent's Answer, Parenting Plan, Notice of Hearing, and Judgment of Dissolution of Marriage.

### ALL FORMS

Recommend the caption of the forms be changed to "In the Circuit Court of \_\_\_\_\_ County, Missouri" instead of "In the \_\_\_\_\_ Court of \_\_\_\_\_, Missouri. The Committee was also concerned with the number of additional pages of instruction included with the package of forms as it would increase the size of each respective file. Overall, most domestic relations cases have a permanent retention period and many additional pages of instruction will increase the number of pages required to be retained.

### PETITION FOR DISSOLUTION OF MARRIAGE (Form CAF001)

Although the Committee notes that the social security number and date of birth of the parties and children are statutory requirements; there are privacy concerns about their use in public documents. If possible, this statutory requirement should be reviewed for possible changes to maintain the confidentiality of sensitive information.

### STATEMENT OF PROPERTY AND DEBT AND PROPOSED SEPARATION (Form CAF040)

The Committee notes that the CAF040 form's definition of non-marital property does not include "any property that is acquired after a legal separation or by a valid written agreement of the parties" that is used on the approved form CV105.

### STATEMENT OF INCOME AND EXPENSES (Form CAF050)

The Committee notes that the CAF050 form is significantly different than the approved Income and Expense Statement form CV100. .

### RESPONDENT'S ANSWER (Form CAF010)

Recommend adding to Question #5 an optional checkbox to state "I am on active duty in the armed services of the United States of America but *do not* waive my rights pursuant to the Servicemembers Civil Relief Act of 2003."

PARENTING PLAN

PART A – CUSTODY OF CHILDREN (Form CAFC501A)

Recommend that the last sentence of the paragraph under Question #5.A. Major Decisions be changed to “The following are examples of major decisions:” instead of “These decisions include the following:”.

PART B – SUPPORT OF THE CHILDREN (Form CAFC501B)

The Committee notes that the CAFC Form 14 worksheet Line 2.c., dealing with the adjustment for other children (not a subject of this proceeding) in the parent’s custody, is different than the Supreme Court’s Civil Procedure Form 14 worksheet.

JUDGMENT OF DISSOLUTION (Form CAFC 070)

Recommend adding a checkbox before the last sentence of Question #17 that states “The sheriff or other law enforcement’s ability to enforce the custody and visitation rights of any person pursuant to Section 452.425 RSMo.”

Mary -

On July 18, 2008, I attended the Judicial Records Committee meeting in Jefferson City, Missouri, to discuss the forms that have been approved by the Committee on Access to Family Courts. Judge Edwards graciously took the forms up at the start of the meeting. I was quite impressed with the members of the JRC as they all appeared to have reviewed the forms in detail.

I was questioned about a number of things and I think that most of the concerns were explained. Some of the unresolved points are as follows:

1. The Judicial Records Committee (JRC) suggested that it was a bad idea to have the social security numbers of the parties on the petition. I replied that this was required by Missouri statutes. I believe our statutes may have been mandated by federal law, but I am not sure of this. Anyway, the suggestion was made that the social security numbers be kept in a separate portion of the file that could be sealed. I don't think this complies with the statute that requires the social security numbers of the parties and children to be included in the petition and judgment. One judge indicated that the lawyers in her circuit only put down the last four digits of the social security number. I don't believe this practice complies with state law. This point was not resolved. I personally believe that the Missouri Statutes should be amended and that dissolution of marriage files should be closed. There is just too much personal information in these files. This is currently done in paternity cases.

2. Another issue arose concerning birth dates of the parties. These birth dates are required on the Certificate of Dissolution of Marriage, but they are not technically required on the petition. They have been included on the petition so that the judge could easily verify that the parties are over the age of 18. It was suggested that the petition contain the age of the parties and not the birthdates. This is possible, but this would affect the interactivity of the forms. Similar information should be entered in a similar format. For example, when someone enters their birthdate on the petition, it is automatically input on the Certificate of Dissolution of Marriage under the Husband or Wife. If we enter the age on the petition and the birthdate on the Certificate of Dissolution it will present problems and it could also allow for contradictory information to be entered. Someone could list their age as 30 and then list a birth date that would indicate they were a different age. But the information that was entered on the petition could not be automatically entered on the Certificate of Dissolution of Marriage, so the end user would be required to input additional information. If the birthdate was not required on the Certificate of Dissolution, then I would agree that we would merely need the age of the parties on the petition. Since the birthdate is required on the Certificate of Dissolution, I suggest that we require the birthdate on the petition also to be consistent.

3. One judge thought that an additional box should be added to the military issue on the answer. Currently one box provides that the respondent is in the military and waives his rights under the Servicemembers Civil Relief Act of 2003. Another box provides that the respondent is not in the military. It was suggested that a third box be added that would provide that the respondent is in the military but does NOT waive his rights under the Servicemembers Civil Relief Act of 2003. First of all, I think that if a person files an answer under the Servicemember Civil Relief Act of 2003, they may some of their rights. I did not bring this to the attention of the JRC because it only occurred to me later. In all of the cases I have handled as an attorney and as a judge, I have never seen someone in the

military file and answer but not waive their rights pursuant to the Soldiers and Sailors Civil Relief Act of 1940 or the subsequent Servicemembers Civil Relief Act of 2003. I'm not sure this is necessary. Also, this is somewhat akin to the problem outlined above in point 2. The petition provides for two choices: either the respondent is in the military or is not in the military. These two boxes map to the answer on a one to one basis. If we were to add an additional box on the answer, it would require significant additional programming. I'm not saying it can't be done, but it would be some amount of work.

4. There was some discussion that the definition of marital property contained on Page 2 of the Property Statement under the paragraph "What is marital property?" is incomplete. There were provisions of Section 452.330 which were not included on the form. For example, property acquired by a spouse after a decree of legal separation was not included. Early on in the forms creation process, we learned that pro se litigants were confused by this language because they confuse separation with a judgment of legal separation. Perhaps this could be reworded to closer track the statutory language. I think it might be a good idea to change the language slightly here.

5. In paragraph 17 of the proposed judgment, it provides that "The sheriff or other law enforcement officers shall enforce the rights of any person to custody or visitation pursuant to RSMo. Section 452.425." Many lawyers always include this language in judgments. The JRC thought that this language should be optional and should have a box in front of it. The concept of most of these forms is that you can only check one box under each paragraph. In paragraph 17, either the court does not have jurisdiction under the UCCJA or it does and it enters a parenting plan. An additional box might be confusing. This is one of those "What should be the default language?" issues. In my experience, almost all litigants would want this language included in their judgment. Litigants expect the police to enforce custody judgments. If a judge really didn't want this language included in the judgment, they could cross it out. I guess you could add a separate paragraph which would have two boxes. One would be the above quoted language and the other would state "The sheriff or other law enforcement officer shall NOT enforce the rights of any person to custody or visitation pursuant to RSMo. Section 452.425." This would make the judgment longer. After thinking about this issue in some detail, I would probably leave this language alone.

6. The JRC thought that the language in paragraph 5 on Part A, Page 2 of the Parenting Plan should be changed. Under "Major Decisions", it currently states that "These decisions include the following:" The JRC thinks the language should state "The following are examples of major decisions:" It doesn't seem to make any difference to me.

7. There was also some discussion of the footnote at the bottom of each page. Currently it reads "This form is available for free at [www.courts.mo.gov](http://www.courts.mo.gov)" Some members of the JRC thought that this language should be larger and more obvious. Some member of the Committee on Access to Family Courts have suggested that this language be changed to "This form is available for free at [www.selfrepresent.mo.gov](http://www.selfrepresent.mo.gov)" which is the Committee on Access to Family Courts website off of the courts main site.

As you can see, most of these suggestions were minor. At the conclusion of the discussion, the Committee decided to wait on making their comments until they receive comments from the Family Court Committee. The Family Court Committee does not meet until the fall. According to the order that creates the Committee on Access to Family Courts, we are to forward forms approved by our committee to the Judicial Records Committee for comment and we are to establish a liaison with the Family Courts Committee.

I don't know where to go from here. The forms have been sent to every judge in the state for comment. These forms are available on the website.

When most of the members of the pro se implementation commission attended the midwest pro se conference in Des Moines two years ago, we were told that it is very important to have a nimble and responsive group of individuals who could be responsible for pro se forms. Otherwise the forms creation process could not be responsive to changes in the law or to changing patterns of usage. I believe that we definitely need to streamline the process.

Also, there is a significant amount of time that has to be expended when forms are changed. Something that may seem to be little such as changing a birthdate to an age requires several days of programming embedded into the forms. Currently, there are over 90,000 lines of JavaScript computer code embedded into the forms that take information from one spot on the form and put it into another spot on the form. This can be seen in the automatic calculation of child support in Form 14, but it is also this logic that forms full names out of the first name, middle name, last name and suffix. It is also the same logic that attempts to prevent people from answering the questions incorrectly. It is also the same logic that pops up alerts and warnings throughout the form.

For example, at the meeting on July 18, the JRC decided to change the Filing Information Sheet to include the gender of the parties. This really is not a significant change, but it required additional programming to be embedded into the forms so that these forms fields can also be interactive. The logic behind these form fields is non-trivial.

I think in the past, forms have been created with very little thought as to how they should be coded from a programming standpoint. As our statewide computer system evolves, this will be more important. This is especially true as we move to e-filing. The computer people have to talk with the legal people to make sure the forms work correctly.

Our committee will begin to work on the other forms required by Rule 88.09. Once again, thanks for all of your support and time. I hope you and the other judges on the Supreme Court are proud of our efforts with the committee.

Dennis

## SFIG Comments

On Sep 8, 2008, at 3:08 PM, John T. Bruere wrote:

I just had my first client come in with the new court approved forms for dissolution. Looking at them, I couldn't help but notice the anger that was swelling up in me. To think that after all the sweat and toil that I have done to get through law school and practice 40 years to the best of my ability and also wondering if I would have enough monthly to support my family, now, the very system that I depend upon for my livelihood is undercutting my income. In the instant case, I would have taken payments, as I do in most cases where there is financial problems. I am not the kind of attorney that turns a person down just because they don't have a large retainer. The client had \$300 to file with and to publish. The client's only question was how to publish, whether kids that were lost through DFS and adoption were still the client's kids, etc. The client thought I shouldn't charge anything because the client was doing it!!!! I believe most of you will realize there is a big difference about hearing about it and seeing all the forms laid in front of you by a client. The difference is that it hits home immediately where the practice of law is going and how the solo practioner that does domestic work in poor areas is doomed. It is socialism at it's worst. I already just despise how beaucratic most judges have become because of their reporting requirments and forgetting they are public servants first, and beaucrats last. Our judiciary, by and large, there are exceptions, have forgot that clients other than domestic clients rely on the sole practioner and that in most small towns, domestic work keeps the doors open. It was the St. Louis County judges that instigated this undercutting of the profession just to alleviate the problem of dealing with self-helf petitioners. Most judges become judges because they don't like to practice law or they are not earning enough. Because of that, they don't have any empathy at all for practicing lawyers. For the most part, I have found a definite decrease of respect for lawyers by judges.

If I could, I would opt out of being a member of the Mo. Bar and join an alternative association that would protect the lawyer and his or her income. I see nothing in that regard from the Bar Association. It has become nothing but an educational institution and a disseminator of phamplets and forms for the public. Lawyers need to form a union type organization to promote the survival of the sole or small firm practioner. I think law students should be warned that the very institution that licenses them will be taking business from them- this is just the beginning. The judiciary has now joined the internet in taking away business from the lawyer. The street vendor will be next - "legal forms, legal forms, cheap, and approved by the court, here ye, here ye" What is the difference between the street vendor selling court approved froms to fill in and the internet sellling forms to be filled in???????? Just wait, the court approved forms will appear on the internet for a nominal price to save the person from going to the court house. The judges will not know the souce.

JOHN T. BRUERE

John T. Bruere, Attorney at Law  
425 E. Cherry Street, Troy, Mo. 63379  
[thelawyer@socket.net](mailto:thelawyer@socket.net)  
636-462-3286

nothing like an abstract office or real estate agent drafting a deed and contract. But mind you they are trained professionals, right?????

Tom

Tom Hensley  
122 W. Harrison  
P.O. Box 7535  
Kirksville, MO 63501 [tomhensley@sbcglobal.net](mailto:tomhensley@sbcglobal.net) (660) 665-4419

For what it's worth, we real estate attorneys have been dealing with this for years to the point that the local bar puts its imprimatur on the face of real estate contracts which the real estate agents complete--and butcher--often enough. I think the family lawyers are experiencing something that the real estate attorneys have been completely frustrated with for a very long time.

Joanna W. Owen  
763 S. New Ballas Road, Suite 300  
St. Louis, MO 63141  
314-721-7717  
314-446-2756 (fax)

I agree with you whole-heartedly and just wish someone at the Bar or the Court gave a rat's ass about us, which -- with the possible exception of LindaO and the other good folks at the staff level -- it is clear no one does. I will not help a client to harm themselves by having anything to do with those forms that the judges drafted. Nor

will I do anything to support any judge OR MISSOURI BAR MEMBER that had anything to do with supporting them if I become aware of their support of that effort.

--

M. Corinne Corley  
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816.222.0792 [ccorleyjd@corleylawfirm.com](mailto:ccorleyjd@corleylawfirm.com) [www.corleylawfirm.com](http://www.corleylawfirm.com) "Only that day dawns to which you are awake." -- Thoreau

Corrine and others

They will not give a rats ass until we get our people into seats in the legislature and begin to affect their budget.

Another how to run for office for sasf 09

David Browning  
[dbrowningjd@comcast.net](mailto:dbrowningjd@comcast.net)  
103 S. Peck  
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years ago, I owned a real estate school, and started two title companies. At that time, no title company could do a deed. Now they sneak by with any document as long as they are "fill ins", all with the approval of the Judiciary and the Missouri Bar. It was my partial fault that real estate attorneys that are also brokers are exempt from continuing education. I attended a real estate school after I received my broker's license and repeatedly raised my hand to point out to the lecturer how wrong he was on the law. It was soon after that that the Real Estate Commission exempted me. The title companies and real estate agents hate real estate lawyers unless they are in trouble, which, when they do get into trouble, it is deep trouble.

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----- Original Message -----

Subject: Re: [Mosfig] New domestic court forms- angry  
Date: Mon, 8 Sep 2008 16:17:25 -0500  
From: John T. Bruere [thelawyer@socket.net](mailto:thelawyer@socket.net)  
Reply-To: [mosfig@karltimmerman.com](mailto:mosfig@karltimmerman.com)  
To: [mosfig@karltimmerman.com](mailto:mosfig@karltimmerman.com)  
References: <000b01c911ee\$b1143530\$6701a8c0@john> <20080908141120.zw  
[baiptxv79c884o@webmail.corleylawfirm.com](mailto:baiptxv79c884o@webmail.corleylawfirm.com)> <E873C90C-  
165E-4C13-BAF4-FD0D0621020B@comcast.net>

I normally get called from a member of a large firm asking me to support a raise in judiciary salaries, not from small firms. Need I say more?

Re: [Mosfig] New domestic court forms- angry

I had my first a couple weeks ago. The client, wife, didn't get the forms right and the judge sent her away. So she hired me to get it done. Two days after she paid my fee, I filed, including a written entry and waiver by H. Three days later H called her and bitched her out, said it was taking too long and that she should fire me and hire someone else. When she called asking when we could finish it, I explained that we had to wait 30 days after filing, and that I already had a spot on the uncontested docket 33 days after we filed, 35 days after the fee was paid.

Maybe H will file a bar complaint ...

**Dan Pingelton**

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This is just giving the people "meaningful" access to the courts. How could you complain about that. I am shocked and appalled and your defiance to this just and honorable attempt to help the People by their humble servants, the courts.

Tom

Tom Hensley  
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If so, my condolences. Can we fire the Bar and start our own?  
Seriously folks, the rich judges and lawyers of the Bar care not for us. Or seem not to care.

--

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816.222.0792 [ccorleyjd@corleylawfirm.com](mailto:ccorleyjd@corleylawfirm.com) [www.corleylawfirm.com](http://www.corleylawfirm.com) "Only that day dawns to which you are awake." -- Thoreau

Subject: RE: [Mosfig] New domestic court forms- angry  
Date: Mon, 08 Sep 2008 15:33:00 -0500  
From: Thomas C. Farnam <[TCF@FarnamLaw.com](mailto:TCF@FarnamLaw.com)>  
Reply-To: [mosfig@karltimmerman.com](mailto:mosfig@karltimmerman.com)  
To: [mosfig@karltimmerman.com](mailto:mosfig@karltimmerman.com)  
References: <000b01c911ee\$b1143530\$6701a8c0@john>  
<[20080908141120.zwbaiptxv79c884o@webmail.corleylawfirm.com](mailto:20080908141120.zwbaiptxv79c884o@webmail.corleylawfirm.com)>  
<[9F03DEC57759D541865ECEF81250F7A015C3853@eftsomaexch10.eftsre.source.com](mailto:9F03DEC57759D541865ECEF81250F7A015C3853@eftsomaexch10.eftsre.source.com)>  
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Corinne, like Joanna those of us doing employee benefits work have been dealing with the "pre-approved forms" issue for longer

than you could possibly imagine. (Personally I can attest to the issue being a reality since 1970, but that was long after it began.)

If you (or any other SFIG members) have a qualified retirement plan, did you create it using a form provided by the investment resource? Did you even bother to read the form before you signed? Were you told something to the effect of "there's nothing to worry about, this form has been approved by the IRS"? Guess what - if there is **any** problem of any kind with that retirement plan, it will be **YOUR** problem, and you can expect no help from the investment provider, and don't even bother telling the IRS it was an approved form. It is up to **you** (or your counsel) to make it work properly, and to know what it takes to accomplish "properly".

Sound familiar?

That's my world.

TCF

Oh that's right. I forgot. They DO care for us -- because we're the pile of rocks they climb to get to Mission Hills. [Ladue, I guess, if you're on the east side of the state].

--

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816.222.0792 [ccorleyjd@corleylawfirm.com](mailto:ccorleyjd@corleylawfirm.com) [www.corleylawfirm.com](http://www.corleylawfirm.com) "Only that day dawns to which you are awake." -- Thoreau

Corinne:

Sure they care for us, we pay their way to the Bahamas and other exotic places of call once a year. We are suppose to lead the charge for the Missouri Partisan court plan so no one gets their hands dirty. (Note didn't the bar board of governors, after raising our dues [or did the supremes do that], authorize \$500,000.00 to "educate" the Missouri proletariat on the Missouri partisan court plan.) We take the less than worthy cases from the "trial attorneys" so the insurance attorneys can get paid, we refer cases to the big firms so they can get paid, we create the little companys so the big firms can take over when the little companys get to big for us. Don't we wash their cars for them too?? How can they not care for us, again I am shocked an appalled.

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If he does, I'll represent you for free. In fact, we can file an action against the Pro Se committee for complicity in creating the

disaster. Oooh,that sounds fun anyway.

--

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dawns to which you are awake." -- Thoreau