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New rules let N.H. lawyers handle part of a case

By Katharine Webster, Associated Press Writer

An appetizer of legal consultation, please, with a main course of court appearance and a side of legal briefs.

New court rules let New Hampshire attorneys offer a menu of limited legal services to people who can't afford a lawyer from soup to nuts.

The rules, which took effect July 1, grew out of state Supreme Court efforts to deal with the overwhelming number of people representing themselves in court, or appearing "pro se."

"It's a response to the pro se dilemma throughout the country: Let's try to get you some help when you need it, when you want it, and in a manner that you can afford," said John Norton, a Keene attorney who worked on the new court rules and corresponding ethics rules for lawyers.

About 70 percent of family law cases in Maine and New Hampshire involve at least one person without a lawyer, court officials and lawyers say. The National Center for State Courts says there are no national statistics, but some states and other jurisdictions report comparable numbers, especially in family law and probate cases.

Several states, including Maine, have already adopted rules similar to New Hampshire's, and most other states are considering them. Vermont has provisionally authorized "unbundled" legal services in landlord-tenant disputes and is working on similar rules for family law cases, said Vermont Court Administrator Lee Suskind. The New Hampshire rules apply to all civil cases.

The changes are driven partly by judges and bar associations trying to help people without lawyers, said Jeanne Charn, a senior lecturer at Harvard Law School who advises the American Bar Association's Committee on the Delivery of Legal Services.

Consumers also are able to get more legal information online, while lawyers are facing the fact that most potential clients can't afford a full-service divorce, she said. Starting in the mid-1990s, courts began responding. They put forms and rules in plain English and online; set up self-help centers at courthouses; and hired mediators, neutral evaluators or case managers to guide people.

"The challenge (in family law) is the personal difficulties people are going through and the lack of trust, the hurt and the disappointment," Charn said. "There are areas where they need assistance -- it's too painful -- but they don't want to spend more than they have to."

Freeport, Maine, resident Mary Noyes used a lawyer to coach her through her divorce. She chose Portland attorney Elizabeth Scheffee, who pushed to unbundle legal services in Maine as president of the state bar in 2001.

Scheffee told Noyes what to expect, outlined her choices, assisted her through mediation -- required by Maine law -- filled out the necessary forms and drafted the final agreement. Noyes liked being in control, instead of being swept through the process by experts.

"The most valuable part is there is an active role, as opposed to just being told what to do and what my rights and responsibilities were. You can choreograph and build an agreement that hopefully is amenable to both parties," she said. Also, "It's always great just to pay for what you need."

Scheffee said a full-service divorce costs \$5,000 to \$8,000. But coaching someone like Noyes costs about \$1,000 -- more if the couple own real estate or have children, less if they have already negotiated an agreement and just need someone to put it in a legal document.

"My retainer from soup to nuts is four times what it is for unbundling, and it usually needs to be replenished, whereas most of your unbundled clients get a refund," she said.

Even at the New Hampshire Supreme Court, 25 percent to 30 percent of all appeals are filed by nonlawyers, Associate Justice James Duggan said. Most are in landlord-tenant actions, small claims cases, petitions filed by prisoners and post-divorce disputes.

"A lot of them are handwritten. I mean, people do the best they can, but our concern is people may have a good issue and they don't raise it," Duggan said. "What we hope is those people who are representing themselves will go to a lawyer to help them with a significant piece of the litigation, and that will help the courts."

The new rules also protect lawyers, said Amherst attorney Honey Hastings. If a lawyer starts a full-service divorce and the client runs out of money, the lawyer has to get a judge's permission to withdraw if the client objects.

Now lawyers and clients can sign a contract specifying exactly what they will and won't do and how much it will cost. If the client stops paying, the lawyer can stop working.

"Before, if the client stopped paying you -- and they might be into you for thousands of dollars -- you might not be able to get out of the case," she said. "It made lawyers say,

'I'm not going to take a case' or 'I'm going to have to charge more money,' and I think that priced some people out."

Manchester lawyer Peter Beeson, who helped fine-tune New Hampshire's rules, warns that unbundling will not resolve what he considers a crisis. That will require more legal aid lawyers, he said.

"Limited representation is not the ideal answer -- it's piecemeal representation in a case where somebody should really have representation from A to Z," Beeson said. "You need to have a far stronger legal services apparatus than we have now to address the problem of low- and moderate-income access to the legal system."