

STATE OF MINNESOTA
IN SUPREME COURT
ADM19-8002



**ORDER AMENDING RULES GOVERNING
LEGAL PARAPROFESSIONAL PILOT PROJECT**

This court established the Legal Paraprofessional Pilot Project to evaluate the use of legal paraprofessionals in Minnesota courts. This pilot project was put into effect by promulgating amendments to the Supervised Practice Rules, effective as of March 1, 2021. *See* Order Implementing Legal Paraprofessional Pilot Project, No. ADM19-8002 (Minn. filed Sept. 29, 2020). The Standing Committee for the Legal Paraprofessional Pilot Project was directed to administer the pilot project and to file an interim status report on the project with recommendations for any further rule amendments or other refinements to the project. *Id.* at 2–3. The Standing Committee filed its interim report on December 27, 2021, which included five recommended amendments to Rule 12 of the Supervised Practice Rules and a sixth recommendation to extend the pilot project for an additional year, until March 31, 2024. Standing Comm. for Legal Paraprofessional Pilot Project, *Interim Report and Recommendations to the Minnesota Supreme Court*, No. ADM19-8002 (Dec. 27, 2021) (“Interim Report”).

We opened a public comment period on January 28, 2022, and on April 1, 2022, we issued an order adopting the recommendations that had received only support and for which no concerns were raised, including extending the pilot project. *See* Order Establishing Public

Hearing and Promulgating Amendments to Rules Governing Legal Paraprofessional Pilot Project, No. ADM19-8002 (Minn. filed Apr. 1, 2022). We also ordered a public hearing to be held on May 17, 2022, on the two remaining recommended amendments that had received public comments both in favor of and in opposition to their adoption. Those recommendations were as follows:

- Amend Rule 12.01(e) to remove the prohibition against providing advice and representation in court or at mediations if the family law case involves allegations of domestic abuse or child abuse.
- Add eligibility to provide advice and representation in order for protection (OFP) and harassment restraining order (HRO) cases to the scope of work in which a legal paraprofessional may provide services.

The Standing Committee explained the reasons for these recommendations in its interim report. The rationale for expanding the pilot project to permit legal paraprofessionals to provide advice and representation in family law cases involving allegations of domestic or child abuse was as follows:

Consistent with the Court’s goals for the Pilot Project and based on feedback from participating lawyers and paraprofessionals, permitting legal paraprofessionals to represent and give advice to clients in family law cases where there are allegations or findings of domestic and/or child abuse will expand the opportunities for quality, low-cost representation. The Standing Committee believes that giving discretion to the supervising attorney and the legal paraprofessional to assess the circumstances on a case-by-case basis is preferable to an absolute exclusion. Often cases with allegations of abuse also have court orders or other prohibitions against the parties communicating with each other. Expanding the scope in this way may encourage settlement, assure equitable representation opportunities, and protect parties through a third-party representative.

Interim Report at 7. The Standing Committee, however, recommended that this expansion of the pilot project not include “cases where a child protection case has been filed under

Minnesota Statutes, Chapter 260C” because such cases are then in “the juvenile protection system and parties are eligible for court appointed attorneys.” *Id.* at 8.

The Standing Committee’s rationale for expanding the pilot project to allow legal paraprofessionals to provide services in OFP and HRO cases was similar:

Orders for Protection (OFP) and Harassment Restraining Orders (HRO) may be additional legal actions or components in a family law case. Adding the option for an eligible legal paraprofessional to provide advice and representation to clients in OFP and HRO cases to the scope of work aligns with the Pilot Project’s goal of expanding access to justice and representation for Minnesota’s citizens.

Both areas of law have low representation rates, consistent with the rates presented to the Court in the Implementation Committee’s Report and Recommendations. SCAO research analysts pulled representation data from MNCIS for OFP and HRO cases using the same methodology for the prior data. Among the cases disposed from 2018 to 2020, 97% of petitioners and 95% of respondents in OFP cases were unrepresented. The data are similar for HRO cases disposed during the same timeframe, with 97% of petitioners and 98% o[f] respondents unrepresented. The low rates of representation show that OFP and HRO cases are another area of unmet civil legal need in Minnesota courts.

Additionally, in OFP cases, non-lawyer domestic abuse advocates often assist parties, but they are not allowed to address the court, so the valuable services they can provide are limited in a court setting. Legal paraprofessionals are currently eligible under the Pilot Project to provide legal advice and representation to parties in evidentiary proceedings for landlord-tenant cases. OFP and HRO evidentiary hearings are comparable when considering the related legal time frames, rules, and complexity of the evidence.

Adding OFP and HRO cases as an area of law to the Pilot Project may result in more effective court hearings, continuity of representation in a case, and more equitable outcomes for parties.

Id. at 9–10 (footnote omitted).

Three comments were received in favor of the Standing Committee’s recommended expansion of the pilot project in these family-law-related areas from the National Federation

of Paralegal Associations, the Minnesota Paralegal Association, and the Institute for the Advancement of the American Legal System. All identified the unmet need for legal representation for the people involved in those cases and the ability for supervised legal paraprofessionals to help fill that gap if the pilot project were expanded.

Three comments were likewise received in opposition from the Minnesota State Bar Association Family Law Section and its Domestic Abuse Committee, the St. Paul and Ramsey County Domestic Abuse Intervention Project, and Standpoint and the Minnesota Coalition Against Sexual Assault. In both the written comments and at the public hearing, these groups expressed concerns about a lack of training for abuse-related cases in what can be more complex legal proceedings, particularly given the high stakes in proceedings involving victim safety.

We recognize the concerns expressed by both sides. The unmet need for legal representation, however, stands paramount. The pilot project was established to evaluate the delivery of legal services in areas of unmet civil legal needs, specifically including the area of family law. Prior to the pilot project, petitioners in family law disputes were without representation 53 percent of the time, while respondents were without representation in 84 percent of proceedings. Implementation Comm. for Proposed Legal Paraprofessional Pilot Project, *Report and Recommendations to the Minnesota Supreme Court*, No. ADM19-8002, at 2 (Mar. 2, 2020). The pilot project has allowed legal paraprofessionals to help meet that need, but not in cases involving “allegations of domestic abuse or child abuse.” Minn. Supervised Prac. R. 12.01(e). Lawyers and legal paraprofessionals currently participating in the pilot have identified this requirement as an obstacle to providing legal services to clients

who would otherwise benefit from the pilot. We also observe that the term “allegations” is undefined and vague. Removing the limitation on representation where there are “allegations of domestic abuse or child abuse” will expand the opportunities for quality, low-cost representation. We find support for this conclusion based on the absence of any complaints having been filed to date through the formal complaint process regarding the work of legal paraprofessionals, the fact that supervising lawyers have the discretion to determine whether a paraprofessional may properly and competently assist the client in a given case, and the fact that this is a pilot and not a permanent expansion of the authority of legal paraprofessionals to provide legal advice to clients in family law matters. We also agree with the Standing Committee that legal paraprofessionals’ authority to provide legal advice and representation should not be expanded to include cases in which “a child protection case has been filed under Minnesota Statutes, Chapter 260C.” Accordingly, subject to the qualifications set forth below, we adopt the Standing Committee’s recommendation to amend Rule 12.01(e) to remove the prohibition against providing advice and representation in court or at mediations if the family law case involves allegations of domestic abuse or child abuse, except in cases where a child protection case has been filed under Minn. Stat. ch. 260C.

We also conclude that the Standing Committee’s recommendation to allow legal paraprofessionals to provide services in OFP and HRO cases should be adopted, subject to several conditions. We note that there is a significant unmet need for legal services in OFP and HRO cases. Court statistics show that over 95 percent of petitioners and respondents in OFP and HRO proceedings are unrepresented. Interim Report at 10. We acknowledge that expert lawyers and organizations that provide services to victims of domestic abuse, sexual

abuse, and other abuse provide important and essential services to survivors. In particular, we note the vital services that domestic abuse advocates have provided to victims (and to the court) for decades in Minnesota. We also agree with commenters who stated that the evidentiary and substantive legal issues in OFP and HRO cases are often complex—and in particular, often more complex than those presented in many eviction cases. On the other hand, not all OFP and HRO cases are so legally complex that a trained paraprofessional under the supervision of an attorney cannot provide competent and effective legal services to clients who would otherwise be unrepresented. Moreover, we observe that a fundamental principle underlying the pilot program is that supervising attorneys will play a central role in ensuring that legal paraprofessionals serve only clients who are under the pilot in cases where the supervising attorney believes that the paraprofessional is competent and prepared. *See* Minn. Supervised Prac. R. 12.03(b) (stating that the supervisory attorney must “assume personal professional responsibility for and supervision of the legal paraprofessional’s work, including court appearances”).

We also note that concern was expressed that if the pilot project were expanded to OFP or HRO proceedings, alleged abusers, rather than victims, may be the ones to benefit from these expanded legal services. This concern is in part because financial abuse may accompany, or be part of, domestic abuse. Based on those concerns, we limit expansion of the pilot program to OFP and HRO proceedings to representations of persons seeking the OFP or HRO. Accordingly, we adopt the Standing Committee’s recommendation to amend Minn. Supervised Prac. R. 12.01(f) with modifications.

We also recognize that legitimate concerns about the need for training have been raised and thus condition our expansion of the pilot project to OFP and HRO cases on the Standing Committee establishing training or experience requirements for legal paraprofessionals before such legal paraprofessionals can provide services under the pilot program in those cases. We also conclude that the training or experience requirements shall apply in any family law case where the pleadings in the case include an allegation of domestic abuse or child abuse. We therefore adopt a new Rule 12.02(e) reflecting such requirements.

In developing and defining the training or experience requirements, the Standing Committee must consult with the Minnesota State Bar Association Family Law Section and its Domestic Abuse Committee, the St. Paul and Ramsey County Domestic Abuse Intervention Project, Standpoint, and the Minnesota Coalition Against Sexual Assault. Other groups that provided public comments, such as the Minnesota Paralegal Association—which expressed interest and support for such collaboration and training—may also be consulted. In directing the Standing Committee to establish training or experience requirements, we note that training specific to domestic abuse issues is required of all qualified adjudicative and evaluative neutrals in family law cases, who are required to have completed “a minimum of 6 hours of certified training in domestic abuse issues,” including at least “(1) 2 hours about domestic abuse in general, including definition of battery and types of power imbalance; (2) 3 hours of domestic abuse screening, including simulation or role-playing; and, (3) 1 hour of legal issues relative to domestic abuse cases.” Minn. Gen. R. Prac. 114.13(d)–(e). We also observe that commenters at the public hearing

described training programs offered by organizations that provide services to victims of domestic abuse and sexual abuse.

We additionally stress the supervisory attorney's responsibility to "assume personal professional responsibility for and supervision of the legal paraprofessional's work, including court appearances." Minn. Supervised Prac. R. 12.03(b). We urge the Standing Committee to consider whether, for purposes of the kinds of cases at issue in this order, an experience requirement should be added requiring the supervising attorney to appear with the legal paraprofessional in all trials and other proceedings for a certain period of time, unless waived by a judge after accepting a representation made by the supervising lawyer that the paraprofessional is prepared to proceed alone. A similar requirement exists for law student practitioners and supervised practitioners under Minn. Supervised Prac. R. 5.A(4).

Finally, we note that the Interim Report stated that in nearly half of the pilot project cases to date, the legal paraprofessional did not charge for their services. Interim Report at 6. It is thus important that the training or experience requirements not be so onerous so as to preclude legal paraprofessionals from being able to provide advice and representation on a pro bono basis to alleged victims of abuse.

IT IS HEREBY ORDERED THAT:

1. The Supervised Practice Rules are amended as shown below. The amendments are effective as of October 14, 2022, conditioned upon the Standing Committee submitting to the court by September 14, 2022, training or experience requirements for legal paraprofessionals participating in such proceedings, after consultation with, but not limited to, the following organizations: the Minnesota State Bar

Association Family Law Section and its Domestic Abuse Committee, the St. Paul and Ramsey County Domestic Abuse Intervention Project, and Standpoint and the Minnesota Coalition Against Sexual Assault. We will review the training or experience requirements before the amendment goes into effect on October 14, 2022.

Dated: June 16, 2022

BY THE COURT:

A handwritten signature in black ink, appearing to read "Lorie S. Gildea". The signature is written in a cursive style with a large initial "L".

Lorie S. Gildea
Chief Justice

SUPERVISED PRACTICE RULES

[Note: in the following amendments, deletions are indicated by a line drawn through the words, and additions are indicated by a line drawn under the words.]

Rule 12. Authorized Practice by Legal Paraprofessionals in Pilot Project

Rule 12.01 Scope of Work

An eligible legal paraprofessional may, under the supervision of a member of the bar, provide the following services:

* * *

(e) Under no circumstances shall a legal paraprofessional provide advice or appear in court or at a mediation under this paragraph if a petition for a child in need of protection has been filed under Minn. Stat. ch. 260C ~~the family law case involves allegations of domestic abuse or child abuse.~~

(f) Appear in court on behalf of petitioners, and provide advice to petitioners, in proceedings seeking orders for protection under Minn. Stat. § 518B.01 and harassment restraining orders under Minn. Stat. § 609.748.

(g) With authorization from the supervising attorney, prepare and file documents which include but are not limited to the documents identified in Appendix 1 to these rules.

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Rule 12.02 Eligible Legal Paraprofessionals

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(e) Training or Experience Requirements for Certain Cases. In any family law case in which the pleadings include allegations of domestic abuse or child abuse, or in any case under Rule 12.01(f), the legal paraprofessional shall not provide advice or appear in court or at a mediation unless the training or experience requirements established by the Standing Committee for these categories of cases have been satisfied. The legal paraprofessional must submit to the Standing Committee proof that the training requirements have been completed, and the Standing Committee shall note on the roster described in subdivision (d) of this rule that the training requirements have been satisfied. The Standing Committee shall publish the training requirements on its website and provide the training requirements to all registered legal paraprofessionals and supervising attorneys.