

**IN THE CIRCUIT COURT FOR THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

THE STRAND ON OCEAN DRIVE
CONDOMINIUM ASSOCIATION, INC., a
Florida not-for-profit corporation,

Plaintiff,

vs.

GENERAL JURISDICTION
DIVISION

CASE NO.
2017 025588 CA 01

Division: 06

JEFFREY HAYM; JOHN DOE TENANT;
and, JANE DOE TENANT,

Defendant.

_____ /

****Special Appearance****

NOTICE OF NON-APPEARANCE OF LIMITED-REPRESENTATION COUNSEL¹

Ice Legal, P.A., in deference to this Court's order and the obligations of the firm's attorneys as officers of the court, hereby responds to the Court's order purporting to order the firm, despite being a non-party which has never appeared in the case, to file either a Notice of Appearance of a Notice of Non-Representation in this case.

The Court's order exceeds the reach of its personal jurisdiction because Ice Legal has not appeared in the case as either a party or an attorney of record. Even if the Court had personal jurisdiction over the firm, there is no basis for compelling an attorney to appear as the attorney of record for a client when that attorney has entered into a limited-representation contract with the client the scope of which is strictly limited to assisting them outside of court—especially when there is no allegation that the limited-representation counsel has acted unethically or otherwise

¹ Ice Legal P.A.'s Appearance is not a general appearance or a waiver of any requirement of personal jurisdiction. Its appearance is limited to addressing the Court's Order directed against Ice Legal, P.A..

abused the limited-representation relationship. Moreover, the Court's order deprives the Defendant in this case his choice of counsel and an entirely appropriate means of affording legal advice. (See Motion to Vacate Court Order, attached as Exhibit "A").

The filing of a notice of appearance by a limited-representation attorney is not required by either the Rules of Civil Procedure or the Rules Regulating the Florida Bar. A requirement to do so would interfere with the contractual relationship between the firm and its client and would undermine the public policies that support limited-representation as a one of the primary means of combatting the access to justice crisis. Conversely, a requirement to file a Notice of Non-Representation would be misleading since Ice Legal, P.A. is "representing" (as in providing legal advice and assistance) the client on a limited basis. Moreover, it may be improperly used to restrict the client's freedom of choice of counsel in that the client may later decide to retain additional services, including appearance in the case.

Dated: February 2, 2018.

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By: *Alyx Cassel*
ALYX CASSEL
Florida Bar No. 123764

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served this February 2, 2018 to all parties on the attached service list. Service was by email to all parties not exempt from Rule 2.516 Fla. R. Jud. Admin. at the indicated email address on the service list, and by U.S. Mail to any other parties.

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DEFENDANT, JEFFREY HAYM'S, MOTION TO VACATE COURT ORDER

Defendant, Jeffrey Haym, moves this court to vacate a court order improvidently entered by the Court against the Defendant and in favor of the Plaintiff, The Strand on Ocean Drive Condominium Association, Inc., a Florida not-for-profit corporation, and states as follows:

1. On January 25, 2018, this Court was set to hear Defendant's Motion to Dismiss Complaint and the parties were present (by telephone). However, this Court refused to hear the motion due to its mistaken belief that the Defendant was represented by counsel who needed to be present at the hearing.

2. Additionally, the Court entered an Order, attached here as Exhibit A, stating that "Plaintiff's counsel is awarded an hour (1) of fees..." presumably as a sanction for having burdened Plaintiff with paying its counsel to re-appear at another hearing. Again, this stemmed from the Court's mistaken belief that it could not proceed at the January 25th hearing.

PREPARED WITH ASSISTANCE OF COUNSEL

Exhibit A

3. The Court’s concern was triggered by the “Prepared with Assistance of Counsel” language on the Defendant’s motion and an apparent belief that *pro se* litigants cannot be assisted by attorneys who do not make an appearance.

4. In reality, assisting clients outside of court or on discrete matters within a case (known as the “unbundling of legal services”¹) is not only permitted by applicable Bar rules, but actually encouraged by The Florida Bar and the American Bar Association (“ABA”) as a means of addressing the access to justice problem facing our community and the nation as a whole.²

5. The unbundling of legal services includes ghostwriting motions and preparing *pro se* litigants to handle hearings on their own. The ABA formally endorsed the delivery of legal ghostwriting services by attorneys to *pro se* clients in 2007.³

6. Florida Bar Rule 4-1.2 (c) formally approves of unbundling:

If not prohibited by law or rule, a lawyer and client may agree to limit the objectives or scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent in writing. If the attorney and client agree to limit the scope of the representation, the lawyer shall advise the client regarding applicability of the rule prohibiting communication with a represented person.

¹ Unbundled legal services is when the lawyer and client agree that the lawyer will provide some, but not all, of the work involved in traditional full service representation. Simply put, the lawyers perform only the agreed upon tasks, rather than the whole “bundle,” and the clients perform the remaining tasks on their own. [New York City Civil Court: Definitions](#).

² Ramón A. Abadin, [Filling the Justice Gap with a New Business Model](#), The Florida Bar Journal (November, 2015) (discussing proposals to facilitate the unbundling of legal services rules beyond the 2003 Supreme Court authorization for family law and certain probate matters); [Florida Commission on Access to Civil Justice, Subcommittee Final Report to the Commission](#), May 20, 2016 (listing unbundling as an area of focus for Florida’s permanent access to justice commission); [A National Conference on Pro Se Litigation Florida Team Report, Office of the State Courts Administrator](#), Florida Supreme Court January 3, 2000 (stressing the importance of encouraging unbundling).

³ *Undisclosed Legal Assistance to Pro Se Litigants*. American Bar Association, Standing Committee on Ethics and Professional Responsibility, "[Formal Opinion 07-446](#)".

7. The comments to this rule requires that lawyers ghostwriting pleadings and motions inserted the words “Prepared With Assistance of Counsel” in the document:

In addition, a lawyer and client may agree that the representation will be limited to providing assistance out of court, including providing advice on the operation of the court system and drafting pleadings and responses. If the lawyer assists a pro se litigant by drafting any document to be submitted to a court, the lawyer is not obligated to sign the document. However, the lawyer must indicate ‘Prepared with the assistance of counsel’ on the document to avoid misleading the court, which otherwise might be under the impression that the person, who appears to be proceeding pro se, has received no assistance from a lawyer.

Agreements limiting scope of representation Comments to Rule 4-1.2 R. Regulating Fla. Bar.

8. The comment codifies Florida Bar Ethics Opinion 79-7 (Reconsideration), issued on February 15, 2000, which held:

Any pleadings or other papers prepared by an attorney for a *pro se* litigant and filed with the court must indicate ‘Prepared with the Assistance of Counsel.’ An attorney who drafts pleadings or other filings for a party triggers an attorney-client relationship with that party even if the attorney does not represent the party as attorney of record.

9. Ironically, the fact that Defendant’s limited-representation counsel complied with the Bar rules triggered this Court’s concern that proceeding without the presence of limited-representation counsel would be improper.

10. As a consequence, any cost to the Plaintiff for having counsel appear for a second hearing is not a consequence of Defendant’s actions or any action or inaction by his limited-representation counsel. Therefore, there was no basis for the Court to impose a sanction of one hour of attorneys’ fees as there was nothing improper with proceeding on the Defendant’s Motion to Dismiss on January 25, 2018.⁴ Indeed, if sanctions are to be awarded, they should be in favor

⁴ Notably, at the hearing and in response to the Court’s request, Plaintiff’s counsel called Defendant’s limited-assistance counsel and confirmed the limited-assistance relationship and advised the Court about that fact.

of Defendant who is now burdened with writing this motion (by way of limited-representation counsel) and attending another hearing.

WHEREFORE, Defendant requests this Court to enter an order vacating the Court Order on Defendant's Motion to Dismiss Complaint and the imposition of attorney fees entered on January 25, 2018.

Dated: February 2, 2018.

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/s/ Jeffrey Haym
Jeffrey Haym

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