

AN ANALYSIS OF RULES THAT ENABLE LAWYERS TO SERVE PRO SE LITIGANTS

A White Paper

by the
ABA Standing Committee
on the
Delivery of Legal Services

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I. Introduction

This white paper has been prepared by the American Bar Association's Standing Committee on the Delivery of Legal Services. The purpose of the paper is to provide policy-makers with information and analysis on the ways in which various states are formulating or amending rules of professional conduct, rules of procedure and other rules and laws to enable lawyers to provide a limited scope of representation to clients who would otherwise proceed on a *pro se* basis, and to regulate that representation.

Specific policies cover: defining the scope of representation; clarifying communications between counsel and parties; creating parameters for the lawyer's role in document preparation, including disclosure of the lawyer's assistance; governing the entry of appearances and withdrawals for limited scope representation; and excusing conflicts checks for some limited scope services.

These specific issues are discussed below, following a brief background section. In addition, the white paper concludes with two appendices. Appendix A provides policy-makers with a worksheet focused on the decisions that need to be addressed to enable lawyers to provide assistance to *pro se* litigants. Appendix B includes the specific rules that are discussed throughout the paper.

II. Background

When going to state court, most people proceed *pro se* most of the time. High volume state courts, including traffic, housing and small claims, are dominated by *pro se* litigants.¹ Over the course of the past 20 years, domestic relations courts in many jurisdictions have shifted from those where litigants were predominately represented by lawyers to those where *pro se*'s are most common. In these areas of the courts, *pro se* is no longer a matter of growth, but rather a status at a saturated level.² Anecdotal evidence suggests that *pro se* representation is increasing in other personal civil matters, as well.³

The courts have responded to the paradigm where litigants are frequently self-represented by providing a variety of services to assist these litigants. Within the courthouse, some courts have added services. A few courts now provide guides, who give directions and

¹ See *Self-Represented Litigants and Court Legal Services Responses to Their Needs: What We Know*, by John Greacen (undated), at http://www.lri.lsc.gov/pdf/02/020045_selfrep_litigants&whatweknow.pdf, reporting on an internal analysis of four California counties, where 91.1 percent of small claims and 81.1 of landlord/tenant proceedings went forward with at least one *pro se* litigant. See also, *No Time for Justice: A Study of Chicago Eviction Court*, by the Chicago Lawyers Committee for Better Housing and the Chicago-Kent College of Law Class of 2004 Honors Scholar (December 2003), finding that in 96 percent of observed eviction cases at least one party was unrepresented.

² *Id.*, Greacen, at 7

³ See the poll of court administrators and judges reported in *Meeting the Challenge of Pro Se Litigation*, Goldschmidt, et al., American Judicature Society (1998).

offer general information.⁴ Courts in Washington, California⁵ and Florida⁶ have established courthouse facilitators who assist with detailed procedural information and form preparation on a one-to-one basis. Other courts have established desks staffed by volunteer lawyers who provide similar individual information.⁷ And, several courts have established self-help centers, based on a model originated in the Maricopa County branch of the Superior Court of Arizona.⁸ These centers provide forms, packets of information and sometimes, technological tools to provide directions and answers for an array of procedural questions.

State courts have also provided extensive information through the Internet. Many courts provide downloadable forms and a few incorporate document assembly tools so that litigants can either fill in the forms online or answer questions that are used to assemble the forms needed for the litigant's matter.⁹

Pro se litigants also now have the widely available resources of private document preparation services, both online and over-the-counter. The demand for this assistance appears high. Despite facing allegations of unauthorized practice of law, one service estimates it will generate revenue of \$50 million in 2005.¹⁰

Even though the courts and the marketplace are providing substantial assistance to *pro se* litigants, the scope of this assistance is limited.¹¹ Many, if not most, litigants need more than the procedural assistance offered by these resources. They need to know more than which forms to use, how to docket their cases and what time to appear in court. They need assistance with decision-making and judgment. They need to know their options, possible outcomes and the strategies to pursue their objectives.¹² In some cases, *pro se*

⁴ For example, the Hawai'i State Judiciary has sponsored the Ho'okele Court Navigation Project, which includes a "court concierge" desk located at the entrances of main court buildings.

⁵ See, A Description of California Courts' Programs for Self-Represented Litigants, Hough, 2003, at <http://www.selfhelpsupport.org/library.cfm?fa=detailItem&fromFa=detail&id=45467&folderID=40327&appView=folder&r=fa~~detail.id~~40327.appview~~folder>

⁶ See Florida Rule 12.750 Family Self-Help Programs, at http://phonl.com/fl_law/rules/famlawrules/famrul12750.htm

⁷ See, for example, the programs catalogued on the Self-Help Support portal, at <http://www.selfhelpsupport.org/library.cfm?fa=detail&id=42480&appView=folder>

⁸ See, <http://www.superiorcourt.maricopa.gov/ssc/sschome.html>

⁹ For a list of online self-service centers, see the ABA Pro Se/Unbundling Resource Center, at <http://www.abanet.org/legalservices/delivery/delunbundself.html>

¹⁰ Challenges Beset Low Cost Paralegal Aid, Mayer, Washington Post, (May 30, 2004) at <http://www.washingtonpost.com/ac2/wp-dyn/A113-2004May29?language=printer>

¹¹ Services in the marketplace are limited by state-based statutes governing the unauthorized practice of law. Limitations to court-based programs are found within their own enabling legislation. See *supra* note 7. See also the Supreme Court of Wisconsin order 1-18 (2002), In the matter of the creation of rules providing guidance on assistance to individual court users, at http://www.courts.state.wi.us/sc/sc_rules/01-18.pdf

¹² In **The Self-Help Friendly Court**, National Center for State Courts (2002), Richard Zorza labels this the Analysis Barrier, and states, "Most self-help assistance programs report as the key problem that telling people the law was not enough. Litigants often need far more help than the program could give them in analyzing the implications of the law, in applying that law to the facts, and then in forging out of the law and the facts a coherent and persuasive legal argument.", at 17.

litigants need advocates for some portion of their matter. These services can only come from lawyers.

With the input of lawyers, self-represented litigants can benefit from getting legal advice specific to their factual issues. Beyond mere advice, some *pro se* litigants also need direction on completing their forms in ways that not only make the forms legally compliant, but strategically advantageous to the litigant. They can benefit from document preparation that is not done merely mechanically, but executed with foresight and judgment. Additionally, some *pro se* litigants can optimize their outcomes if they have a lawyer advocate their interests before the tribunal. This may not be necessary for the entire litigation, but only for a limited purpose.

The added input from lawyers not only assists the litigants, but the courts, as well. The better the litigant is prepared, the more efficiently the court operates. While judges would no doubt prefer fully represented litigants, the choice in most venues is a self-represented litigant who is well prepared or one who is not. Courts can avoid litigants who are in a procedural revolving door when those litigants have access to the services lawyers provide.

Yet lawyers who provide personal civil legal services frequently do not meet the needs of *pro se* litigants.¹³ While they offer the full spectrum of legal services, lawyers are often unwilling to separate or unbundle their services and provide a limited scope of representation to litigants, although they typically do so when representing business interests and in transactional matters. Indeed the litigation system is not designed to accommodate this limited scope of representation model for the most part, although it does occur within some situations. For example, the process of challenging a court's jurisdiction is in itself a limited scope of representation. Similarly, when a lawyer represents a client through the trial stage, but not on appeal, the scope of representation is limited.

Fifteen years ago the courts were ill-equipped to handle *pro se* litigants in domestic relations, but many have since re-tooled themselves to do so through courthouse facilitators, self-help centers and related projects. The traditional services offered by lawyers combined with the more recent innovations in the courts result in a dichotomy in many states, however, where people are either represented by a lawyer or proceed with their matter on a *pro se* basis, relying on resources other than lawyers.

Until recently, neither the court system nor the legal profession has been fully prepared to embrace a model in which lawyers provide some, but not all, of the services of value to a litigant. Yet some courts and bar associations are moving forward, often collaboratively with other stakeholders such as legal aid providers, to facilitate limited representation, and to clearly define the circumstances under which these services are permissible.

¹³ See, for example, Recommendations from the Boston Bar Association Task Force on Unrepresented Litigants, calling for an increase in the availability of lawyers who provide unbundled services, at <http://www.unbundledlaw.org/Recommendations/Sourcematerials/BostonBar.htm>

Policies to enable lawyers to provide limited representation of civil litigants are being advanced through two concurrent initiatives. One is the result of Ethics 2000, the ABA endeavor to review and amend the ABA Model Rules of Professional Conduct, which began in 1997 and concluded with adopted revisions to the Model Rules in 2002.¹⁴ States are in the process of reviewing the revised Model Rules, and adopting, adapting or rejecting the specific changes, including Model Rules 1.2(c) and 6.5, which are discussed in detail below.¹⁵

The second initiative involves individual state collaborative analyses of limited representation policies. Rather than focusing on the ethics rules as a whole, as Ethics 2000 did, these initiatives are statewide efforts that examine the dynamics of *pro se* litigation. Many of these state initiatives stem from the 1999 National Conference on *Pro Se* Litigation, produced by the American Judicature Society. Eight states have amended rules of ethics and/or rules of civil procedure in response to their analyses of the specific aspects of limited representation.¹⁶ Several other states are at earlier stages of this process.¹⁷

The policy issues that have been addressed as a result of both of these initiatives thus far are:

- Defining the scope of representation;
- Clarifying communications between counsel and parties;
- Creating parameters for the lawyer's role in document preparation, including disclosure of the lawyer's assistance;
- Governing the entry of appearances and withdrawals for limited representation; and
- Excusing conflicts checks for limited services programs.

States that have analyzed issues of *pro se* litigation have stressed various directions. Several have recommended further research into specific areas. Some have suggested ongoing entities,¹⁸ and others have identified specific issues that they do, or do not, wish to explore further.¹⁹ But these reports express a common need to address the changes in the delivery of legal services, most often with rules that give a greater certainty to the process.

¹⁴ Details about Ethics 2000 are at http://www.abanet.org/cpr/e2k-ov_mar02.doc

¹⁵ To view the progress of the state decision-making on the adoption of Ethics 2000 recommendations, see the chart at http://www.abanet.org/cpr/jclr/ethics_2000_status_chart.pdf

¹⁶ CA, CO, FL, ME, NV, NM, WA, and WY. See Court Rules of the ABA Pro Se/Unbundling Resource Center, at <http://www.abanet.org/legalservices/delivery/delunbundrules.html>

¹⁷ They include Alaska, Illinois, Iowa, and Ohio. Utah has submitted revised rules to its Supreme Court.

¹⁸ See the [Report of the Nebraska Supreme Court Committee on Pro Se Litigation](#) (Nov 2002)

¹⁹ [The Recommendations and Report of the Minnesota State Bar Association Pro Se Implementation Committee](#) (July 2002) specifically recommends inter alia that its rules of professional responsibility be amended to relax conflicts of interest for non-profit and court-annexed limited legal services programs. Cf. the [Report and Recommendations on Unbundled Legal Services of the Commission on Providing Access to Middle Income Consumers of the New York State Bar Association](#), which states that "Limited appearances in litigation matters should not be permitted as a general matter."

III. Rules Defining the Scope of Representation

As part of Ethics 2000, the ABA amended Model Rule 1.2(c) to explicitly and unambiguously permit a lawyer to limit the scope of the representation.

According to the Reporter's Explanation of Changes:

The Commission recommends that paragraph (c) be modified *to more clearly permit, but also more specifically regulate*, agreements by which a lawyer limits the scope of the representation to be provided a client. Although lawyers enter into such agreements in a variety of practice settings, this proposal in part is intended to provide a framework within which lawyers may expand access to legal services by providing limited but nonetheless valuable legal services to low or moderate-income persons who otherwise would be unable to obtain counsel. (Ital. added)²⁰

Prior to the Ethics 2000 amendment, Model Rule 1.2(c) had stated:

A lawyer may limit the objective of the representation if the client consents after consultation.

The rule was amended to state:

A lawyer may limit the scope of representation if the limitation is reasonable under the circumstances and the client gives informed consent.

In addition to the rule change, the comment to Model Rule 1.2 was substantially changed to explicitly permit limited representation, such as a brief telephone consultation.²¹

Two issues are worth noting in regard to Model Rule 1.2(c). First, informed consent does not require a client to provide written consent under the Model Rule. The Standing Committee on the Delivery of Legal Services opposed efforts to include a pervasive writing requirement when the Ethics 2000 Commission considered this issue.²² While written consent to a limited representation is clearly a best practice that should be encouraged in many settings, the Committee believed that such an ethical requirement would frustrate the ability of lawyers to provide services through telephone hotlines, such as Hotlines for the Elderly, sponsored by AARP, or other electronic communications that do not lend themselves to an exchange of written or signed documents.

Most states that have adopted the revisions to Model Rule 1.2(c) have followed the ABA model that includes an informed consent requirement, but does not mandate a writing.

²⁰ [Model Rule 1.2 Reporter's Explanation of Changes](#) (undated)

²¹ For the complete change to the comment, see paragraphs 6 through 8, at <http://www.abanet.org/cpr/e2k-rule12.html>.

²² See testimony of John Skilton, then chair of the ABA Standing Committee on the Delivery of Legal Services, in Los Angeles, February 1999, at <http://www.abanet.org/cpr/e2k/skilton.html>

However, a few states have created interesting variations. Florida has simply modified its version of Rule 1.2(c) to require the client to consent to the limited representation in writing after consultation.²³ On the other hand, Maine and Wyoming have created amendments to their versions of Rule 1.2(c) that have the client and attorney contract for the scope of the representation and the specific aspects of the limitation within a designated form. These forms have been appended to the rules and are a part of their rules of professional conduct.²⁴

Maine Rule 3.4(i), the counterpart to ABA Model Rule 1.2(c), includes an attachment headed “Limited Representation Agreement.” It provides a checklist of 20 services that the lawyer may agree to perform, including legal advice, drafting, legal research and analysis, and standby telephone assistance during negotiations or a settlement conference. Other parts of the agreement set out the payment methods, a statement about costs, an agreement to arbitrate any fee dispute arising from the agreement and a list of client understandings. The client must indicate that he or she understands the attorney has not promised any outcome, the attorney is relying on the client’s disclosure of facts, and the attorney’s obligation is limited to those items designated in the agreement unless both the attorney and client enter into a subsequent written agreement. The Maine rule does not address the issue of brief advice over the telephone and does not provide exceptions to the use of the agreement.²⁵

Wyoming’s Rule 1.2(c) requires the lawyer who limits the objective or means of representation to fully disclose the limitations to the client. The rule includes a provision that requires written consent, but carves out telephone consultations. Rule 1.2(c)(3) states, “Unless the representation of the client consists solely of telephone consultation, the disclosure and consent required by this subsection shall be in writing.” The rule then indicates that the use of a written notice and consent form set out by the Board of Judicial Policy and Administration creates the presumptions that the representations are limited as described in the form and the attorney does not otherwise represent the client. The form, set out as an appendix to the rule, provides for the lawyer and client to fill in the limitations of the representation, under general topics of advice, document preparation or review and going to court. The form also stresses the need for the client to include an address where the opposing party and the court may reach him or her.²⁶

As states examine policies governing the limited scope of representation, many will address the obligation to define the scope through writings. However, the policies do not have to conclude that a written agreement is always necessary, or conversely, never required. States should consider the circumstances where a written agreement is valuable and those where it is likely to create barriers. The rules should then advance those considerations.

²³ See, <http://www.flabar.org/divexe/rrtfb.nsf/8bf68c7a6fda323085256bc800648cce/b97185a8d94f11f985256e1600596e31?OpenDocument>.

²⁴ See [Attachment A, Maine Bar Rule 3.4\(i\)](#)

²⁵ See, <http://www.cleaves.org/pdf/barrules.pdf>

²⁶ See, <http://www.courts.state.wy.us/RULES/Professional%20Conduct%20for%20Attorneys.html>

The second noteworthy issue involves the relationship between Model Rule 1.2(c)²⁷, governing the scope of representation, and Model Rule 1.1²⁸, governing competence. As noted in the introduction, court administrators and nonlawyer legal service providers in the marketplace, such as document preparation services, provide general *legal information* that is not based on the specific individual facts, while only lawyers are capable of providing clients with *legal advice* about specific matters. This raises a question about whether a lawyer can provide a client with only legal information, such as that provided by a document preparation service, *without further inquiry*. The question is important in relation to the limited scope of representation because a lawyer who cannot limit the scope of services in a way that includes an option for merely giving legal information loses the ability to provide a full array of unbundled services and to compete with the document preparation services and other legal service providers. The challenge is to craft policy that maintains legal services dedicated specifically for the skills particular to lawyers while at the same time enabling lawyers to serve a marketplace that sometimes wants something other than those skills.

The difficulty is in the relationship between the obligations created by Model Rule 1.1, addressing competence, and Model Rule 1.2(c), addressing the scope of limited services. The comment to Model Rule 1.1 provides an expansive definition of “competence” and states in part, “Competent handling of a particular matter includes *inquiry into and analysis of the factual and legal elements of the problem*...An agreement between the lawyer and the client regarding the scope of the representation may limit the matters for which the lawyer is responsible.”²⁹ (Ital. added) The comment then makes reference to Model Rule 1.2(c). The comment to Model Rule 1.2(c) states on this point, “Although an agreement for a limited representation does not exempt a lawyer from the duty to provide competent representation, the limitation is a factor to be considered when determining the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.”³⁰

If, by definition, competent representation necessitates some degree of inquiry and analysis and a lawyer may not limit representation to the extent that the representation exempts the lawyer from competent representation, then the logical conclusion is that a lawyer may not limit representation to the extent that the lawyer is excused from the obligation to conduct inquiry and analysis. Regardless of the intention of those drafting (and adopting) Model Rule 1.2(c), it would appear the outcome is one that handicaps the ability of the lawyer to limit his or her services and to compete with those who provide only legal information.

If policy-makers want to provide a full range of limited representation options and enable lawyers to provide clients with the services those clients are demanding in the marketplace, they could address this issue by modifying the comments to Rules 1.1 and

²⁷ See, http://www.abanet.org/cpr/mrpc/rule_1_2.html

²⁸ See, http://www.abanet.org/cpr/mrpc/rule_1_1.html

²⁹ See, http://www.abanet.org/cpr/mrpc/rule_1_1_comm.html

³⁰ See, http://www.abanet.org/cpr/mrpc/rule_1_2_comm.html

1.2(c) to clarify that a lawyer and client may agree to limit the representation to nothing more than legal information when that is all the client wants the lawyer to provide, and that in those instances accurate information is deemed competent without the requirement of the lawyer to make further inquiry or analysis. Amending the comments in this way would advance the objective of Ethics 2000 to “more clearly permit” limited representations.³¹

An additional alternative is to more explicitly enable lawyers to compete with document preparation services by making reference in the comment of MR 1.2(c) to MR 5.7, which governs law-related services. The reference would indicate that the lawyer may provide services such as document preparation as long as they are provided separate from the lawyer’s practice. This alternative is more difficult than merely excusing the lawyer’s obligation to make reasonable inquiry because it requires the lawyer to institutionalize the separate law-related service, rather than fold it into the practice of law.

IV. Rules Clarifying Communications Between Counsel and Parties

ABA Model Rules 4.2³² and 4.3³³ govern the communications of parties. Rule 4.2 protects a person who is represented by counsel and prohibits an adverse lawyer from communicating with a person he or she knows to be represented in the matter, unless the lawyer has consent from the opposing lawyer or has legal authority for the communication. Rule 4.3 is designed to prevent an adverse lawyer from taking advantage of an unrepresented opposing party and prohibits the lawyer from stating or implying that he or she is disinterested and prohibits the lawyer from giving the unrepresented party legal advice other than to obtain a lawyer.

These rules, of course, address the dichotomy of those who are fully represented and those who are *pro se*. They do not effectively address the circumstance of when a *pro se* litigant receives limited representation from a lawyer. However, the four states that have adopted policies governing this paradigm have amended their counterpart rules, giving direction to lawyers who oppose *pro se* litigants in court.³⁴

Colorado’s rules are somewhat inconsistent. It first places the burden on the *pro se* party to communicate the fact of any limited representation to opposing counsel. Rule 4.2, governing communications with a person represented by counsel, states, in part, “A *pro se* party to whom limited representation has been provided ...is considered to be unrepresented for purposes of this rule unless the lawyer has knowledge to the contrary.”³⁵

³¹ Supra note 21.

³² See, http://www.abanet.org/cpr/mrpc/rule_4_2.html

³³ See, http://www.abanet.org/cpr/mrpc/rule_4_3.html

³⁴ CO, FL, ME, and WA

³⁵ See, http://www.courts.state.co.us/supct/rules/1999/1999_10.pdf

However, the Colorado rule governing a lawyer's dealings with an unrepresented party states that *pro se* litigants who receive limited representation should be considered unrepresented for the purposes of that rule.³⁶

Washington, Florida and Maine address the issues with nearly identical language as one another.³⁷ The rules provide that the party receiving limited representation is to be considered by opposing counsel to be unrepresented unless that opposing counsel is provided with written notice of the limited representation. Washington Rule 4.2(b) states, "An otherwise unrepresented person to whom limited representation is being provided or has been provided in accordance with Rule 1.2 is considered to be unrepresented for purposes of this rule unless the opposing lawyer knows of, or has been provided with, a written notice of appearance under which, or a written notice of time period during which, he or she is to communicate only with the limited representation lawyer as to the subject matter within the limited scope of representation." Florida Rule 4-4.2(b) and Maine Rule 3.6(f) are virtually identical.

Washington and Florida also have nearly identical versions of Rule 4.3(b), which call for parties who have received limited assistance to be treated as unrepresented parties unless they have been notified in writing of the representation.

Creating a common understanding among lawyers about when a *pro se* litigant is represented may be a difficult challenge. While state rules are designed to protect *pro se* litigants and also assure that counsel receives information from opposing counsel, counsel should also have the responsibility of complying with the terms of the limited representation as communicated to opposing counsel. Rules should be considered that impose an obligation on counsel for the represented party to communicate with counsel for the *pro se* litigant only to the extent of the limited representation as identified by counsel for the *pro se* litigant.

V. Rules Creating Parameters for the Lawyer's Role in Document Preparation

Model Rule 1.2(c) seems to permit a lawyer to ethically provide the limited service of document preparation on behalf of otherwise self-represented litigants. However, rules of civil procedure sometimes create obstacles that make it impractical for a lawyer to provide limited services. A handful of states have addressed aspects of civil procedure, giving direction for issues that pertain to document preparation. Since the ABA's Ethics 2000 initiative examined only the Rules of Professional Conduct, and not rules of civil procedure, the states that have examined this issue have done so as independent state initiatives. This began with rule changes in Colorado in 1999.

The rules of civil procedure typically require a lawyer who represents a party to sign the pleadings. The signing, under the rules, serves as a verification or certification that the pleadings are well grounded in fact, warranted by existing law or a good faith argument

³⁶ Id

³⁷ See the ABA Pro Se/Unbundling Resource Center at <http://www.abanet.org/legalservices/delivery/delunbundrules.html> for links to each of these state rules.

for the extension, modification or reversal of existing law, and not interposed for any improper purpose, such as harassment. In full representation, a lawyer must make these representations after reasonable inquiry. This reasonable inquiry is not necessarily based solely on representations from the litigant.

While it is important to take steps to avoid frivolous litigation, the lawyer's obligation to certify pleadings is not consistent with the limited nature of document preparation. The state rules of civil procedure generally work toward preserving the dichotomy of full representation versus self-representation when placing the burden on the lawyer to make reasonable inquiry pursuant to this segmented service.

Colorado and Washington have addressed this issue by permitting the lawyer to rely on the *pro se* party's representation of facts in most situations. The Washington rule, which is fundamental identical to the Colorado rule, states:

In helping to draft a pleading, motion or document filed by the otherwise self-represented person, the attorney certifies that, to the best of the attorney's knowledge, information, and belief, formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or cause unnecessary delay or needless increase in the cost of litigation. *The attorney in providing such drafting assistance may rely on the otherwise self-represented person's representation of facts, unless the attorney has reason to believe that such representations are false or materially insufficient, in which instance the attorney shall make an independent reasonable inquiry into the facts.*³⁸ (Ital. added)

Some jurisdictions believe it is important to formally notify the court in some manner that the *pro se* litigant has had the assistance of counsel in the drafting of pleadings. This belief is generated from the notion that the courts give *pro se* litigants greater leeway and that if a litigant has had the undisclosed assistance of counsel, the litigant then stands to get both that assistance and the court's leeway. It is sometimes said that such an outcome would deceive the court. Professor Jona Goldschmidt rebuts this idea in his law review article, *In Defense of Ghostwriting*,³⁹ in which he notes that rules require the courts to liberally construe pleadings regardless of whether they are drafted by a lawyer or a litigant. Therefore, he concludes it is irrelevant whether the *pro se* litigant received the benefit of counsel in the preparation of pleadings.

Nevertheless, a few states have adopted provisions that require the court to be notified of the lawyer's role in drafting. Colorado C.R.C.P. 11(b) provides that pleadings drafted by a lawyer must include the lawyer's name, address, telephone number and registration

³⁸ See Colorado C.R.C.P. 11(b) at http://www.courts.state.co.us/supct/rules/1999/1999_10.pdf, and Washington Rule CR 11(b) at

http://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=sup&set=CR&ruleid=supcr11

³⁹ 29 Fordham Urban L J 1145 (2002)

number.⁴⁰ Nevada Rule 5.28 requires that a lawyer who contracts to limit the scope of representation state that limitation “in the first paragraph of the first paper or pleading filed on behalf of that client.”⁴¹

In the Florida Family Law Rules of Procedure Rule 12.040, a party who has received a lawyer’s assistance in document preparation must certify that fact in the pleadings or documents.⁴² The Florida Rules of Professional Conduct state in the comment to Rule 4-1.2, “If a 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.”⁴³

On the other hand, the California Rules of Court explicitly excuses the lawyer who drafts documents in a family matter from the obligation to disclose. Rule 5.70(a) states, “In a family law proceeding, an attorney who contracts with a client to draft or assist in drafting legal documents, but not to make an appearance in the case, is not required to disclose within the text of the document that he or she was involved in preparing the document.”⁴⁴

The obligation to disclose is significant because in some states the signing of pleadings can create an appearance, obligating the lawyer to perform services beyond those that he or she contracted with the client to perform. Wyoming has explicitly carved out an exception to such an obligation. Wyoming Rule 102(a)(1) states in part, “An attorney appears in a case:...(B) By permitting the attorney’s name to appear on any pleadings or motions, except that an attorney who assisted in the preparation of a pleading and whose name appears on the pleading as having done so shall not be deemed to have entered an appearance in the matter...”⁴⁵

To summarize:

- Some states require lawyers who draft pleadings as a discrete function to certify those pleadings, but allow the lawyer to primarily rely on the factual representation of the litigant rather than to conduct an independent inquiry.
- Some states are concerned that the courts will be misled if the role of the lawyer in drafting is not revealed to the court. In some jurisdictions, the lawyer’s name

⁴⁰ See http://www.courts.state.co.us/supct/rules/1999/1999_10.pdf

⁴¹ See http://www.co.clark.nv.us/district_court/EDCR.pdf

⁴² See [http://www.flabar.org/TFB/TFBResources.nsf/Attachments/416879C4A88CBF0485256B29004BFAF8/\\$FILE/04familylawrules.pdf?OpenElement](http://www.flabar.org/TFB/TFBResources.nsf/Attachments/416879C4A88CBF0485256B29004BFAF8/$FILE/04familylawrules.pdf?OpenElement)

⁴³ See <http://www.flabar.org/divexe/rrtfb.nsf/8bf68c7a6fda323085256bc800648cce/b97185a8d94f11f985256e1600596e31?OpenDocument>

⁴⁴ See <http://www.courtinfo.ca.gov/rules/titlefive/title5-1-18.htm>

⁴⁵ See http://courts.state.wy.us/RULES/04Uniform_Rules_for_District_Courts_of_the_State_of_Wyoming.html

and contact information must be disclosed. In others, the court must merely be advised that the litigant had the assistance of a lawyer.

- The obligation to sign pleadings may result in an appearance and where it does, at least one state has recognized the need to create an exception and preclude the lawyer who is providing limited services from an obligation to provide more expanded services than he or she agreed to provide.

VI. Rules Governing the Entry of Appearances and Withdrawals for Limited Representations in Court

Just as some litigants can benefit from lawyers who assist them with document preparation, others can benefit from lawyers who represent them in court for a portion of their legal matter. For example, a litigant in a divorce proceeding may not be able to afford a lawyer for the entire case, but have the need for a lawyer for a hearing to obtain an order of protection.

Under the traditional model of full representation, a lawyer who enters an appearance and, therefore becomes the attorney of record, is presumed to be the litigant's representative for all matters within that case. This is a convenient arrangement that facilitates court administration and case management. The lawyer receives all notices, is responsible for progressing the case and can only withdraw with leave of the court after motion and hearing. While there is no doubt this system is beneficial to the court and to opposing parties, it also perpetuates the dichotomy where litigants are assumed either to have representation or to be proceeding *pro se*. As with limits on document preparation, a system that contributes to this dichotomy is likely to result in more *pro se* litigants who are less prepared to efficiently advance their legal matter. If we presume that *pro se* litigation administratively encumbers the courts, it seems reasonable that a system clarifying limited appearances, and expediting withdrawals, would contribute to the smooth functioning of the courts.

As part of state initiatives to adopt policies advancing limited scope representation, some states have now revised rules to permit and clarify procedures for limited appearances and expedited withdrawals. Note that this discussion focuses only on limited representation, and does not refer to limited appearances entered for the purpose of challenging jurisdiction.

The rules of the states address three issues: 1) the manner in which the lawyer creates the limited appearance, 2) the obligation to provide the opposing side with notice, and 3) the procedure for withdrawal.

A limited appearance may be created by oral or written declaration to the court. New Mexico Rule of Professional Conduct 16-303(E) requires the lawyer who appears for a client in a limited manner to disclose the scope of the representation to the court, but does not specify the manner of that disclosure.

Nevada Rule 5.28 permits a lawyer to merely appear in court and provide notice of the limitation. It states, in part, "...[I]f the attorney appears at a hearing on behalf of a client pursuant to a limited scope contract, the attorney shall notify the court of that limitation at the beginning of the hearing."⁴⁶

More commonly, states require a written document that sets out the limitation in some manner. Wyoming Rule 102 allows a written appearance to be limited "by its terms, to a particular proceeding or matter."⁴⁷

Florida Rule 12.040 adds a requirement that the litigant acknowledge the limited appearance by stating that an attorney of record shall be attorney of record throughout the family law matter, "unless at the time of appearance the attorney files a notice, signed by the party, specifically limiting the attorney's appearance only to the particular proceeding or matter in which the attorney appears."⁴⁸

Maine Rule 11(b) specifically addresses limited appearances and states in part, "To the extent permitted by the Maine Bar Rules, an attorney may file a limited appearance on behalf of an otherwise unrepresented litigant. The appearance shall state precisely the scope of the limited representation..."⁴⁹

Washington Rules CR 70.1 and CRLJ 70.1 address an important issue. The rules state in part, "If specifically so stated in a notice of limited appearance *filed and served prior to or simultaneous with the proceeding*, an attorney's role may be limited to one or more individual proceedings in the action."⁵⁰ [Ital. added] This provision requiring the limited appearance to be filed initially prevents lawyers from essentially abandoning their clients, which is a risk when a client is unable to pay fees beyond the initial retainer. This is significant because the procedure for withdrawing from limited appearances is expedited.

These Washington rules are also unique because they set out the obligation to give notice to the lawyer who has filed a limited appearance. The rules state, "Service on an attorney who has made a limited appearance for a party shall be valid ...only in connection with the specific proceedings for which the attorney has appeared, including any hearing or trial at which the attorney appeared and any subsequent motions for presentation of orders."⁵¹

Although the ABA Model Rules do not specifically address limited appearances and their withdrawals, Rule 1.16 sets out the appropriate circumstances for terminating

⁴⁶ See http://www.co.clark.nv.us/district_court/EDCR.pdf

⁴⁷ See http://courts.state.wy.us/RULES/04Uniform_Rules_for_District_Courts_of_the_State_of_Wyoming.html

⁴⁸ See [http://www.flabar.org/TFB/TFBResources.nsf/Attachments/416879C4A88CBF0485256B29004BFAF8/\\$FILE/04familylawrules.pdf?OpenElement](http://www.flabar.org/TFB/TFBResources.nsf/Attachments/416879C4A88CBF0485256B29004BFAF8/$FILE/04familylawrules.pdf?OpenElement)

⁴⁹ See <http://www.cleaves.org/pdf/barrules.pdf>

⁵⁰ See http://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=sup&set=CR&ruleid=supcr70.1

⁵¹ Id.

representation. The comment to this rule notes, “Ordinarily, a representation in a matter is completed when the agreed-upon assistance has been concluded.” It then refers to Rules 1.2(c), addressing the scope of limited representation and 6.5, establishing procedures for a lawyer’s participation in a limited legal services program. While policy-makers should be certain to examine the role of the ethics rules governing this area, both limited and appearances and their withdrawals are addressed through rules of procedure.

Withdrawals of limited appearance are done in the states on a *de facto* basis or through an administrative process. They do not require leave of court in these particular states, except as noted below.

Wyoming provides a *de facto* withdrawal. Wyoming Rule 102 states, in part, “An attorney who has entered a limited entry of appearance shall be deemed to have withdrawn when the attorney has fulfilled the duties of the limited entry of appearance.”⁵²

Washington and Florida have similar rules that require the lawyer to file a notice of completion or termination. Each state also requires the filing to provide the court with the name and address of the person the lawyer had represented in the proceeding. Washington Rules CR 70.1 and CRLJ 70.1 state, in part, “At the conclusion of such proceedings the attorney’s role terminates without the necessity of leave of court, upon the attorney filing notice of completion of limited appearance which notice shall include the client information required by rule 71(c)(1).”⁵³ Florida Rule 12.040(c) is an adaptation of this provision.⁵⁴

Other states have more detailed procedures for withdrawal from limited appearances. Nevada requires a lawyer to file a “Substitution of Attorney,” substituting the client for the lawyer. The lawyer must state that he or she was hired to perform a limited service and the service has been completed. The lawyer must also include a copy of the limited services retainer agreement showing the scope of the service the lawyer was hired to perform. The lawyer must also serve copies of the substitution on the client and all other parties or their lawyers.⁵⁵

California includes safeguards with a slightly more formal system. A lawyer who has completed tasks set out in the court’s Notice of Limited Scope Representation form, serves the client with an Application to be Relieved as Counsel Upon Completion of Limited Scope Representation and a form for the client to file an objection to the application. If no objection is filed within 15 days, the lawyer then files an updated form and order with the clerk of the court. After the order has been signed, the lawyer must serve copies on the client and all parties who have appeared. If the client objects within

⁵² See [http://courts.state.wy.us/RULES/04Uniform Rules for District Courts of the State of Wyoming.html](http://courts.state.wy.us/RULES/04Uniform%20Rules%20for%20District%20Courts%20of%20the%20State%20of%20Wyoming.html)

⁵³ See http://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=sup&set=CR&ruleid=supcr70.1

⁵⁴ See [http://www.flabar.org/TFB/TFBResources.nsf/Attachments/416879C4A88CBF0485256B29004BFAF8/\\$FILE/04familylawrules.pdf?OpenElement](http://www.flabar.org/TFB/TFBResources.nsf/Attachments/416879C4A88CBF0485256B29004BFAF8/$FILE/04familylawrules.pdf?OpenElement)

⁵⁵ See http://www.co.clark.nv.us/district_court/EDCR.pdf

the 15 days, a hearing is set to determine whether the lawyer will be given leave to withdraw.⁵⁶

VII. Excusing Conflicts Checks for Limited Services Programs

As noted in the introduction, volunteer lawyers are often involved in court-sponsored programs that provide pro se litigants with individual consultations and document preparation in civil legal matters such as domestic relations, guardianships, housing and small claims. Similarly, legal aid offices and nonprofit law firms sponsor clinics, operate telephone hotlines and otherwise lend limited support, short of full representation.

Some courts and programs have concluded that the services the participating lawyers provide in these settings are merely legal information and not legal advice, reasoning that general legal information does not give rise to the creation of an attorney-client relationship and therefore the rules of professional conduct do not apply.

This perspective has a number of adverse consequences. First, the program unnecessarily limits the assistance it provides. On the one hand, it has lawyers who are trained advocates offering their services. Yet, the program limits that level of service and tells the lawyers they cannot serve as advocates or even give fact-specific advice. In this respect, the abilities of the lawyers are underutilized. Second, the pro se litigants are short-changed. They have a resource that has the capacity to answer their questions to optimize their outcomes, but is unable to provide that advice. Perhaps most importantly, the litigants are not given the protections otherwise available to clients of lawyers under the Rules of Professional Responsibility. The litigants are not protected from conflicts of interest. Their communications are not confidential, and the lawyers are not required to be competent when providing these services.

On the other hand, if a program were to deem its services legal advice tantamount to the creation of an attorney-client relationship, participating lawyers would be required to check for conflicts of interests not only for themselves, but also for imputed conflicts with the other members of their firms. This, of course, limits the pool of lawyers who are available to participate. However, volunteer lawyers may be willing to extend their services to provide short-term limited legal advice if they have no obligation to check conflicts of interests, but only face conflicts when the lawyer has actual knowledge of one. This is the basis for ABA Model Rule 6.5, a new rule promulgated as a result of the Ethics 2000 initiative.⁵⁷

According to the Reporter's Explanation of Changes, "Rule 6.5 is a new Rule in response to the Commission's concern that a strict application of the conflict-of-interest rules may be deterring lawyers from serving as volunteers in programs in which clients are provided short-term limited legal services under the auspices of a nonprofit organization or a court-annexed program."⁵⁸

⁵⁶ See <http://www.courtinfo.ca.gov/rules/titlefive/title5-1-19.htm>

⁵⁷ See http://www.abanet.org/cpr/mrpc/rule_6_5.html

⁵⁸ Model Rule 6.5 Reporter's Explanation of Changes, at <http://www.abanet.org/cpr/e2k-rule65rem.html>

While lawyers should always consider a full conflict check with the lawyer's firm to be a best practice, MR 6.5 excuses from the obligation to check for conflicts of interests lawyers who are participating in nonprofit or court programs offering limited legal services where there is no expectation of continuing representation. If the lawyer has actual knowledge of a conflict, the rules governing conflicts for the attorney and imputed conflicts for members of the attorney's firm continue to apply. In such a case, the lawyer would need to terminate any representation upon learning of the conflict.

Not only does the rule remove the disincentive preventing lawyers from participating, but it also preserves protection of the clients where there is a risk of harm from a conflict. When the representation begins and ends with a single brief encounter, the lawyer who is not personally aware of a conflict cannot jeopardize the interests of the client.

The scope of this rule should be examined when considering limited scope representation. Model Rule 6.5 encompasses lawyers who participate in nonprofit organizations or courts. It does not limit the scope to *pro bono* programs, nor to lawyers who volunteer their services. The rule goes beyond a mere rationale to facilitate greater participation by lawyers in volunteer programs. It also advances the ability of people to access limited legal services in a way that maintains protection against the adverse consequences of conflicts of interests.

States that have adopted Model Rule 6.5 include Arizona, Delaware, Idaho, Louisiana, Montana, New Jersey, North Carolina, South Dakota, and Virginia.⁵⁹ Several other states are considering the rule. Maine Bar Rule 3.4(j) is substantially similar to Model Rule 6.5. Washington state has adopted a rule that governs conflicts within the nonprofit or court program with more detail.⁶⁰

VIII. Conclusion

The information provided in this white paper serves as a basis for understanding the policies addressed by those states that have confronted the challenges of *pro se* litigation. Each of these states has taken steps to allow lawyers to provide a broader range of legal services and represent *pro se* litigants under systems that are clearly set out in their policies and that are understood by the courts, the litigants and the lawyers.

The attached worksheet presents a checklist of the issues and specific state remedies. It is designed to assist other policy-makers to comprehensively address this fundamental shift in the delivery of legal services from a system that mandates litigants to either have

⁵⁹ For a chart showing the status of state action on Ethics 2000, see http://www.abanet.org/cpr/jclr/ethics_2000_status_chart.pdf

⁶⁰ See Washington RPC 6.5, at http://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=ga&set=RPC&ruleid=garpc6.5.

lawyers or go it alone to one where lawyers can agree with their clients to provide services along a continuum of legal needs.

Appendix A

A Worksheet to Determine Rule Changes that Enable Lawyers to Serve *Pro Se* Litigants

- I. Defining the Scope of Representation
 - A. Will lawyers and clients benefit if the state defines the scope of a lawyer's representation explicitly and with clarity? See [ABA Model Rule 1.2\(c\)](#), generally
- II. Required Writing for Limited Tasks
 - A. When a lawyer agrees with a client to provide limited representation, should the rules require the agreement to be written? See [FL Rule 4-1.2\(c\)](#)
 1. Will a writing requirement preclude the delivery of legal services through hotlines or electronic media or should it include exemptions? See [Wyoming Rule 1.2\(c\)](#) for an exception
 2. Consider when a writing advances the representation and when it creates a barrier
- III. Standardized Form
 - A. Should a writing be in a standardized form?
 1. For a checklist, see [Maine Rule 3.4\(i\)](#) appendix
 2. For an open-ended form, see Wyoming Rule 1.2(c) appendix
- IV. Contact Information
 - A. Should the writing inform the otherwise unrepresented client of the need to provide contact information to the court and opposing party or counsel? See [Wyoming Rule 1.2\(c\) appendix](#)
- V. Setting the Limits of Limited Scope Representation – Obligation to Make Inquiry
 - A. Should the scope of representation be defined in a way that permits a lawyer to give a client only legal information, without an obligation to make inquiry and analysis as set forth in [the comment to ABA Model Rule 1.1](#), governing competence? This would allow the lawyer to offer the same degree of services as those offered by lay-sponsored legal document preparation services and still provide the benefits inherent in an attorney-client relationship.
 - B. If the jurisdiction decides to enable the lawyer to limit the scope of representation in a way that allows the lawyer to compete with a document preparation service, it should reconcile the comments to Rules 1.1 and 1.2(c) so that accurate factual information is deemed competent without the requirement of the lawyer to make further inquiry or analysis. The comment to Rule 1.2(c) could also reference MR 5.7, regarding the lawyer's obligations when providing law-related services.
- VI. Clarifying Communications Between Counsel and Opposing *Pro Se* Parties

- A. Should opposing counsel be prohibited from communicating with a party who receives limited scope representation?
 - 1. Allow counsel to presume the opposing party is unrepresented (and thus allow counsel to communicate with the opposing party) unless the lawyer for the otherwise self-represented party informs counsel otherwise. See [CO Rule 4.2](#), [FL Rule 4-4.2\(b\)](#), [WA Rule 4.2\(b\)](#) and [ME Rule 3.6\(f\)](#).
 - 2. Allow counsel to presume the opposing party is unrepresented (and prohibit opposing counsel from giving the opposing party advice) unless the lawyer for the otherwise self-represented party informs opposing counsel in writing. See [WA 4.3\(b\)](#) and [FL 4-4.3\(b\)](#).
- B. Should opposing counsel be required to communicate according to the directions from the counsel for the *pro se* litigant and not continue contacting counsel for the *pro se* litigant outside of that counsel's direction?
- VII. Document Preparation – Certification of Pleadings
 - A. Should a lawyer who provides the limited representation of document preparation be required to certify pleadings?
 - 1. The lawyer may rely on the litigant's representation of facts unless there is reason to believe they are false or materially insufficient. See [WA CR 11](#) and [CO CRCP Rule 11\(b\)](#)
- VIII. Document Preparation – Obligation to Inform the Court
 - A. Should the court be formally notified that a lawyer drafted the pleadings? Is the court at risk of being misled if the lawyer does not identify himself or herself? Is it sufficient to indicate that a lawyer has prepared the documents, or is there justification that requires full individual identification of the lawyer?
 - 1. Must include the lawyer's name, address, telephone and registration numbers. See [CO CRCP 11\(b\)](#)
 - 2. Lawyer must state the limitation of the services in first paragraph of pleading. See [NV Rule 5.28](#)
 - 3. Lawyer's assistance must be certified in the pleadings or documents, See [FL Family Law Rules of Procedure 12.040](#)
 - 4. Document must state, "Prepared with the assistance of counsel" See [FL 4-1.2\(c\)](#)
 - 5. No obligation to disclose that the lawyer prepared the forms. See [CA Rule 5.70\(a\)](#).
- IX. Document Preparation – Entry of Appearance
 - A. If the filing of signed pleadings create the entry of an appearance, should the rule be amended to exempt lawyers providing limited scope representation? See [WY Rule 102\(a\)\(1\)](#).
- X. Limited Appearance – Entry

- A. How may a lawyer who appears in court in a limited role enter an appearance?
 - 1. Requirement for lawyer to give notice of limited representation to the court at the beginning of a hearing. See [NV 5.28](#) and NM 16-303(E)
 - 2. Permit written appearance to be limited by its terms to a particular proceeding or matter. See [WY Rule 102](#)
 - B. How do we assure the otherwise self-represented litigant understands the limits of the representation?
 - C. Require litigant to sign an acknowledgement, See [FL Rule 12.040](#) Require the appearance to state the precise scope of the limited representation. See [ME Rule 11\(b\)](#). See also [ME Rule 3.4\(i\) appendix](#). How do we protect against *de facto* limited representation, where the lawyer leaves the client before the matter is concluded?
 - 1. Require notice of limited appearance to be filed prior to or simultaneously with the proceeding. See [WA Rule CR 70.1](#)
- XI. Limited Appearance – Notice to Counsel
- A. What is the opposing side’s obligation to service notice to counsel who files a limited appearance?
 - 1. Service is required only in connection with the proceeding for which the lawyer has appeared. See [WA Rule CR 70.1](#)
- XII. Limited Appearance – Withdrawal
- A. How may a limited appearance be concluded? Is leave of court required?
 - 1. The appearance ends when the lawyer fulfills his or her duties. See [WY Rule 102](#)
 - 2. The appearance ends with the filing of a notice of completion that provides the court with the name and address of the person represented. See [WA CR 70.1](#) and [FL Rule 12.040](#)
 - 3. The appearance ends when the lawyer files a substitution of attorney, substituting the client. A copy of the limited services retainer agreement must be attached and copies filed served on the client, all parties or their lawyers. See [NV Rule 5.28\(b\)](#)
 - 4. With notice and opportunity for a hearing. See [CA Rule 5.71](#)
- XIII. Excusing Conflicts Checks for Limited Services Programs
- A. Should lawyers providing short-term limited services be excused from checking conflicts when they have no knowledge of a conflict of interest?
 - 1. Stimulates *pro bono* involvement by lawyers who cannot practically check conflicts with their firm’s clients.
 - 2. Causes no harm to client who has no further interaction with the lawyer. See [ABA Model Rule 6.5](#)
 - B. What is the proper scope of the rule?
 - 1. MR 6.5 is limited to lawyers working in nonprofit and court-annexed services

Appendix B

Rules of Ethics and Procedure

ABA Model Rule 1.1 Comment
ABA Model Rule 1.2(c) and Comment
ABA Model Rule 6.5 and Comment
California Rule 5.70
California Rule 5.71
Colorado Rules of Civil Procedure Changes
Florida Rule of Professional Conduct 4-1.2(c)
Florida Rule of Professional Conduct 4-4.2(b)
Florida Rule of Professional Conduct 4-4.3(b)
Florida Family Law Rules of Procedure, Rule 12.040
Maine Amendments to Bar Rules
Maine Amendments to Rules of Civil Procedure
Rules of Practice for the Eighth Judicial District Court of Nevada
Washington Rules of Professional Conduct 1.2(c)
Washington Rules of Professional Conduct 4.2(b)
Washington Rules of Professional Conduct 4.3(b)
Washington Rules of Professional Conduct 6.5
Washington Rules of Procedure CR 11
Washington Rules of Procedure CR 70.1
Wyoming Rules of Professional Conduct 1.2(c)
Wyoming Rules of Professional Conduct 1.2 Appendix

Model Rules of Professional Conduct

CLIENT-LAWYER RELATIONSHIP **RULE 1.1 COMPETENCE**

Comment

Thoroughness and Preparation

[5] Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners. It also includes adequate preparation. The required attention and preparation are determined in part by what is at stake; major litigation and complex transactions ordinarily require more extensive treatment than matters of lesser complexity and consequence. An agreement between the lawyer and the client regarding the scope of the representation may limit the matters for which the lawyer is responsible. See Rule 1.2(c).

CLIENT-LAWYER RELATIONSHIP
**RULE 1.2 SCOPE OF REPRESENTATION AND ALLOCATION
OF AUTHORITY BETWEEN CLIENT AND LAWYER**

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

Comment

Agreements Limiting Scope of Representation

[6] The scope of services to be 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. When a lawyer has been retained by an insurer to represent an insured, for example, the representation may be limited to matters related to the insurance coverage. A limited representation may be appropriate because the client has limited objectives for the representation. In addition, the terms upon which representation is undertaken may exclude specific means that might otherwise be used to accomplish the client's objectives. Such limitations may exclude actions that the client thinks are too costly or that the lawyer regards as repugnant or imprudent.

[7] Although this Rule affords the lawyer and client substantial latitude to limit the representation, the limitation must be reasonable under the circumstances. If, for example, a client's objective is limited to securing general information about the law the client needs in order to handle a common and typically uncomplicated legal problem, the lawyer and client may agree that the lawyer's services will be limited to a brief telephone consultation. Such a limitation, however, would not be reasonable if the time allotted was not sufficient to yield advice upon which the client could rely. Although an agreement for a limited representation does not exempt a lawyer from the duty to provide competent representation, the limitation is a factor to be considered when determining the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. See Rule 1.1.

PUBLIC SERVICE
**RULE 6.5 NONPROFIT AND COURT-ANNEXED
LIMITED LEGAL SERVICES PROGRAMS**

(a) A lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:

(1) is subject to Rules 1.7 and 1.9(a) only if the lawyer knows that the representation of the client involves a conflict of interest; and

(2) is subject to Rule 1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by Rule 1.7 or 1.9(a) with respect to the matter.

(b) Except as provided in paragraph (a)(2), Rule 1.10 is inapplicable to a representation governed by this Rule.

Comment

[1] Legal services organizations, courts and various nonprofit organizations have established programs through which lawyers provide short-term limited legal services — such as advice or the completion of legal forms - that will assist persons to address their legal problems without further representation by a lawyer. In these programs, such as legal-advice hotlines, advice-only clinics or pro se counseling programs, a client-lawyer relationship is established, but there is no expectation that the lawyer's representation of the client will continue beyond the limited consultation. Such programs are normally operated under circumstances in which it is not feasible for a lawyer to systematically screen for conflicts of interest as is generally required before undertaking a representation. See, e.g., Rules 1.7, 1.9 and 1.10.

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

[3] Because a lawyer who is representing a client in the circumstances addressed by this Rule ordinarily is not able to check systematically for conflicts of interest, paragraph (a) requires compliance with Rules 1.7 or 1.9(a) only if the lawyer knows that the representation presents a conflict of interest for the lawyer, and with Rule 1.10 only if the lawyer knows that another lawyer in the lawyer's firm is disqualified by Rules 1.7 or 1.9(a) in the matter.

[4] Because the limited nature of the services significantly reduces the risk of conflicts of interest with other matters being handled by the lawyer's firm, paragraph (b) provides that Rule 1.10 is inapplicable to a representation governed by this Rule except as provided by paragraph (a)(2). Paragraph (a)(2) requires the participating lawyer to comply with Rule 1.10 when the lawyer knows that the lawyer's firm is disqualified by Rules 1.7 or 1.9(a). By virtue of paragraph (b), however, a lawyer's participation in a short-term limited legal services program will not preclude the lawyer's firm from undertaking or continuing the representation of a client with interests adverse to a client being represented under the program's auspices. Nor will the personal disqualification of a lawyer participating in the program be imputed to other lawyers participating in the program.

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

2005 California Rules of Court

Rule 5.70. Nondisclosure of attorney assistance in preparation of court documents

(a) **[Nondisclosure]** In a family law proceeding, an attorney who contracts with a client to draft or assist in drafting legal documents, but not to make an appearance in the case, is not required to disclose within the text of the document that he or she was involved in preparing the documents.

Rule 5.71. Application to be relieved as counsel upon completion of limited scope representation

(a) **[Applicability of this rule]** Notwithstanding rule 376, an attorney who has completed the tasks specified in the *Notice of Limited Scope Representation* (form FL-950) may use the procedure in this rule to request that the attorney be relieved as counsel in cases in which the attorney has appeared before the court as attorney of record and the client has not signed a *Substitution of Attorney-Civil* (form MC-050).

(b) **[Notice]** An application to be relieved as counsel upon completion of limited scope representation under Code of Civil Procedure section 284(2) must be directed to the client and made on the *Application to Be Relieved as Counsel Upon Completion of Limited Scope Representation* (form FL-955).

(c) **[Service]** The application must be filed with the court and served on the client and on all other parties and counsel who are of record in the case. The client must also be served with form FL-956, *Objection to Application to Be Relieved as Counsel Upon Completion of Limited Scope Representation*.

(d) **[No objection]** If no objection is filed within 15 days from the date that the *Application to Be Relieved as Counsel Upon Completion of Limited Scope Representation* (form FL-955) is served upon the client, the attorney making the application must file an updated form FL-955 indicating the lack of objection, along with a proposed *Order on Application to Be Relieved as Counsel Upon Completion of Limited Scope Representation* (form FL-958). The clerk will then forward the file with the proposed order for judicial signature.

(e) **[Objection]** If an objection is filed within 15 days, the clerk must set a hearing date on the *Objection to Application to Be Relieved as Counsel Upon Completion of Limited Scope Representation* (form FL-956). The hearing must be scheduled no later than 25 days from the date the objection is filed. The clerk must send the notice of the hearing to the parties and counsel.

(f) **[Service of the order]** After the order is signed, a copy of the signed order must be served by the attorney who has filed the *Application to Be Relieved as Counsel Upon Completion of Limited Scope Representation* (form FL-955) on the client and on all

parties who have appeared in the case. The court may delay the effective date of the order relieving counsel until proof of service of a copy of the signed order on the client has been filed with the court.

Rule Change 1999(10)

The Colorado Rules of Civil Procedure

Chapter 2. Pleadings and Motions

C.R.C.P. 11. Signings of Pleadings

Chapter 17A. Practice Standards and Local Court Rules

C.R.C.P. 121, Section 1-1. Entry of Appearance and Withdrawal

Chapter 25. Colorado Rules of County Court Civil Procedure

C.R.C.P. 311. Signing of Pleadings

Appendix to Chapters 18 to 20. Colorado Rules of Professional Conduct

Colo.RPC 1.2. Scope and Objectives of Representation

Colo.RPC 4.2. Communication with Person Represented by Counsel

Colo.RPC 4.3. Dealing with Unrepresented Person

C.R.C.P. 11. Signings of Pleadings

(a) OBLIGATIONS OF PARTIES AND ATTORNEYS

[Reletter existing text of Rule 11 as subsection (a) with no change to original text.]

(b) LIMITED REPRESENTATION

AN ATTORNEY MAY UNDERTAKE TO PROVIDE LIMITED REPRESENTATION IN ACCORDANCE WITH COLO.RPC 1.2 TO A PRO SE PARTY INVOLVED IN A COURT PROCEEDING. PLEADINGS OR PAPERS FILED BY THE PRO SE PARTY THAT WERE PREPARED WITH THE DRAFTING ASSISTANCE OF THE ATTORNEY SHALL INCLUDE THE ATTORNEY'S NAME, ADDRESS, TELEPHONE NUMBER AND REGISTRATION NUMBER. THE ATTORNEY SHALL ADVISE THE PRO SE PARTY THAT SUCH PLEADING OR OTHER PAPER MUST CONTAIN THIS STATEMENT. IN HELPING TO DRAFT THE PLEADING OR PAPER FILED BY THE PRO SE PARTY, THE ATTORNEY CERTIFIES THAT, TO THE BEST OF THE ATTORNEY'S KNOWLEDGE, INFORMATION AND BELIEF, THIS PLEADING OR PAPER IS (1) WELLGROUNDED IN FACT BASED UPON A REASONABLE INQUIRY OF THE PRO SE PARTY BY THE ATTORNEY, (2) IS WARRANTED BY EXISTING LAW OR A GOOD FAITH ARGUMENT FOR THE EXTENSION, MODIFICATION OR REVERSAL OF EXISTING LAW, AND (3) IS NOT INTERPOSED FOR ANY IMPROPER PURPOSE, SUCH AS TO HARASS OR TO CAUSE UNNECESSARY DELAY OR NEEDLESS INCREASE IN THE COST OF LITIGATION. THE ATTORNEY IN PROVIDING SUCH DRAFTING ASSISTANCE MAY RELY ON THE PRO SE PARTY'S REPRESENTATION OF FACTS, UNLESS THE ATTORNEY HAS REASON TO BELIEVE THAT SUCH REPRESENTATIONS ARE FALSE OR MATERIALLY INSUFFICIENT, IN WHICH INSTANCE THE ATTORNEY SHALL MAKE AN INDEPENDENT REASONABLE INQUIRY INTO THE FACTS. ASSISTANCE BY AN ATTORNEY TO A PRO SE PARTY IN FILLING OUT PRE-PRINTED AND ELECTRONICALLY PUBLISHED FORMS THAT ARE ISSUED THROUGH THE JUDICIAL BRANCH FOR USE IN COURT ARE NOT SUBJECT TO THE CERTIFICATION AND ATTORNEY NAME DISCLOSURE REQUIREMENTS OF THIS RULE 11(b).

LIMITED REPRESENTATION OF A PRO SE PARTY UNDER THIS RULE 11(b) SHALL NOT CONSTITUTE AN ENTRY OF APPEARANCE BY THE ATTORNEY FOR PURPOSES OF C.R.C.P. 121, SECTION 1-1 OR C.R.C.P. 5(b), AND DOES NOT AUTHORIZE OR REQUIRE THE SERVICE OF PAPERS UPON THE ATTORNEY. REPRESENTATION OF THE PRO SE PARTY BY THE ATTORNEY AT ANY PROCEEDING BEFORE A JUDGE, MAGISTRATE, OR OTHER JUDICIAL OFFICER ON BEHALF OF THE PRO SE PARTY CONSTITUTES AN ENTRY OF AN APPEARANCE PURSUANT TO C.R.C.P. 121, SECTION 1-1. THE ATTORNEY'S VIOLATION OF THIS RULE 11(b) MAY SUBJECT THE ATTORNEY TO THE SANCTIONS PROVIDED IN C.R.C.P. 11(a).

C.R.C.P. 121, SECTION 1-1. ENTRY OF APPEARANCE AND WITHDRAWAL
[No Change]

COMMITTEE COMMENT

[No change to first paragraph of existing comment]

AN ATTORNEY MAY PROVIDE LIMITED REPRESENTATION TO A PRO SE PARTY IN ACCORDANCE WITH THE REQUIREMENTS OF C.R.C.P. 11(b) OR C.R.C.P. 311(b) AND COLO.RPC 1.2. PROVIDING LIMITED REPRESENTATION TO A PRO SE PARTY IN ACCORDANCE WITH C.R.C.P. 11(b) OR 311(b) AND COLO.RPC 1.2 DOES NOT CONSTITUTE AN ENTRY OF APPEARANCE EITHER UNDER C.R.C.P. 121, SECTION 1-1, OR IN THE COUNTY COURT. SUCH LIMITED REPRESENTATION DOES NOT REQUIRE OR AUTHORIZE THE SERVICE OF A PLEADING OR PAPER UPON THE ATTORNEY PURSUANT TO C.R.C.P. 5(b) OR C.R.C.P. 305.

C.R.C.P. 311. Signing of Pleadings

(a) OBLIGATIONS OF PARTIES AND ATTORNEYS

***[Reletter existing text of Rule 311 as subsection (a) with no change to original text.] ***

(b) LIMITED REPRESENTATION

AN ATTORNEY MAY UNDERTAKE TO PROVIDE LIMITED REPRESENTATION IN ACCORDANCE WITH COLO.RPC 1.2 TO A PRO SE PARTY INVOLVED IN A COURT PROCEEDING. PLEADINGS OR PAPERS FILED BY THE PRO SE PARTY THAT WERE PREPARED WITH THE DRAFTING ASSISTANCE OF THE ATTORNEY SHALL INCLUDE THE ATTORNEY'S NAME, ADDRESS, TELEPHONE NUMBER AND REGISTRATION NUMBER. THE ATTORNEY SHALL ADVISE THE PRO SE PARTY THAT SUCH PLEADING OR OTHER PAPER MUST CONTAIN THIS STATEMENT. IN HELPING TO DRAFT THE PLEADING OR PAPER FILED BY THE PRO SE PARTY, THE ATTORNEY CERTIFIES THAT TO THE BEST OF THE ATTORNEY'S KNOWLEDGE, INFORMATION AND BELIEF, THIS PLEADING OR PAPER IS (1) WELLGROUNDED IN FACT BASED UPON A REASONABLE INQUIRY OF THE PRO SE PARTY BY THE ATTORNEY, (2) IS WARRANTED BY EXISTING LAW OR A GOOD FAITH ARGUMENT FOR THE EXTENSION, MODIFICATION OR REVERSAL OF EXISTING LAW, AND (3) IS NOT INTERPOSED FOR ANY IMPROPER PURPOSE, SUCH AS TO HARASS OR TO CAUSE UNNECESSARY

DELAY OR NEEDLESS INCREASE IN THE COST OF LITIGATION. THE ATTORNEY IN PROVIDING SUCH DRAFTING ASSISTANCE MAY RELY ON THE PRO SE PARTY'S REPRESENTATION OF FACTS, UNLESS THE ATTORNEY HAS REASON TO BELIEVE THAT SUCH REPRESENTATIONS ARE FALSE OR MATERIALLY INSUFFICIENT, IN WHICH INSTANCE THE ATTORNEY SHALL MAKE AN INDEPENDENT REASONABLE INQUIRY INTO THE FACTS. ASSISTANCE BY AN ATTORNEY TO A PRO SE PARTY IN FILLING OUT PRE-PRINTED AND ELECTRONICALLY PUBLISHED FORMS THAT ARE ISSUED THROUGH THE JUDICIAL BRANCH FOR USE IN COURT ARE NOT SUBJECT TO THE CERTIFICATION AND ATTORNEY NAME DISCLOSURE REQUIREMENTS OF THIS RULE 311(b).

LIMITED REPRESENTATION OF A PRO SE PARTY UNDER THIS RULE 311(b) SHALL NOT CONSTITUTE AN ENTRY OF APPEARANCE BY THE ATTORNEY FOR PURPOSES OF C.R.C.P. 121, SECTION 1-1 OR C.R.C.P. 305, AND DOES NOT AUTHORIZE OR REQUIRE THE SERVICE OF PAPERS UPON THE ATTORNEY. REPRESENTATION OF THE PRO SE PARTY BY THE ATTORNEY AT ANY PROCEEDING BEFORE A JUDGE, MAGISTRATE, OR OTHER JUDICIAL OFFICER ON BEHALF OF THE PRO SE PARTY CONSTITUTES AN ENTRY OF AN APPEARANCE PURSUANT TO C.R.C.P. 121, SECTION 1-1. THE ATTORNEY'S VIOLATION OF THIS RULE 311(b) MAY SUBJECT THE ATTORNEY TO THE SANCTIONS PROVIDED IN C.R.C.P. 311(a).

Colo.RPC 1.2. Scope AND OBJECTIVES of Representation

(a) A lawyer shall abide by a client's decisions concerning the SCOPE AND objectives of representation, subject to paragraphs (c), (d), and (e), 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) * * * [No change] * * *

(c) A lawyer may limit the SCOPE OR objectives, OR BOTH, of the representation if the client consents after consultation. A LAWYER MAY PROVIDE LIMITED REPRESENTATION TO PRO SE PARTIES AS PERMITTED BY C.R.C.P. 11(b) AND C.R.C.P. 311(b).

(d) * * * [No change] * * *

(e) * * * [No change] * * *

(f) * * * [No change] * * *

COMMENT

Scope AND OBJECTIVES of Representation

(INSERT FOLLOWING NEW MATERIAL TO BEGIN THE COMMENT AND THEN PROCEED WITH THE EXISTING COMMENT WITHOUT CHANGE)

THE SCOPE OR OBJECTIVES, OR BOTH, OF THE LAWYER'S REPRESENTATION OF THE CLIENT MAY BE LIMITED IF THE CLIENT CONSENTS AFTER CONSULTATION WITH THE LAWYER.

IN LITIGATION MATTERS ON BEHALF OF A PRO SE PARTY,

LIMITATION OF THE SCOPE OR OBJECTIVES OF THE REPRESENTATION IS SUBJECT TO C.R.C.P. 11(b) OR 311 (b) AND C.R.C.P. 121, SECTION 1-1, AND, THEREFORE, INVOLVES NOT ONLY THE CLIENT AND THE LAWYER BUT ALSO THE COURT. WHEN A LAWYER IS PROVIDING LIMITED REPRESENTATION TO A PRO SE PARTY AS PERMITTED BY C.R.C.P. 11(b) OR 311(b), THE CONSULTATION WITH THE CLIENT SHALL INCLUDE AN EXPLANATION OF THE RISKS AND BENEFITS OF SUCH LIMITED REPRESENTATION. A LAWYER MUST PROVIDE MEANINGFUL LEGAL ADVICE CONSISTENT WITH THE LIMITED SCOPE OF THE LAWYER'S REPRESENTATION, BUT A LAWYER'S ADVICE MAY BE BASED UPON THE PRO SE PARTY'S REPRESENTATION OF THE FACTS AND THE SCOPE OF REPRESENTATION AGREED UPON BY THE LAWYER AND THE PRO SE PARTY.

A LAWYER REMAINS LIABLE FOR THE CONSEQUENCES OF ANY NEGLIGENT LEGAL ADVICE. NOTHING IN THIS RULE IS INTENDED TO EXPAND OR RESTRICT, IN ANY MANNER, THE LAWS GOVERNING CIVIL LIABILITY OF LAWYERS.

[No change to balance of existing comment]

Colo.RPC 4.2. Communication with Person Represented by Counsel

[No change]

COMMENT

[No change to first two paragraphs]

This rule also covers any person, whether or not a party to a formal proceeding, who is represented by counsel concerning the matter in question. A PRO SE PARTY TO WHOM LIMITED REPRESENTATION HAS BEEN PROVIDED IN ACCORDANCE WITH C.R.C.P. 11(b), OR C.R.C.P. 311(b), AND COLO.RPC 1.2 IS CONSIDERED TO BE UNREPRESENTED FOR PURPOSES OF THIS RULE UNLESS THE LAWYER HAS KNOWLEDGE TO THE CONTRARY.

COMMITTEE COMMENT

[No change]

Colo.RPC 4.3. Dealing with Unrepresented Person

[No change]

COMMENT

An unrepresented person, particularly one not experienced in dealing with legal matters, might assume that a lawyer is disinterested in loyalties or is a disinterested authority on the law even when the lawyer represents a client. During the course of a lawyer's representation of a client, the lawyer should not give advice to an unrepresented person other than the advice to obtain counsel. THE LAWYER MUST COMPLY WITH THE REQUIREMENTS OF THIS RULE FOR PRO SE PARTIES TO WHOM LIMITED REPRESENTATION HAS BEEN PROVIDED, IN ACCORDANCE WITH C.R.C.P. 11(b), C.R.C.P. 311(b), COLO. RPC 1.2, AND COLO.RPC 4.2. SUCH PARTIES ARE CONSIDERED TO BE UNREPRESENTED FOR PURPOSES OF THIS RULE.

COMMITTEE COMMENT

[No change]

Amended and adopted by the Court, En Banc, June 17, 1999, effective July 1, 1999.

BY THE COURT:

Gregory J. Hobbs, Jr.

Justice, Colorado Supreme Court

(Notice and Comment Accompanying Colorado Supreme Court's
Announcement of Limited Representation Rules for Litigation)

Notice: Limited Representation Rules ("litigation unbundling") have been adopted effective July 1, 1999, amending C.R.C.P. 11, C.R.C.P. 311, Colo.RPC 1.2, C.R.C.P. 121, section 1.1 (comment), Colo.RPC 4.2 (comment) and Colo.RPC 4.3 (comment). Please Read Text of Rule Change and the Notice of its effect.

Notice of Limited Representation "Undbundling" Rules for Litigation In Effect July 1, 1999

The Colorado Supreme Court has adopted new rules for limited representation of clients in litigation matters. They address the obligations of attorneys to pro se parties and Colorado state courts in litigation that is being pursued by the pro se party with the drafting assistance of the attorney who is not making an entry of appearance in the case before a judge, magistrate, or other judicial officer.

The new rules authorize limited representation of pro se parties by attorneys in litigation, pursuant to Colo. RPC 1.2. Under Colo.RPC 1.2 the attorney and the client as a result of consultation with each other may limit the objectives and scope of litigation representation. As the comment to this professional rule sets forth, the attorney shall explain to the client the risks and benefits of limited representation. The attorney providing limited representation must provide meaningful legal advice to the client but it may be based upon the pro se party's representation of the facts and the scope of the representation agreed upon between the attorney and the client.

New comment to Colo.RPC 4.2 and Colo.RPC 4.3 explains that a pro se party to whom such limited representation is being provided is considered to be unrepresented from the standpoint of other lawyers who must contact the pro se party in the course of the litigation. Such lawyers contacting the pro se parties may not give legal advice to them but do not have to proceed through the lawyer who has provided the limited representation.

C.R.C.P. Rules 11 and 311 now contain a new subsection (b) that addresses limited litigation representation. An attorney who provides drafting assistance to a pro se party who files a pleading or paper in court thereby certifies to the court that it, to the best of the attorney's knowledge, information and belief, it is (1) well grounded in fact based on a reasonable inquiry of the pro se party by the attorney, (2) is warranted by existing law or good faith argument for the extension, modification or reversal of existing law, and (3) is not interposed for any improper purpose. The attorney may rely on the pro se party's representation of the facts unless he or she has

reason to believe that such representations are false or materially insufficient, in which instance the attorney shall make an independent reasonable inquiry into the facts. The attorney must advise the pro se party that a pleading or paper for which the attorney has provided drafting assistance must include the attorney's name, address, telephone number and registration number. The attorney certification and name disclosure requirements do not apply to attorneys who assist pro se parties in filling out pre-printed and electronically published forms that are issued through the judicial branch for use in court. This includes forms that are prepared and released through the State Court

Administrator's Office and having been derived from the Colorado Judicial Branch are republished by print or electronically by services such as Bradford (marked "JDF" on Bradford forms), West, or Lexis. This also includes forms approved by rule of the Colorado Supreme Court and those available through the Colorado Judicial Branch web page. Forms that are derived from sources other than the Colorado Judicial Branch are considered pleadings or papers whose assistance in drafting must meet the attorney certification and name disclosure requirements of C.R.C.P. 11(b) and C.R.C.P. 311(b). As set forth in C.R.C.P. 121, Section 1-1, providing limited representation in litigation in accordance with Colo.RPC 1.2, C.R.C.P. 11(b) and C.R.C.P.

311(b) does not constitute entry of appearance by the attorney in the case and does not require or authorize the service of a pleading or paper upon the attorney pursuant to C.R.C.P. 5(b) or C.R.C.P. 305. However, under rules 11(a) and 311(a) representation of the pro se party at any proceeding before a judge, magistrate, or other judicial officer on behalf of the pro se party constitutes an entry of appearance.

Violation of C.R.C.P. 11(b) or C.R.P.C. Rule 311 (b) subjects the attorney to the sanctions of C.R.C.P. 11(a) or C.R.C.P. 311(a).

Gregory J. Hobbs, Jr.

Liaison Justice, Civil Rules Committee

Rules Regulating The Florida Bar

4 RULES OF PROFESSIONAL CONDUCT

4-1 CLIENT-LAWYER RELATIONSHIP

RULE 4-1.2 OBJECTIVES AND SCOPE OF REPRESENTATION

(c) Limitation of Objectives and Scope of Representation. 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 consents in writing after consultation. 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.

RULE 4-4.2 COMMUNICATION WITH PERSON REPRESENTED BY COUNSEL

(b) An otherwise unrepresented person to whom limited representation is being provided or has been provided in accordance with Rule Regulating the Florida Bar 4-1.2 is considered to be unrepresented for purposes of this rule unless the opposing lawyer knows of, or has been provided with, a written notice of appearance under which, or a written notice of time period during which, the opposing lawyer is to communicate with the limited representation lawyer as to the subject matter within the limited scope of the representation.

Comment

This rule does not prohibit communication with a party, or an employee or agent of a party, concerning matters outside the representation. For example, the existence of a controversy between a government agency and a private party, or between 2 organizations, does not prohibit a lawyer for either from communicating with nonlawyer representatives of the other regarding a separate matter. Also, parties to a matter may communicate directly with each other and a lawyer having independent justification for communicating with the other party is permitted to do so. Permitted communications include, for example, the right of a party to a controversy with a government agency to speak with government officials about the matter.

RULE 4-4.3 DEALING WITH UNREPRESENTED PERSONS

(b) An otherwise unrepresented person to whom limited representation is being provided or has been provided in accordance with Rule Regulating The Florida Bar 4-1.2 is considered to be unrepresented for purposes of this rule unless the opposing lawyer

knows of, or has been provided with, a written notice of appearance under which, or a written notice of time period during which, the opposing lawyer is to communicate with the limited representation lawyer as to the subject matter within the limited scope of the representation.

Comment

An unrepresented person, particularly one not experienced in dealing with legal matters, might assume that a lawyer is disinterested in loyalties or is a disinterested authority on the law even when the lawyer represents a client. During the course of a lawyer's representation of a client, the lawyer should not give advice to an unrepresented person other than the advice to obtain counsel.

Florida Family Law Rules of Procedure

RULE 12.040. ATTORNEYS

(a) **Limited Appearance.** An attorney of record for a party, in a family law matter governed by these rules, shall be the attorney of record throughout the same family law matter, unless at the time of appearance the attorney files a notice, signed by the party, specifically limiting the attorney's appearance only to the particular proceeding or matter in which the attorney appears.

(b) **Withdrawal or Limiting Appearance.**

(1) Prior to the completion of a family law matter or prior to the completion of a limited appearance, an attorney of record, with approval of the court, may withdraw or partially withdraw, thereby limiting the scope of the attorney's original appearance to a particular proceeding or matter. A motion setting forth the reasons must be filed with the court and served upon the client and interested persons.

(2) The attorney shall remain attorney of record until such time as the court enters an order, except as set forth in subdivision (c) below.

(c) **Scope of Representation.** If an attorney appears of record for a particular limited proceeding or matter, as provided by this rule, that attorney shall be deemed "of record" for only that particular proceeding or matter. Any notice of limited appearance filed shall include the name, address and telephone number of the attorney and the name, address and telephone number of the party. At the conclusion of such proceeding or matter, the attorney's role terminates without the necessity of leave of court, upon the attorney filing notice of completion of limited appearance.

The notice, which shall be titled "Termination of Limited Appearance," shall include the names and last known addresses of the person(s) represented by the withdrawing attorney.

(d) **Preparation of Pleadings or Other Documents.** A party who files a pleading or other document of record pro se with the assistance of an attorney shall certify that the party has received assistance from an attorney in the preparation of the pleading or other document. The name, address and telephone number of the party shall appear on all pleadings or other documents filed with the court.

(e) **Notice of Limited Appearance.** Any pleading or other document filed by a limited appearance attorney shall state in bold type on the signature page of that pleading or other document: “Attorney for [Petitioner] [Respondent] [attorney’s address and telephone number] for the limited purpose of [matter or proceeding]” to be followed by the name of the petitioner or respondent represented and the current address and telephone number of that party.

(f) **Service.** During the attorney’s limited appearance, all pleadings or other documents and all notices of hearing shall be served upon both the attorney and the party. If the attorney receives notice of a hearing that is not within the scope of the limited representation, the attorney shall notify the court and the opposing party that the attorney will not attend the court proceeding or hearing because it is outside the scope of the representation.

STATE OF MAINE

SUPREME JUDICIAL COURT
AMENDMENTS TO THE MAINE BAR RULES
Effective July 1, 2001
Docket No. SJC-51

All of the Justices concurring therein, the following amendments to the Maine Bar Rules are hereby adopted, prescribed, promulgated, and amended to be effective on July 1, 2001, as follows:

The specific rules amendments are set forth below. To aid in understanding of the amendments, an Advisory Note appears after the text of each amendment. The Advisory Note states the reason for recommending the amendment, but it is not part of the amendment adopted by the Court.

1. Maine Bar Rule 3.4(i) is added to read as follows:

(i) Limited Representation. A lawyer may limit the scope of representation if the limitation is reasonable under the circumstances and the client provides informed consent after consultation. If, after consultation, the client consents in writing (the general form of which is attached to these Rules), an attorney may enter a limited appearance on behalf of an otherwise unrepresented party involved in a court proceeding. A lawyer who signs a complaint, counterclaim, cross-claim or any amendment thereto which is filed with the court, may not thereafter limit representation as provided in this rule.

Advisory Notes

Both lawyer and client have authority and responsibility to determine the objectives and means of representation. The scope of services to be provided by a lawyer may be limited by agreement with the client. In situations where the lawyer will not be providing limited representation in court, the limited representation agreement need not be in writing, but must be reasonable under the circumstances. If, for example, a client's objective is limited to securing general information about the law and the client's needs in order to handle a common and typically uncomplicated legal problem, the lawyer and the client may agree that the lawyer's services will be limited to a brief telephone consultation or office visit. Such a limitation, however, will not be reasonable if the time allotted was not sufficient to yield advice upon which the client can rely. Although an agreement for limited representation does not exempt a lawyer from the duty to provide competent representation, the limitation is a factor to be considered when determining the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation. A lawyer's advice may be based upon the scope of the representation agreed upon by the lawyer and client, and the client's representation of the facts. The reasons a writing memorializing the agreement is not required in

all contexts include (by way of example) the problem non-profit and court annexed legal services programs face in securing such a writing from their clients, and the time entering into the agreement takes in proportion to the time consumed by the limited representation itself. Nevertheless, to the extent a writing may be obtained, it is a better practice to do so for both the lawyer and the client.

In situations involving limited representation in court of an otherwise unrepresented party, a written memorandum of the scope of representation is required. A lawyer providing limited representation in court proceedings should include in the consultation with the client an explanation of the risks and benefits of the limited representation. The general form of the agreement is attached to the Code of Professional Responsibility. Limited representation may not be provided by a lawyer who signs a complaint, counterclaim, cross-claim or any amendment thereto, which is filed with the court.

2. Maine Bar Rule 3.5(a)(4) is added to read as follows:

(4) It shall not be a violation of 3.5(a) to cease or limit representation in accordance with Rule 3.4(i).

Advisory Notes

This Rule allows the client and lawyer to agree to the parameters, including time limitations, on the scope of representation, and allows the attorney to withdraw from pending litigation or otherwise terminate representation in accordance with the agreement with the client and Rule 89.

3. Maine Bar Rule 3.6(a)(2) is amended to read as follows:

(2) handle a legal matter without preparation adequate in the circumstances, provided that, with respect to the provision of limited representation, the lawyer may rely on the representations of the client and the preparation shall be adequate within the scope of the limited representation; or

Advisory Notes

An attorney reasonably may rely on the information provided by the limited representation client. This rule does not reduce an attorney's obligation to provide competent representation, but makes clear the preparation for the legal matter is limited along with the scope of the representation. See, generally, comment to Rule 3.4(i).

4. Maine Bar Rule 3.6(f) is amended to read as follows:

(f) Communicating With Adverse Party. During the course of representation of a client, a lawyer shall not communicate or cause another to communicate on the subject of the

representation with a party the lawyer knows to be represented by another lawyer in that matter unless the lawyer has the prior consent of the lawyer representing such other party or is authorized by law to do so. An otherwise unrepresented party to whom limited representation is being provided or has been provided in accordance with Rule 3.4(i) is considered to be unrepresented for purposes of this rule, except to the extent the limited representation attorney provides other counsel written notice of a time period within which other counsel shall communicate only with the limited representation attorney.

Advisory Notes

This Rule change allows lawyers to communicate directly with a party to whom limited representation is being or has been provided. Such lawyers contacting the otherwise unrepresented party may not give legal advice to them but do not have to proceed through the lawyer who has provided the limited representation.

5. Maine Bar Rule 3.4(j) is added to read as follows:

(j) Non-Profit and Court-Annexed Limited Legal Service Programs. A lawyer who, under the auspices of a nonprofit organization or a court-annexed program, provides limited representation to a client without expectation of either the lawyer or the client that the lawyer will provide continuing representation in the matter is subject to the requirements of Rules 3.4(a)-(e) only if the lawyer knows that the representation of the client involves a conflict of interest.

Advisory Notes

[1] Legal service organizations, courts, and various non-profit organizations have established programs through which lawyers provide limited legal services - typically advice - that will assist persons with limited means to address their legal problems without further representation by a lawyer. In these programs, such as legal advice hotlines, advice-only clinics, lawyer for the day programs in criminal or civil matters, or unrepresented party counseling programs, an attorney-client relationship is established, but there is no expectation that the lawyer representation of the client will continue beyond the limited consultation. It is the purpose of this Rule to provide guidance to lawyers about their professional responsibilities when serving a client in this capacity.

[2] Because a lawyer who is representing a client in the circumstances addressed by this Rule is not able to check systematically for conflicts of interest, paragraph (j) only requires compliance with Rules

3.4(a)-(e) if the lawyer knows, based on reasonable recollection and information provided by the client in the ordinary course of the consultation, that the representation presents a conflict of interest. A conflict of interest that would otherwise be imputed to a lawyer because of the lawyer association with a firm will not preclude the lawyer from representing a client in a limited services program. Nor will the lawyer participation in such a program preclude the lawyer's firm from undertaking or continuing the representation of clients with interests adverse to a client being represented under the program's auspices.

6. The form Limited Representation Agreement, attached hereto as Attachment A, shall be inserted after Maine Bar Rule 3.4(c)(i) and before Maine Bar Rule 3.5. Used in conjunction with Rule 3.4(i) it shall be sufficient to satisfy the rule. The authorization of this form shall not prevent the use of other forms consistent with this Rule. Such rules as thus adopted and amended shall be recorded in the Maine

Reporter.

Dated: May 16, 2001

Daniel E. Wathen, Chief Justice

Robert W. Clifford

Paul L. Rudman

Howard H. Dana, Jr.

Leigh I. Saufley

Donald G. Alexander

Susan Calkins

Associate Justices

ATTACHMENT A

Maine Bar Rule 3.4(i)

Promulgation Order of May 15, 2001

(Used in conjunction with Rule 3.4(i) the following form shall be sufficient to satisfy the rule. The authorization of this form shall not prevent the use of other forms consistent with this rule.)

LIMITED REPRESENTATION AGREEMENT

To Be Executed In Duplicate

Date: , 20

1. The client, , retains the attorney, ,
to perform limited legal services in the following matter:

_____ v. _____.

2. The client seeks the following services from the attorney (indicate by writing "yes" or "no"):

a. Legal advice: office visits, telephone calls, fax, mail, e-mail;

b. Advice about availability of alternative means to resolving the dispute, including mediation and arbitration;

- c. Evaluation of client self-diagnosis of the case and advising client about legal rights and responsibilities;
- d. Guidance and procedural information for filing or serving documents;
- e. Review pleadings and other documents prepared by client;
- f. Suggest documents to be prepared;
- g. Draft pleadings, motions, and other documents;
- h. Factual investigation: contacting witnesses, public record searches, in-depth interview of client;
- i. Assistance with computer support programs;
- j. Legal research and analysis;
- k. Evaluate settlement options; l. Discovery: interrogatories, depositions, requests for document production;
- m. Planning for negotiations;
- n. Planning for court appearances;
- o. Standby telephone assistance during negotiations or settlement conferences;
- p. Referring client to expert witnesses, special masters, or other counsel;
- q. Counseling client about an appeal;
- r. Procedural assistance with an appeal and assisting with substantive legal argument in an appeal;
- s. Provide preventive planning and/or schedule legal checkups;
- t. Other:

3. The client shall pay the attorney for those limited services as follows:

a. Hourly Fee:

The current hourly fee charged by the attorney or the attorney's law firm for services under this agreement are as follows:

- i. Attorney: \$
- ii. Associate: \$
- iii. Paralegal: \$
- iv. Law Clerk: \$

Unless a different fee arrangement is established in clause b.) of this paragraph, the hourly fee shall be payable at the time of the service. Time will be charged in increments of one-tenth of an hour, rounded off for each particular activity to the nearest one-tenth of an hour.

b. Payment from Deposit:

For a continuing consulting role, client will pay to attorney a deposit of \$, to be received by attorney on or before , and to be applied against attorney fees and costs incurred by client. This amount will be deposited by attorney in attorney trust account. Client authorizes attorney to withdraw funds from the trust account to pay attorney fees and costs as they are incurred by client. The deposit is refundable. If, at the termination of services under this agreement, the total amount incurred by client for attorney fees and costs is less than the amount of the deposit, the difference will be refunded to client. Any balance due shall be paid within

thirty days of the termination of services.

c. Costs:

Client shall pay attorney out-of-pocket costs incurred in connection with this agreement, including long distance telephone and fax costs, photocopy expense and postage. All costs payable to third parties in connection with client case, including filing fees, investigation fees, deposition fees, and the like shall be paid directly by client. Attorney shall not advance costs to third parties on client behalf.

4. The client understands that the attorney will exercise his or her best judgment while performing the limited legal services set out above, but also recognizes:

- a. the attorney is not promising any particular outcome,
- b. the attorney has not made any independent investigation of the facts and is relying entirely on the client limited disclosure of the facts given the duration of the limited services provided, and
- c. the attorney has no further obligation to the client after completing the above described limited legal services unless and until both attorney and client enter into another written representation agreement.

5. If any dispute between client and attorney arises under this agreement concerning the payment of fees, the client and attorney shall submit the dispute for fee arbitration in accordance with Rule 9(e)-(k) of the Maine Bar Rules. This arbitration shall be binding upon both parties to this agreement.

WE HAVE EACH READ THE ABOVE AGREEMENT BEFORE SIGNING IT.

Signature of client

Signature of attorney

STATE OF MAINE
SUPREME JUDICIAL COURT
AMENDMENTS TO THE MAINE RULES OF CIVIL PROCEDURE
Effective July 1, 2001
Docket No. SJC-11

All of the Justices concurring therein, the following amendments to the Maine Rules of Civil Procedure to address limited appearances and limited representations, are hereby adopted, prescribed, promulgated, and amended, to be effective on July 1, 2001.

The specific rules amendments are set forth below. To aid in understanding of the amendments, an Advisory Note appears after the text of each amendment. The Advisory Note states the reason for recommending the amendment, but it is not part of the amendment adopted by the Court.

1. Rule 5, subdivision (b) of the Maine Rules of Civil Procedure is amended as follows:

(b) Same: How Made. Whenever under these rules service is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney unless service upon the party personally is ordered by the court. When an attorney has filed a limited appearance under Rule 11(b), service upon the attorney is not required. Service upon an attorney who has ceased to represent a party is a sufficient compliance with this subdivision until written notice of change of attorneys has been served upon the other parties. Service upon an attorney or upon a party shall be made by delivering a copy to the attorney or to the party or by mailing it to the last known address or, if no address is known, by leaving it with the clerk of the court. Delivery of a copy within this rule means: handing it to the attorney or to the party; or leaving it at the office of the attorney or of the party with the person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein, or, if the office is closed or the person to be served has no office, leaving it at the person's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. Service by mail is complete upon mailing.

Advisory Committee's Note

The Court has amended the Maine Bar Rules and Rules 5, 11 and 89 of the Maine Rules of Civil Procedure to permit attorneys to assist an otherwise unrepresented litigant on a limited basis without undertaking the full representation of the client on all issues related to the legal matter for which the attorney is engaged. By these amendments, the Court has sought to enlarge access to justice in Maine courts. The amendment to Rule 5 (b) makes clear that where an attorney has filed a limited appearance under amended Rule 11 (b), service of papers upon the attorney is not required. Service is sufficient if made upon the party, despite the limited representation. The purpose of the amendment is to avoid confusion by establishing the identity of the person to be served

throughout the case. The amendment places the burden upon the otherwise unrepresented litigant and the attorney filing the limited appearance to ensure that have made arrangements for served papers to be processed in a timely fashion. At the same time, two observations are appropriate. First, the amendment applies only in cases in which the limited appearance has been filed under Rule 11 (b); in all other cases, the first sentence of Rule 5 (b) requires service on the attorney, not the represented party. Second, even in cases in which service upon the party is permitted, the amendment is not intended to discourage the tradition of courtesy among the Maine Bar by sending to the attorney copies of served papers.

2. Rule 11, subdivision (a), of the Maine Rules of Civil Procedure is amended and subdivision (b) is added as follows:

(a) Attorney Signature Required; Sanctions. Subject to subdivision (b), Every pleading and motion of a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. A party who is not represented by an attorney shall sign the party's pleading or motion and state the party's address. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. The signature of an attorney or party constitutes a certificate representation by the signer that the signer has read the pleading or motion; that to the best of the signer's knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay. If a pleading or motion is not signed, it shall not be accepted for filing. If a pleading or motion is signed with intent to defeat the purpose of this rule, the court, upon motion or upon its own initiative, may impose upon the person who signed it, upon a represented party, or upon both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading or motion, including a reasonable attorney's fee.

(b) Limited Appearance of Attorneys. To the extent permitted by the Maine Bar Rules, an attorney may file a limited appearance on behalf of an otherwise unrepresented litigant. The appearance shall state precisely the scope of the limited representation. The requirements of subdivision (a) shall apply to every pleading and motion signed by the attorney. An attorney filing a pleading or motion outside the scope of the limited representation shall be deemed to have entered an appearance for the purposes of the filing.

Advisory Committee's Note

The Court has amended the Maine Bar Rules and Rules 5, 11 and 89 of the Maine Rules of Civil Procedure to permit attorneys to assist a pro se litigant on a limited basis without undertaking the full representation of the client on all issues related to the legal matter for which the attorney is engaged. By these amendments, the Court has sought to enlarge access to

justice in Maine courts.

Rule 11 (a) is amended to make its provisions subject to a new subdivision (b). New Rule 11 (b) permits attorneys to file a limited appearance on behalf of an otherwise unrepresented litigant. The effect of the limited appearance is to permit the attorney to represent the client on one or more matters in the case but not for all matters. The attorney need not file a motion to withdraw unless the attorney seeks to withdraw from the limited appearance itself. The attorney is responsible under Rule 11 (a) only for those filings signed by the attorney.

The benefits of a Rule 11(b) are obtained only by the filing of a limited appearance identified as such. The limited appearance should clearly state the scope of the limited representation. Any doubt about the scope of the appearance should be resolved in a manner that promotes the interests of justice and those of the client and opposing party. As to those filings signed by the attorney, Rule 11 (a) applies fully and the attorney is deemed to have entered an appearance for the purposes of the filing, even if the filing is beyond the apparent scope of the limited appearance.

A limited appearance is created by the Maine Supreme Judicial Court's rulemaking authority. Consequently, counsel in cases removed to the United States District Court should be aware that limited appearances may not be recognized in the federal forum. See, e.g., Order, *Donovan v. State of Maine*, Civil No. 00-268-P-H (February 16, 2001) (striking partial objection to recommended decision made through purported "limited appearance"); *McKaskle v. Wiggins*, 465 U.S. 168, 183 (1984) (noting trial judge not required to allow hybrid representation); *U.S. v. Campbell*, 61 F.3d 976, 981 (1st Cir. 1982) (same); *O'Reilly v. New York Times Co.*, 692 F.2d 863, 868 (2d Cir. 1982) (same; civil case).

3. Rule 89, subdivisions (a) and (b) of the Maine Rules of Civil Procedure is amended as follows:

(a) **Withdrawal of Attorneys.** An attorney may withdraw from a case in which the attorney appears as sole counsel for a client, by serving notice of withdrawal on the client and all other parties and filing the notice, provided that (1) such notice is accompanied by notice of the appearance of other counsel, (2) there are no motions pending before the court, and (3) no trial date has been set. Unless these conditions are met, the attorney may withdraw from the case only by leave of court. A motion for leave to withdraw shall state the last known address of the client and shall be served on the client in accordance with Rule 5. This subdivision shall not apply to a limited appearance filed under Rule 11 (b) unless the attorney seeks to withdraw from the limited appearance itself.

(b) **Visiting Attorneys.** Any member in good standing of the bar of any other state or of the District of Columbia may at the discretion of the court, on motion by a member of the bar of this state who is actively associated with the out-of-state attorney in a particular action, be permitted to practice in that action. The court may at any time for good cause revoke such permission without hearing. An attorney so permitted to practice in a

particular action shall at all times be associated in such action with a member of the bar of this state, upon whom all process, notices and other papers shall be served and who shall sign all papers filed with the court and whose attendance at any proceeding may be required by the court. Visiting attorneys shall not be permitted to file limited appearances.

Advisory Committee's Note

The Court has amended the Maine Bar Rules and Rules 5, 11 and 89 of the Maine Rules of Civil Procedure to permit attorneys to assist an otherwise unrepresented litigant on a limited basis without undertaking the full representation of the client on all issues related to the legal matter for which the attorney is engaged. By these amendments, the Court has sought to enlarge access to justice in Maine courts.

A limited appearance is filed under Rule 11 (b). The last sentence in Rule 89 (b) is added to provide that visiting lawyers may not file limited appearances. Rule 89 (a) is amended to add a new last sentence making the conditions for withdrawal or a motion for leave to withdraw unnecessary for a limited appearance unless the attorney seeks to withdraw from the limited appearance itself. An attorney who has filed and fulfilled a clearly stated limited appearance is presumptively no longer representing the client. Any doubt about the scope of the appearance should be resolved in a manner that promotes the interests of justice and those of the client and opposing party. If the attorney has signed filings beyond the scope of the limited appearance, Rule 11 (b) applies fully and the attorney is deemed to have entered an appearance for the purposes of the filing. Thus, the attorney may not withdraw from the matter of the filing without complying with Rule 89 (a).

A limited appearance is created by the Maine Supreme Judicial Court's rulemaking authority. Consequently, counsel in cases removed to the United States District Court should be aware that limited appearances may not be recognized in the federal forum. *See, e.g.,* Order, *Donovan v. State of Maine*, Civil No. 00-268-P-H (February 16, 2001) (striking partial objection to recommended decision made through purported "limited appearance"); *McKaskle v. Wiggins*, 465 U.S. 168, 183 (1984) (noting trial judge not required to allow hybrid representation); *U.S. v. Campbell*, 61 F.3d 976, 981 (1st Cir. 1982) (same); *O'Reilly v. New York Times Co.*, 692 F.2d 863, 868 (2d Cir. 1982) (same; civil case).

Dated: May 16, 2001

Daniel E. Wathen, Chief Justice
Robert W. Clifford
Paul L. Rudman
Howard H. Dana, Jr.
Leigh I. Saufley
Donald G. Alexander

Susan Calkins
Associate Justices

Rule 5.28. Withdrawal of attorney in limited services ("unbundled services") contract.

(a) An attorney who contracts with a client to limit the scope of representation shall state that limitation in the first paragraph of the first paper or pleading filed on behalf of that client. Additionally, if the attorney appears at a hearing on behalf of a client pursuant to a limited scope contract, the attorney shall notify the court of that limitation at the beginning of that hearing.

(b) An attorney who contracts with a client to limit the scope of representation shall be permitted to withdraw from representation before the court by filing a Substitution of Attorney with the clerk's office. The Substitution of Attorney shall state that the attorney is withdrawing from the case because the attorney was hired to perform a limited service, that service has been completed, and shall include a copy of the limited services retainer agreement between the attorney and the client. The Substitution of Attorney shall also state that the client will be representing himself or herself in proper person unless another attorney agrees to represent the client and shall contain the client's address, or last known address, and telephone number at which the client may be served with notice of further proceedings taken in the case. The attorney must serve a copy of the Substitution of Attorney upon the client and all other parties to the action or their attorneys.

[Added effective August 21, 2000.]

Washington Ethics Rules

RULE 1.2

SCOPE OF REPRESENTATION

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client consents after consultation. An agreement limiting the scope of a representation shall consider the applicability of Rule 4.2 to the representation.

RULE 4.2

COMMUNICATION WITH PERSON REPRESENTED BY COUNSEL

(b) An otherwise unrepresented person to whom limited representation is being provided or has been provided in accordance with Rule 1.2 is considered to be unrepresented for purposes of this rule unless the opposing lawyer knows of, or has been provided with, a written notice of appearance under which, or a written notice of time period during which, he or she is to communicate only with the limited representation lawyer as to the subject matter within the limited scope of the representation.

RULE 4.3

DEALING WITH UNREPRESENTED PERSON

(b) An otherwise unrepresented person to whom limited representation is being provided or has been provided in accordance with Rule 1.2 is considered to be unrepresented for purposes of this rule unless the opposing lawyer knows of, or has been provided with, a written notice of appearance under which, or a written notice of time period during which, he or she is to communicate only with the limited representation lawyer as to the subject matter within the limited scope of the representation.

RULE 6.5

NONPROFIT AND COURT-ANNEXED LIMITED LEGAL SERVICE PROGRAMS

(a) A lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:

(1) is subject to Rules 1.7 and 1.9(a) only if the lawyer

knows that the representation of the client involves a conflict of interest except that those rules shall not prohibit a lawyer from providing limited legal services sufficient only to determine eligibility of the client for assistance by the program and to make an appropriate referral of the client to another program; and

(2) is subject to Rule 1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by Rule 1.7 or 1.9(a) with respect to the matter; and,

(3) notwithstanding paragraphs (1) and (2), is not subject to Rules 1.7, 1.9(a) or 1.10 in providing limited legal services to a client if (a) the program lawyers representing the opposing clients are screened by effective means from information as to the opposing client's confidences, secrets, trial strategy and work product as to the matter at issue; (b) each client is notified of the conflict and the screening mechanism used to prohibit dissemination of confidential or secret information; and (c) the program is able to demonstrate by convincing evidence that no confidences or secrets that are material were transmitted by the personally disqualified lawyers to the lawyer representing the conflicting client before implementation of the screening mechanism and notice to the opposing client.

(b) Except as provided in paragraph (a)(2), Rule 1.10 is inapplicable to a representation governed by this Rule.

Washington Rules of Procedure

RULE CR 11

SIGNING AND DRAFTING OF PLEADINGS, MOTIONS, AND LEGAL MEMORANDA: SANCTIONS

- (a) Every pleading, motion, and legal memorandum of a party represented by an attorney shall be dated and signed by at least one attorney of record in the attorney's individual name, whose address and Washington State Bar Association membership number shall be stated. A party who is not represented by an attorney shall sign and date the party's pleading, motion, or legal memorandum and state the party's address. Petitions for dissolution of marriage, separation, declarations concerning the validity of a marriage, custody, and modification of decrees issued as a result of any of the foregoing petitions shall be verified. Other pleadings need not, but may be, verified or accompanied by affidavit. The signature of a party or of an attorney constitutes a certificate by the party or attorney that the party or attorney has read the pleading, motion, or legal memorandum; that to the best of the party's or attorney's knowledge, information, and belief, formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. If a pleading, motion, or legal memorandum is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion, or legal memorandum is signed in violation of this rule, the court, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or legal memorandum, including a reasonable attorney fee.
- (b) In helping to draft a pleading, motion or document filed by the otherwise self-represented person, the attorney certifies that the attorney has read the pleading, motion, or paper, that to the best of the attorney's knowledge, information, and belief, formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law,

and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. The attorney in providing such drafting assistance may rely on the otherwise self-represented person's representation of facts, unless the attorney has reason to believe that such representations are false or materially insufficient, in which instance the attorney shall make an independent reasonable inquiry into the facts.

CR 70.1

APPEARANCE BY ATTORNEY

(a) Notice of Appearance. An attorney admitted to practice in this state may appear for a party by serving a notice of appearance.

(b) Notice of Limited Appearance. If specifically so stated in a notice of limited appearance filed and served prior to or simultaneous with the proceeding, an attorney's role may be limited to one or more individual proceedings in the action. Service on an attorney who has made a limited appearance for a party shall be valid (to the extent permitted by statute and rule 5(b)) only in connection with the specific proceedings for which the attorney has appeared, including any hearing or trial at which the attorney appeared and any subsequent motions for presentation of orders. At the conclusion of such proceedings the attorney's role terminates without the necessity of leave of court, upon the attorney filing notice of completion of limited appearance which notice shall include the client information required by rule 71(c)(1).

Wyoming Rules of Professional Conduct

Rule 1.2. Scope of representation.

(c) A lawyer may limit the objectives or means of the representation pursuant to Rule 6.5, or if :

(1) the limitation(s) are fully disclosed and explained to the client in a manner which can reasonably be understood by the client; and

(2) the client consents thereto.

(3) Unless the representation of the client consists solely of telephone consultation, the disclosure and consent required by this subsection shall be in writing.

(4) The use of a written notice and consent form approved by, or substantially similar to, a form approved by the Board of Judicial Policy and Administration shall create the presumptions that:

(a) the representation is limited to the attorney and the services described in the form; and

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

Comment

[5] Subsection (c) is intended to facilitate the provision of unbundled legal services, especially to low-income clients. "Unbundled" means that a lawyer may agree to perform a limited task for a client without incurring the responsibility to investigate or consider other aspects of the client's matter. Accordingly, a lawyer and a client may agree, in writing, that the lawyer will perform discrete, specified services. The agreement need not be in writing if the representation consists solely of telephone consultation between the lawyer and the client. In such circumstances, the lawyer should maintain a written summary of the conversation(s), including the nature of the requested legal assistance and the advice given. Pursuant to paragraph (c), therefore, a lawyer and a client may agree that the lawyer will: (1) provide advice and counsel on a particular issue or issues; (2) assist in drafting or reviewing pleadings or other documents; or (3) make a limited court appearance. If a lawyer assists in drafting a pleading, the document shall include a statement that the document was prepared with the assistance of counsel and shall include the name and address of the lawyer who provided the assistance. Such a statement does not constitute an entry of appearance or otherwise mean that the lawyer represents the client in the matter beyond assisting in the preparation of the document(s). Further, any limited court appearance must be in writing pursuant to Rule 102 of the Uniform Rules for the District Court of Wyoming, and must describe the extent of the lawyer's involvement. See also, Rule 6.5, Non-profit Limited Legal Services Programs.

To further facilitate the provision of unbundled services, the Board of Judicial Policy and Administration has approved a notice and consent form which may be used to comply with this rule. As paragraph (c)(4) indicates, using such a form will create the

presumption that the lawyer has complied with this rule, as well as the presumption that the lawyer owes no additional duties to the client. The approved notice and consent form is attached as an appendix to these rules.

[6] An agreement concerning the scope of representation must be in 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 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. Further, the lawyer may not make an agreement with the client prospectively limiting the lawyer's liability to the client. See, Rule 1.8(h).

Appendix I
Appendix to Rule 1.2 of the Rule of Professional Conduct for Attorneys at Law

NOTICE AND CONSENT TO LIMITED REPRESENTATION

NOTICE

To help you with your legal problems, a lawyer may agree to give you some of the help you want, but not all of it. In other words, you and the lawyer may agree that the lawyer will limit his representation to helping you with a certain legal problem for a short time or for a particular purpose. Limited representation is available only in civil cases.

When a lawyer agrees to help you 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 such limited help,

- The lawyer DOES NOT HAVE TO GIVE MORE HELP than the lawyer and you agreed.
- The lawyer DOES NOT HAVE TO help with any other part of your legal problem.

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

If you agree to have this lawyer give you limited help, sign your name at the bottom of this form. The lawyer will also sign to show that he or she agrees. If you and the lawyer both sign, the lawyer agrees to help you by performing the following limited services, and need not give you any more help.

Advise you about the following issues:

Write or read and advise you about the following legal documents:

Go to court to represent you only in the following matter(s):

Attorney's Name

CONSENT

I have read this Notice and Consent form and I understand what it says. I agree that the legal services specified above are the ONLY legal help this lawyer will give me. 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 any more legal help. If the lawyer is giving me advice, or is helping me with legal or other documents, I understand the lawyer may decide to stop helping me whenever the lawyer wants. I also understand that if the lawyer goes to court for me, he or she does not have to help me after he goes to court unless we both agree in writing. I agree that the address I give below is my permanent address where I may be reached. I understand that it is important that both the opposing party and the court handling my case be able to reach me at this address in the event my attorney ends his limited representation. I therefore agree that I will inform the Court and the opposing party of any change in my permanent address.

Print Your Name

Mailing Address

Sign Your Name

City State and Zip Code

Date

Phone Number

Uniform Rules of the District Court of the State of Wyoming

Rule 102. Appearance and withdrawal of counsel.

(a) (1) An attorney appears in a case:

(A) By attending any proceeding as counsel for any party;

(B) By permitting the attorney's name to appear on any pleadings or motions, except that an attorney who assisted in the preparation of a pleading and whose name appears on the pleading as having done so shall not be deemed to have entered an appearance in the matter; or

(C) By a written appearance. Except in a criminal case, a written entry of appearance may be limited, by its terms, to a particular proceeding or matter.

(2) Except as otherwise limited by a written entry of appearance, an appearing attorney shall be considered as representing the party or parties for whom the attorney appears for all purposes.

(b) All pleadings shall contain the name, address and telephone number of counsel or, if pro se, the party. All notices shall be mailed to the address provided. Each party or counsel shall give notice in writing of any change of address to the clerk and other parties.

(c) Counsel will not be permitted to withdraw from a case except upon court order. Except in the case of extraordinary circumstances, the court shall condition withdrawal of counsel upon the substitution of other counsel by written appearance. In the alternative, the court shall allow withdrawal upon a statement submitted by the client acknowledging the withdrawal of counsel for the client, and stating a desire to proceed pro se. An attorney who has entered a limited entry of appearance shall be deemed to have withdrawn when the attorney has fulfilled the duties of the limited entry of appearance. (amended January 8, 2002, effective April 1, 2002)