Supreme Court of Utah

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September 21, 2005

Francis M. Wikstrom, Esq.
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Dear Fran:

Enclosed are copies of amendments to the Utah Rules of Professional Conduct that were recently approved by the Utah Supreme Court, with an effective date of November 1, 2005. These amendments were made in order to permit Utah lawyers to provide unbundled legal services, pro se assistance and limited representation to citizens in need of more affordable, and available, legal help.

The Court requests that the Advisory Committee review these rules and recommend any changes to the Utah Rules of Civil Procedure that it believes are needed in view of the Court's approval of the unbundling rules. For example, do the Rules of Civil Procedure need to be amended to allow an attorney to enter an appearance limited to a particular hearing or proceeding or to allow an attorney to draft legal pleadings for a client who is otherwise unrepresented in court?

As always, thanks to the you and to the committee for your excellent work.

Sincerely,

Marilyn M. Branch
Appellate Court Administrator

Enclosures
cc: Tim Shea
Katherine Fox

IN THE SUPREME COURT OF THE STATE OF UTAH

— oo0oo —

In re: Utah State Bar's Petition to Amend Utah Rules of Professional Conduct for Unbundling of Legal Services

Case No. 20031023-SC

ORDER

The Utah State Bar filed a petition (the "Petition") on December 23, 2003, seeking modification of the Utah Rules of Professional Conduct to enable lawyers in Utah to provide unbundled legal services. On January 22, 2004, the Court forwarded the Petition to its Advisory Committee on the Rules of Professional Conduct (the "Advisory Committee") for consideration of the rule amendments proposed in the Petition. At the time the Court sent the Petition to the Advisory Committee, the Advisory Committee was already involved in a detailed review of the Utah Rules of Professional Conduct in light of the American Bar Association Ethics 2000 Commission's recommended revisions to the Model Rules of Professional Conduct. The Court determined that it did not wish to consider the rule amendments requested in the Petition in advance of its consideration of the Ethics 2000 recommended rule revisions.

The Court has now completed its review of the Ethics 2000 rule revisions and has issued an order, dated September 19, 2005, approving the amendments to the Utah Rules of Professional Conduct recommended by the Advisory Committee, including amendments to Rules 1.2, 4.2 and 4.3 of the Utah Rules of Professional Conduct and adoption of a Rule 6.5 to the Utah Rules of Professional Conduct, all of which amendments were requested in the Petition.

Now, therefore, based upon the foregoing, IT IS HEREBY ORDERED that the Petition is granted.

FOR THE COURT:

September 21, 2005
Date

Michael J. Wilkins
Associate Chief Justice

Rule 1.2. Scope of ~~R~~representation and Allocation of Authority Between Client and Lawyer.

(a) Subject to paragraphs (c) and (d), a

~~(a) A~~ lawyer shall abide by a client's decisions concerning the objectives of representation~~,~~ ~~subject to paragraphs (b), (c), (d), and~~ and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to ~~accept an offer of settlement of~~ settle a matter. In a criminal case, ~~a~~ the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

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

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

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

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

COMMENT

Allocation of Authority between Client and Lawyer

~~Scope of Representation~~

~~Both lawyer and client have authority and responsibility in the objectives and means of representation. The client has~~

[1] Paragraph (a) confers upon the client the ultimate authority to determine the purposes to be served by legal representation, within the limits imposed by law and the lawyer's professional obligations. ~~Within those limits, a client also has a right to consult with the lawyer.~~ The decisions specified in paragraph (a), such as whether to settle a civil matter, must also be made by the client. See Rule 1.4(a)(1) for the lawyer's duty to communicate with the client about such decisions. With respect to the means by which the client's objectives are to be pursued, the lawyer shall consult with the client as required by Rule 1.4(a)(2) and may take such action as is impliedly authorized to carry out the representation.

[2] On occasion, however, a lawyer and a client may disagree about the means to be used ~~in pursuing those objectives. At the same time, a lawyer is not required to pursue objectives or employ means simply because a client may wish that the lawyer do so. A clear distinction between objectives and means sometimes cannot be drawn, and in many cases the client-lawyer relationship partakes of a joint undertaking. In questions of means, the lawyer should assume responsibility for technical and legal tactical issues but should~~ to accomplish the client's objectives. Clients normally defer to the special knowledge and skill of their lawyer with respect to the means to be used to accomplish their objectives, particularly with respect to technical, legal and tactical matters. Conversely, lawyers usually defer to the client regarding such questions as the expense to be incurred and concern for third persons who might be adversely affected. ~~Law defining the lawyer's scope of authority in litigation varies among jurisdictions.~~ Because of the varied nature of the matters about which a lawyer and client might disagree and because the actions in question may implicate the interests of a tribunal or other persons, this Rule does not prescribe how such disagreements are to be resolved. Other law, however, may be

applicable and should be consulted by the lawyer. The lawyer should also consult with the client and seek a mutually acceptable resolution of the disagreement. If such efforts are unavailing and the lawyer has a fundamental disagreement with the client, the lawyer may withdraw from the representation. See Rule 1.16(b)(~~6~~ 4). Conversely, the client may resolve the disagreement by discharging the lawyer. See Rule 1.16(a)(3).

~~Services Limited in Objectives or Means~~

[3] At the outset of a representation, the client may authorize the lawyer to take specific action on the client's behalf without further consultation. Absent a material change in circumstances and subject to Rule 1.4, a lawyer may rely on such an advance authorization. The client may, however, revoke such authority at any time.

~~The objectives or scope of services~~ [4] In a case in which the client appears to be suffering diminished capacity, the lawyer's duty to abide by the client's decisions is to be guided by reference to Rule 1.14.

Independence from Client's Views or Activities

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

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. ~~For example, a retainer may be for a specifically defined purpose. Representation provided through a legal aid agency may be subject to limitations on the types of cases the agency handles.~~ When a lawyer has been retained by an insurer to represent an insured, for example, the representation may be

limited to matters related to the insurance coverage. ~~The~~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 ~~objectives or means~~ means that might otherwise be used to accomplish the client's objectives. Such limitations may exclude ~~objectives or means~~ 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 were 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.

[8] All agreements concerning a lawyer's representation of a client ~~An agreement concerning the scope of representation~~ must accord with the Rules of Professional Conduct and other law. ~~Thus, the client may not be asked to agree to representation so limited in scope as to violate Rule 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~~ See, e.g., Rules 1.1, 1.8 and 5.6.

Criminal, Fraudulent and Prohibited Transactions

~~A lawyer is required to give~~ [9] Paragraph (d) prohibits a lawyer from knowingly counseling or assisting a client to commit a crime or fraud. This prohibition, however, does not preclude the lawyer from giving an honest opinion about the actual consequences that appear likely to result from a client's conduct. ~~The~~ Nor does the fact that a client uses advice in a course of action that is

criminal or fraudulent ~~does not,~~ of itself~~,~~ make a lawyer a party to the course of action. ~~However, a lawyer may not knowingly assist a client in criminal or fraudulent conduct.~~ There is a critical distinction between presenting an analysis of legal aspects of questionable conduct and recommending the means by which a crime or fraud might be committed with impunity.

[10] When the client's course of action has already begun and is continuing, the lawyer's responsibility is especially delicate. The ~~lawyer is not permitted to reveal the client's wrongdoing, except where permitted by Rule 1.6. However, the~~ lawyer is required to avoid ~~furthering the purpose, for example, by suggesting how it~~ assisting the client, for example, by drafting or delivering documents that the lawyer knows are fraudulent or by suggesting how the wrongdoing might be concealed. A lawyer may not continue assisting a client in conduct that the lawyer originally ~~supposes is~~ supposed was legally proper but then discovers is criminal or fraudulent. ~~Withdrawal~~ The lawyer must, therefore, withdraw from the representation~~, therefore, may be required.~~ of the client in the matter. See Rule 1.16(a). In some cases, withdrawal alone might be insufficient. It may be necessary for the lawyer to give notice of the fact of withdrawal and to disaffirm any opinion, document, affirmation or the like. See Rule 4.1.

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

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

[13] If a lawyer comes to know or reasonably should know that a client expects assistance not permitted by the Rules of Professional Conduct or other law or if the lawyer intends to act

contrary to the client's instructions, the lawyer must consult with the client regarding the limitations on the lawyer's conduct. See Rule 1.4(a)(5).

[14] Lawyers are encouraged to advise their clients that their representations are guided by the Utah Standards of Professionalism and Civility and to provide a copy to their clients.

Rule 4.2. Communication with Persons Represented by Counsel.

~~(a) General Rule. A lawyer who is~~ (a) General Rule. In representing a client ~~in~~, a ~~matter~~ lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer. ~~or is authorized to do so by:~~

~~(1) constitutional law or statute;~~

~~(2) decision or a rule of a court of competent jurisdiction;~~

~~(3) a prior written authorization by a court of competent jurisdiction obtained by the lawyer in good faith; or~~

~~(4) paragraph (b) of this rule.~~

~~(b)~~ Notwithstanding the foregoing, an attorney may, without such prior consent, communicate with another's client ~~in order to meet~~ if authorized to do so by the requirements of any law, rule, or court order, in which event the communication shall be strictly restricted to that allowed by the law, rule or court order, or as authorized by paragraphs (b), (c), (d) or (e) of this Rule.

(b) Rules Relating to Unbundling of Legal Services. A lawyer may consider a person whose representation by counsel in a matter does not encompass all aspects of the matter to be unrepresented for purposes of this Rule and Rule 4.3, unless that person's counsel has provided written notice to the lawyer of those aspects of the matter or the time limitation for which the person is represented. Only as to such aspects and time is the person considered to be represented by counsel.

(c) Rules Relating to Government Lawyers Engaged in Civil or Criminal Law Enforcement. A government lawyer engaged in a criminal or civil law enforcement matter, or a person acting under the lawyer's direction in the matter, may communicate with a person known to be

represented by a lawyer if:

(c)(1) the communication is in the course of, and limited to, an investigation of a different matter unrelated to the representation or any ongoing, unlawful conduct; or

(c)(2) the communication is made to protect against an imminent risk of death or serious bodily harm or substantial property damage that the government lawyer reasonably believes may occur and the communication is limited to those matters necessary to protect against the imminent risk; or

(c)(3) the communication is made at the time of the arrest of the represented person and after ~~he or she~~that person is advised of ~~his or her~~the rights to remain silent and the right to counsel and voluntarily and knowingly waives these rights; or

(c)(4) the communication is initiated by the represented person, directly or through an intermediary, if prior to the communication the represented person has given a written or recorded voluntary and informed waiver of counsel, including the right to have substitute counsel, for that communication.

(ed) Organizations as Represented Persons.

(d)(1) When the represented "person" is an organization, an individual is "represented" by counsel for the organization if the individual is not separately represented with respect to the subject matter of the communication, and

(d)(1)(A) with respect to a communication by a government lawyer in a civil or criminal law enforcement matter, is known by the government lawyer to be a current member of the control group of the represented organization; or

(d)(1)(B) with respect to a communication by a lawyer in any other matter, is known by the lawyer to be

(d)(1)(B)(i) a current member of the control group of the represented organization; or

(d)(1)(B)(ii) a representative of the organization whose acts or omissions in the matter may be imputed to the organization under applicable law; or

(d)(1)(B)(iii) a representative of the organization whose statements under applicable rules of evidence would have the effect of binding the organization with respect to proof of the matter.

(d)(2) The term "control group" means the following persons: (A) the chief executive officer, chief operating officer, chief financial officer, and- the chief legal officer of the organization; and (B) to the extent not encompassed by ~~the foregoing~~Subsection (A), the chair of the organization's governing body, president, treasurer, ~~and~~ secretary~~,~~ and a vice-president or vice-chair who is in charge of a principal business unit, division~~,~~ or function (such as sales, administration~~,~~ or finance) or performs a major policy-~~-~~making function for the organization; and (C) any other current employee or official who is known to be participating as a principal decision maker in the determination of the organization's legal position in the matter.

(d)(3) This ~~r~~Rule does not apply to communications with government parties, employees~~,~~ or officials unless litigation about the subject of the representation is pending or imminent. Communications with elected officials on policy matters are permissible when litigation is pending or imminent after disclosure of the representation to the official.

(~~d~~e) Limitations on Communications. When communicating with a represented person pursuant to this Rule, no lawyer may

(e)(1) inquire about privileged communications between the person and counsel or about information regarding litigation strategy or legal arguments of counsel~~,~~ or seek to induce the person to- forgo representation or disregard the advice of the person's counsel; or

(e)(2) engage in negotiations of a plea agreement, settlement, statutory or non-statutory immunity agreement~~,~~ or other disposition of actual or potential criminal charges or civil enforcement claims~~,~~ or sentences or penalties with respect to the matter in which the person is represented by counsel unless such negotiations are permitted by law, rule or court order.~~paragraphs (a)(1), (2) or (3), or (b)(4).~~

~~COMMENT~~**Comment**

~~The purpose of this Rule is to foster and protect legitimate attorney-client relationships. It seeks to guard against inequities that exist when a lawyer speaks to an untrained lay person. The Rule should not, however, be used as a vehicle to thwart appropriate contacts between lawyers and lay persons.~~

[1] Rule 4.2 of the Utah Rules of Professional Conduct deviates substantially from ABA Model

Rule 4.2 by the addition of paragraphs (b), (c), (d) and (e). Paragraphs (c), (d) and (e) are substantially the same as the former Utah Rules 4.2(b), (c) and (d), adopted in 1999, as are most of the corresponding comments that address these three paragraphs of this Rule. There is also a variation from the Model Rule in paragraph (a), where the body of judicially created rules are added as a source to which the lawyer may look for general exceptions to the prohibition of communication with persons represented by counsel. (Because of these major differences, the comments to this Rule do not correspond numerically to the comments in ABA Model Rule 4.2.

[2] This Rule contributes to the proper functioning of the legal system by protecting a person who has chosen to be represented by a lawyer in a matter against possible overreaching by other lawyers who are participating in the matter, interference by those lawyers with the client-lawyer relationship and the uncounselled disclosure of information relating to the representation.

[3] This Rule applies to communications with any person who is represented by counsel concerning the matter to which the communication relates.

[4] This Rule applies even though the represented person initiates or consents to the communication. A lawyer must immediately terminate communication with a person if, after commencing communication, the lawyer learns that the person is one with whom communication is not permitted by this Rule.

[5] This Rule does not prohibit communications with a represented person ~~or entity,~~ or an employee or agent of such ~~represented~~a person ~~or entity,~~ where the subject of the communication is outside the scope of the representation. For example, the existence of a controversy between a government agency and a private ~~person~~party, between two organizations, between individuals or between an organization and an individual does not prohibit a lawyer for either from

~~communication~~ communicating with nonlawyer representatives of the other regarding a separate matter. Nor does the Rule prohibit government lawyers from communicating with a represented person about a matter that does not pertain to the subject matter of the representation but is related to the investigation, undercover or overt, of ongoing unlawful conduct. Moreover, this Rule does not prohibit a lawyer from communicating with a person to determine if the person in fact is represented by counsel concerning the subject matter that the lawyer wishes to discuss with that person.

[6] This Rule does not preclude communication with a represented person who is seeking a second opinion from a lawyer who is not otherwise representing a client in the matter. A lawyer may not make a communication prohibited by this Rule through the acts of another. See Rule 8.4(a). Parties to a matter may communicate directly with each other, and a lawyer is not prohibited from advising a client concerning a communication that the client is legally entitled to make.

[7] A lawyer may communicate with a person who is known to be represented by counsel in the matter to which the communication relates only if the communicating lawyer obtains the consent of the represented person's lawyer, or if the communication is otherwise permitted by paragraphs (a), (b) or (~~b~~c). Paragraph (a) permits a lawyer to communicate with a person known to be represented by counsel in a matter without first securing the consent of the represented person's lawyer if the communicating lawyer is authorized to do so by ~~subparagraph (1), (2), or (3) of this paragraph. Paragraph (b)~~ law, rule or court order. Paragraph (b) recognizes that the scope of representation of a person by counsel may, under Rule 1.2, be limited by mutual agreement. Because a lawyer for another party cannot know which of Rule 4.2 or 4.3 applies under these circumstances, the lawyer who has undertaken a limited representation must assume the responsibility for informing another party's lawyer of the limitations. This ensures that such a limited representation will not improperly or unfairly induce an adversary's lawyer to avoid contacting the person on those aspects of a matter for which the person is not represented by

counsel. Note that this responsibility on the lawyer undertaking limited-scope representation also relates to the ability of another party's lawyer to make certain *ex parte* contacts without violating Rule 4.3. Utah Rule of Professional Conduct 4.2(b) and related sections of this Comment are part of the additions to the ABA Model Rules clarifying that a lawyer may undertake limited representation of a client under the provisions of Rule 1.2. Paragraph (c) specifies the circumstances in which government lawyers engaged in criminal and civil law enforcement matters may communicate with persons known to be represented by a lawyer in such matters without first securing consent of that lawyer.

[8] A communication with a represented person is authorized ~~under subparagraph~~ by paragraph (a)~~(1)~~ if permitted by ~~the Constitution or a constitutionally valid statute. Under subparagraph (a)(2), lawyers may also rely on existing judicial precedent or court rules that authorize lawyers to contact persons without permission of the represented person's lawyer.~~ law, rule or court order. This recognizes constitutional and statutory authority as well as the well-established role of the state judiciary in regulating the practice of the legal profession. Direct communications are also ~~permissible~~ permitted if they are made pursuant to discovery procedures or judicial or administrative process in accordance with the orders or rules of the court or other tribunal before which a matter is pending.

[9] A communication is authorized under ~~subparagraph~~ paragraph (a)~~(1)~~ if the lawyer is assisting the client to exercise a constitutional right to petition the government for redress of grievances in a policy dispute with the government and if the lawyer notifies the government's lawyer in advance of the intended communication. This would include, for example, a communication by a lawyer with a governmental official with authority to take or recommend action in the matter, provided that the sole purpose of the lawyer's communication is to address a policy issue, including the possibility of resolving a disagreement about a policy position taken by the government. If, on the other hand, the matter does not relate solely to a policy issue, the communicating lawyer must comply with this Rule.

~~Any lawyer desiring to engage in a communication with a represented person that is not otherwise permitted under this Rule may apply in good faith to a court of competent jurisdiction, either *ex parte* or upon notice, for an order authorizing the communication under subparagraph (a)(3) of this Rule. A "court of competent jurisdiction" means, depending on the context:~~

~~(1) a district judge or magistrate judge of the United States District Court; (2) a judge or commissioner of a court of general jurisdiction of a state having jurisdiction over the matter to which the communication relates; or (3) a military judge.~~

~~A proceeding under subparagraph (a)(3) should be summary in nature, but the specific procedure for obtaining such judicial authorization may vary from jurisdiction to jurisdiction.~~

~~In determining whether a communication is appropriate the court should consider factors such as:~~

~~(1) the communication with the represented person is intended to gain information that is relevant to the matter for which the communication is sought;~~

~~(2) the communication would not be unreasonable or oppressive;~~

~~(3) the purpose of the communication is not primarily to harass the represented person; and~~

~~(4) good cause exists for not requesting the consent of the person's counsel to the communication.~~

~~A written record of the application, including the grounds for the application, the scope of the authorized communications, and the action of the judicial officer, should be required absent exigent circumstances.~~

~~Paragraph (b)~~

[10] In the event the person with whom the lawyer communicates is not known to be represented by counsel in the matter, the lawyer's communication is subject to Rule 4.3.

[11] Paragraph (c) of this Rule makes clear that this Rule does not prohibit all communications with represented persons by state or federal government lawyers (including law enforcement agents and cooperating witnesses acting at their direction) when the communications occur during the course of civil or criminal law enforcement. The exemptions for government lawyers contained in paragraph (~~b~~c) of this Rule recognize the unique responsibilities of government lawyers to enforce public law. Nevertheless, where the lawyer is representing the government in any other role or litigation (such as a contract or tort claim, for example) the same rules apply to government lawyers as are applicable to lawyers for private parties.

[12] A "civil law enforcement proceeding" means a civil action or proceeding before any court or other tribunal brought by the governmental agency that seeks to engage in the communication under relevant statutory or regulatory provisions, or under the government's police or regulatory powers to enforce the law. Civil law enforcement proceedings do not include proceedings related to the enforcement of an administrative subpoena or summons or a civil investigative demand; nor do they include enforcement actions brought by an agency other than the one that seeks to make the communication.

[13] Under ~~sub~~paragraph (~~b~~c) of this Rule, communications are permitted in a number of circumstances. For instance, subparagraph (~~b~~c)(1) permits the investigation of a different matter unrelated to the representation or any ongoing unlawful conduct. (Unlawful conduct involves criminal activity and conduct subject to a civil law enforcement proceeding.) Such violations include, but are not limited to, conduct that is intended to evade the administration of justice including in the proceeding in which the represented person is a defendant, such as obstruction of justice, subornation of perjury, jury tampering, murder, assault, or intimidation of witnesses, bail jumping, or unlawful flight to avoid prosecution. Also, permitted are undercover activities directed at ongoing criminal activity, even if it is related to past criminal activity for which the person is represented by counsel.

[14] Under subparagraph (~~b~~c)(2), a government lawyer may engage in limited communications to protect against an imminent risk of serious bodily harm or substantial property damage. The imminence and gravity of the risk will be determined from the totality of the circumstances. Generally, a risk would be imminent if it is likely to occur before the government lawyer could obtain court approval or take other reasonable measures. An imminent risk of substantial property damage might exist if there is a bomb threat directed at a public building. The Rule also makes clear that a government attorney may communicate directly with a represented party "at the time of arrest of the represented party" without the consent of the party's counsel, provided that the represented party has been fully informed of his or her constitutional rights at that time and has waived them. A government lawyer must be very careful to follow Rule 4.2(d) and would have a significant burden to establish that the waiver of ~~the~~ right to counsel was knowing and voluntary. The better practice would include a written or recorded waiver. Nothing in this ~~r~~Rule, however, prevents law enforcement officers, even if acting under the general supervision of a government lawyer, from questioning a represented person. The actions of the officers will not be imputed to the government lawyer unless the conversation has been "scripted" by the government lawyer.

[15] ~~Under subparagraph (b)(4), post-charge~~ If government lawyers have any concerns about the applicability of any of the provisions of paragraph (c) or are confronted with other situations in which communications ~~are permitted if initiated by~~ with represented persons may be warranted, they may seek court approval for communication ~~avail themselves of~~ the *ex parte* ~~procedures for seeking court approval.~~

[16] Any lawyer desiring to engage in a communication with a represented person that is not otherwise permitted under this Rule must apply in good faith to a court of competent jurisdiction, either *ex parte* or upon notice, for an order authorizing the communication. This means, depending on the context: (1) a district judge or magistrate judge of a United States District Court; (2) a judge or commissioner of a court of general jurisdiction of a state having jurisdiction over the matter to which the communication relates; or (3) a military judge.

[17] In determining whether a communication is appropriate a lawyer may want to consider factors such as: (1) whether the communication with the represented person~~, either directly or through an intermediary, and if~~ is intended to gain information that is relevant to the matter for which the communication is sought; (2) whether the communication is unreasonable or oppressive; (3) whether the purpose of the communication is not primarily to harass the represented person; and (4) whether good cause exists for not requesting the consent of the person's counsel prior to the communication. ~~the represented person has given a recorded voluntary and informed waiver of counsel for that communication. The waiver may be written or "recorded" on videotape, audiotape, or other similarly reliable means.~~

~~If government lawyers have any concerns about the applicability of any of the provisions of subparagraph (b) or are confronted with other situations in which communications with represented persons may be warranted, they may avail themselves of the *ex parte* procedures for seeking court approval under subparagraph (a)(3)~~The lawyer should consider requesting the court to make a written record of the application, including the grounds for the application, the scope of the authorized communications, and the action of the judicial officer, absent exigent circumstances.

[18] Organizational clients are entitled to the protections of this Rule. Paragraph (ed) specifies which individuals will be deemed for purposes of this Rule to be represented by the lawyer who is representing the organization in a matter. Included within the control group of an organizational client, for example, would be the designated high level officials identified in subparagraphs ~~2(A) and (B)~~(d)(2). Whether an officer performs a major policy function is to be determined by reference to the organization's business as a whole. Therefore, a vice-president who has policy making functions in connection with only a unit or division would not be a major policy maker for that reason alone, unless that unit or division represents a substantial part of the organization's total business. A staff member who gives advice on policy but does not have authority, alone or in combination with others, to make policy does not perform a major policy

making function.

[19] Also included in the control group are other current employees known to be "participating as principal decision makers" in the determination of the organization's legal position in the proceeding or investigation of the matter. In this context, "employee" could also encompass former employees who return to the company's payroll or are specifically retained for compensation by the organization to participate as principal ~~decisionmakers~~ decision makers for a particular matter. In general, however, a lawyer may, consistent with this Rule, interview a former employee of an organization without consent of the ~~organization's lawyer.~~organization's lawyer.

~~If an officer or employee of an organization that is represented by counsel in a matter retains another lawyer to separately represent the officer or employee in the matter, a lawyer (including a government lawyer) who wishes to communicate with the individual about the matter must obtain the consent of the individual's lawyer (if consent of a lawyer is required by the Rule) and need not obtain the consent of the organization's lawyer.~~

[20] In a criminal or civil law enforcement matter involving a represented organization, government lawyers may, without consent of the organization's lawyer, communicate with any officer, employee, or director of the organization who is not a member of the control group. In all other matters involving organizational clients, however, the protection of this Rule is extended to two additional groups of individuals: individuals whose acts might be imputed to the organization for the purpose of subjecting the organization to civil or criminal liability and individuals whose statements might be binding upon the organization. A lawyer permitted by this Rule to communicate with an officer, employee, or director of an organization must abide by the limitations set forth in paragraph (~~d~~e).

[21] This Rule does prohibit communications with any person who is known by the lawyer

making the communication to be represented by counsel in the matter to which the communication relates. A person is "known" to be represented when the lawyer has actual knowledge of the representation. Knowledge is a question of fact to be resolved by reference to the totality of the circumstances, including reference to any written notice of the representation. See Rule 1.0(f) Written notice to a lawyer is relevant, but not conclusive, on the issue of knowledge. Lawyers should ensure that written notice of representation is distributed to all attorneys working on a matter.

[22] Paragraph (~~d~~e) is intended to regulate a lawyer's communications with a represented person, which might otherwise be permitted under the Rule, by prohibiting any lawyer from taking unfair advantage of the absence of the represented person's counsel. The prohibition contained in paragraph (~~d~~e) is limited to inquiries concerning privileged communications and lawful defense strategies. The ~~r~~Rule does not prohibit inquiry into unlawful litigation strategies or communications involving, for example, perjury or obstruction of justice.

[23] The prohibition of paragraph (~~d~~e) against the communicating lawyer's negotiating with the represented person with respect to certain issues does not apply if negotiations are authorized by ~~subparagraphs (a)(1)~~law, ~~(2)~~ rule or ~~(3)~~court order. For example, a court of competent jurisdiction could authorize a lawyer to engage in direct negotiations with a represented person. Government lawyers may engage in such negotiations if a represented person who has been arrested, charged in a criminal case, or named as a defendant in a civil law enforcement proceeding initiates communications with the government lawyer and the communication is otherwise consistent with ~~the~~ requirements of subparagraph (~~b~~c)(4).

Rule 4.3. Dealing with Unrepresented Person.

~~(a) During the course of a lawyer's representation of a client, the lawyer shall not give advice to an unrepresented person other than the advice to obtain counsel.~~

~~(b)~~(a) In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding. The lawyer shall not give legal advice to an unrepresented person, other than the advice to secure counsel, if the lawyer knows or reasonably should know that the interests of such a person are or have a reasonable possibility of being in conflict with the interests of the client.

(b) A lawyer may consider a person, whose representation by counsel in a matter does not encompass all aspects of the matter, to be unrepresented for purposes of this Rule and Rule 4.2, unless that person's counsel has provided written notice to the lawyer of those aspects of the matter or the time limitation for which the person is represented. Only as to such aspects and time is the person considered to be represented by counsel.

Comment

[1] 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. In order to avoid a misunderstanding, a lawyer will typically need to identify the lawyer's client and, where necessary, explain that the client has interests opposed to those of the unrepresented person. For misunderstandings that sometimes arise when a lawyer for an organization deals with an unrepresented constituent, see Rule 1.13(f).

[2] This Rule distinguishes between situations involving unrepresented persons whose interests may be adverse to those of the lawyer's client and those in which the person's interests are not in conflict with the client's. In the former situation, the possibility that the lawyer will compromise the unrepresented person's interests is so great that this Rule prohibits the giving of any advice, apart from the advice to obtain counsel. Whether a lawyer is giving impermissible advice may depend on the

experience and sophistication of the unrepresented person, as well as the setting in which the behavior and comments occur. This Rule does not prohibit a lawyer from negotiating the terms of a transaction or settling a dispute with an unrepresented person. So long as the lawyer has explained that the lawyer represents an adverse party and is not representing the person, the lawyer may inform the person of the terms on which the lawyer's client will enter into an agreement or settle a matter, prepare documents that require the person's signature and explain the lawyer's own view of the meaning of the document or the lawyer's view of the underlying legal obligations.

[3] Paragraph (b) recognizes that the scope of representation of a person by counsel may, under Rule 1.2, be limited by mutual agreement. Because a lawyer for another party cannot know which of Rule 4.2 or 4.3 applies under these circumstances, the lawyer who undertakes a limited representation must assume the responsibility for informing another party's lawyer of the limitations. This ensures that such a limited representation will not improperly or unfairly induce an adversary's lawyer to avoid contacting the person on those aspects of a matter for which the person is not represented by counsel. Note that this responsibility on the lawyer undertaking limited-scope representation also relates to the ability of another party's lawyer to make certain ex parte contacts without violating Rule 4.2.

[3a] Utah Rule of Professional Conduct 4.3(b) and related Comment [3] are Utah additions to the ABA Model Rules clarifying that a lawyer may undertake limited representation of a client under the provisions of Rule 1.2.

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:

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

(a)(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 Rule 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 Rule 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.

Unbundle Your Practice: Increase Profits by Coaching Clients

by Forrest S. Mosten

"Unbundling is praised for cutting costs and Increasing Client Satisfaction."

– Lawyer's Weekly
December 18, 1995

WHAT IS UNBUNDLING?

Unbundling is defined as follows: The client is in charge of selecting one or several discrete lawyering tasks contained within the full service package. The discrete tasks can be broken down into seven separate tasks:

1. Advising the Client
2. Legal Research
3. Gathering of Facts
4. Discovery
5. Negotiation
6. Drafting of Documents
7. Court Representation

THE FULL SERVICE PACKAGE

In the traditional full-service package, the lawyer is engaged to perform any and all of the tasks listed above, meeting the demands of the particular case. In unbundling of legal service, the lawyer and client work together to allocate the division of tasks. This allocation depends on the demands of the particular case as well as the needs and potential talents of the client.

DISCRETE TASK REPRESENTATION

The unbundled client specifically contracts for;

1. Extent of services provided by the lawyer;
2. Depth of services provided by the lawyer;
3. Communication and decision control between lawyer and client during the unbundled engagement.

You might be surprised to learn that you already unbundle in your law practice. There are very few lawyers who provide the complete package of services to all clients. Most of us sell discrete services on a fee for service basis or choose to give away discrete services for free.

- **Initial Consultation** – Do you ever see new clients or an existing client on a new matter for a consultation and it never goes any further? You provide advice and either the client decides to go no further or ends up hiring another lawyer (or non-lawyer) to do the work?
- **Drafting Documents** – Do you ever prepare a real estate deed, a power of attorney, or just write a letter – and do nothing else?
- **Second Opinions** – Do people who have retained other lawyers ever come in to see you just to get your views on how their case is being handled. After having the conference, do you find that the person stayed with their existing lawyer, changed lawyers (maybe to you, and maybe not) or decided to go it alone without a lawyer?
- **Telephone Advice** – Do strangers ever call you with an isolated legal question? You answer the question and never hear again from that person?

All of these common practice activities are examples of discrete task services that you already perform. So what's the big deal about unbundling?

The concept of discrete task representation is not new to clients either. Corporations hire in house counsel to handle part of the job and to manage which services will be purchased from other lawyers and on what terms. High income individuals know that it makes sense to use different lawyers for different tasks and to manage the lawyers' time effectively by having non-lawyers (accountants, business managers, personal assistants) do a good deal of the leg work. Frankly, poor people unbundle involuntarily when they pick up just a form from a community legal services

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office since budget cuts preclude full service representation for most poor potential clients.

So unbundling is not new. However, both lawyers and consumers are unaware of its potential to both increase legal access and improve lawyer profitability for middle-income people.

Many clients are no longer willing to be treated like children. Today, clients are more active, more educated in the art of clienthood, more questioning, and more demanding in their quest to control the purchase and supervision of legal services.

Unbundling meets the needs of this new breed of client. In contrast to the traditional attitude that client anxiety is somehow reduced by lack of information and attention, unbundling empowers the client in an unbundled case. The client is the architect of the scope and tenor of the relationship. The unbundled client is the one who decides how the case is to be managed and what role, if any, the lawyer will play. Even more novel: the lawyer not only agrees to this shift of power but invites the public to enter the office on that basis.

BENEFITS TO CLIENTS

It is important to know and understand the benefits of unbundling to advise clients competently whether or not they choose to unbundle or you choose to add discrete task services to your present practice.

Unbundling Saves Money

Unbundling addresses the costs barriers of high lawyer fees in a number of ways:

- **No High Retainers** – Since clients are in charge of the amount of legal work, they pay as they go. Many unbundling lawyers do not charge any deposit with the understanding that the biggest risk will be losing a few hours work. When deposits or retainers are requested, they are only for the work requested.
- **Unbundling Lawyers Are Coaches** – Since unbundling lawyers are not counsel of record, a retainer is not needed to protect the lawyer in a runaway case where the lawyer must keep working even if the client owes money, or is uncooperative until the client consents to the lawyer stopping work, or the judge grants the lawyer's motion to withdraw. In unbundling, no payment, no more work.
- **Total Bills Are More Affordable** – Less work = lower fees. The lawyer's hourly rate may not differ in discrete task representation, but the cost to the clients will be more controlled and generally far less. Since clients are bearing more (if not most)

of the total load, you will be doing less work. This means that in addition to not being scared off by high deposits at the outset, lower overall fees increase lawyer use in two ways. First, clients will be willing to stick a toe in the water and start using your services without the overwhelming fear of being stuck with an unpayable bill at the end. Even though many clients don't pay full service lawyers (see unbundling benefits for lawyers), the vast majority of people want to pay their bills and often hate you when they don't pay – and hate you even more when they are pressured or sued to pay.

- **Focus on Top Priority Tasks** — By limiting your scope, you can concentrate on the clients' most pressing needs. This should increase your efficiency for the tasks undertaken and hopefully reduce the costs to your clients.

Clients Have More Control

Probably the most fascinating finding of the 1993 ABA Study on Self- Representation is that over 50% of the self-representers could afford at least some form of legal representation. Still, they chose to go it alone.

Why? More than half of the self-representers had the money and had some college education. So they should know better – litigants with lawyers get better results. So why are so many litigants choosing this approach?

The answer is relatively simple. The need and desire for control over their own lives seems to universally describe unbundling consumers. They want control in a number of areas:

Control over the Process

The nature of unbundling is such that both lawyer and client say the words: "client is in charge of the process." This explicit agreement of the nature of the client-lawyer relationship defines the power balance and sets the parameters for the roles and expectations of both client and lawyer as to who is in charge and whose needs are paramount.

One of mediation's contributions to unbundling is that it gave clients with legal problems a taste of controlling their own process for resolution. We all bridle at being dependent or powerless, and unbundling supports the desire for clients to be treated like adults by the attorneys they choose to work with. This process control is seen in a number of different ways:

- The client decides what needs to be done to solve the presenting problem;
- The client decides whether the lawyer will be involved at all;
- The client decides the allocation of work between client and lawyer;
- The client decides whether the lawyer will actively monitor the situation or wait for the client to reinitiate contact.

Control over Choices

By remaining on the firing line, unbundling clients are faced with the same types of challenging decisions that you are when providing full service representation. Should I write a letter or have a personal meeting? Should I serve the Summons or request the other side to pick it up? Should I give in on 5 smaller issues in order to get a bit more on the big issue or just to reach finality?

These choices are the art of lawyering. They involve case strategy and they involve ultimate case decisions. Actually the line between the process of handling the case and the ultimate provisions of settlement is often so blurred that it becomes a distinction without a difference. Yet, when they are handling their own case, unbundling clients are confronted with these decisions directly and often want your help born from your training, experience, and just plain good judgment.

KEEPING LAWYERS OUT OF THE WAY

In addition to lowering costs and keeping control, many unbundlers truly believe that lawyer involvement does more harm than good – at any price! Whether stemming from a distasteful experience or the anti-lawyer atmosphere reflected in lawyer jokes, large segments of society believe that lawyers just make a bad situation worse by inflaming emotions, churning conflict, or being insensitive to the relationship and business-driven nuances that are the root causes and often the bases for solving human disputes.

By serving as unbundled managers of dispute resolution, discrete task lawyers can serve to both inform clients about options, and serve as buffers to the court resolution process that the public universally decries as not meeting their needs.

BENEFITS TO LAWYERS

The legal profession can certainly benefit from increasing its customer-centered orientation. The profession is beginning to recognize its vulnerability in the marketplace as clients are increasingly self-representing, turning to non-lawyer providers, or just living with a recognized legal need. Marketing courses for lawyers are the current rage, primarily because legal consumers (clients) are learning from their experience as consumers of other products and services to expect disclosure of relevant "sales information" and friendly client-oriented service. Tools such as

readable brochures, responsive customer hot lines, and employer marketing training help meet this growing consumer demand.

INCREASE YOUR MARKET SHARE

The resulting benefit of no or low deposits is that the public is more willing to utilize lawyers. Many people who are doing without lawyers can afford and are willing to pay limited fees for reduced service. [Bruce D. Sales, Connie Beck, Richard K. Haan, *Self Representation in Divorce Cases* 13-20 (1993), published by the ABA Committee on the Delivery of Legal Services.] Most people know that it is in their self-interest to use lawyers – only they can't afford to come up with the necessary starting fee. Many people will still not choose to pay a few hundred dollars and they'll still try it themselves or just endure. But many more will at least give lawyers a limited try – and if satisfied with the result, they will use lawyers again and again on the same case, to solve other problems, and will recommend that lawyer to others.

Learn from this consumer trend. Some innovative middle-income providers have developed thriving practices using client-oriented advertising, office availability in shopping malls, information and service hot lines paid immediately by credit card or by phone bill, and other experiments in service delivery.

YOU DON'T NEED TO REDUCE YOUR HOURLY RATE

Unbundling need not be confused with a reduced hourly rate. The fee arrangement may be "win-win" for both you and your client. The client pays significantly lower overall fees. However, you can charge (and clients generally expect to pay) a customary hourly rate for the limited services provided. Actually, some lawyers providing unbundled services may choose to offer such services at a higher than normal hourly rate based on a value billing concept, due to the malpractice risks.

YOUR BILLS GET PAID

Another advantage of unbundling is that satisfied clients pay their bills. Satisfied clients generally pay faster so you need to write off fewer fees.

Also, because bills do not skyrocket as fast and your work is better understood and appreciated by clients (who are actually making informed decisions about which tasks you will perform and how much time will be billed), accounts receivable do not become so out of control.

INCREASE YOUR PERSONAL SATISFACTION

Attorneys who sign on for the discrete task model may also find greater personal satisfaction and congruence with their personal values than in the bloodletting of a courtroom. Your belief in the creative opportunities, efficiency, and cost benefits of unbundling can often inspire and steady a client to persevere through a bumpy and painful process. That inspiration and belief alone may help clients achieve satisfactory resolution.

This article is based on Chapter One of Unbundling Legal Services by Forrest S. Mosten, published by The American Bar Association (2000)

Source date: February 2, 2004

Low-income people in 30 Ohio counties are taking advantage of a new phone and internet intake system that Advocates for Basic Legal Equality, Inc. (ABLE) and LSC grantee Legal Aid of Western Ohio (LAWO) have implemented. Joe Tafelski, ABLE's executive director, says that since the beginning of the year, when the intake system started covering the state's largest legal aid services area, the bilingual telephone line has handled twice the amount of calls that it previously did and the new intake website has already had 500 people apply for services. Tafelski notes that the frequent use of the website, which is one of the few web-based intake systems in the country, is a "pleasant surprise" and frees up the phone line to allow intake workers to help even more people. Robert Clyde, executive director of Ohio Legal Assistance Foundation, says that the initial response to the larger service area seems to have alleviated many concerns that legal aid organizations had expressed when the Foundation (one of the biggest funders of legal aid programs in the state) asked ABLE and LAWO to cover 15 additional counties following the shutting down of smaller programs. Clyde says ABLE and LAWO "have the best intake system in the state and one of the best in the country for legal aid agencies. . . . I think it's a little early to tell if we're getting what we hoped for, but they are off to a good start." Local Agencies Do Legal Aid in More Counties, The Blade (Toledo, Ohio), Feb. 2, 2004, page reference unavailable; also based on original reporting by Brennan Center staff.

Topic: **Issues in Legal Services Delivery**
Date of Elert: January 30, 2004
Elert title: Utah State Bar Asks State Supreme Court to "Unbundle" Legal Services
Article titles: "Unbundling" Legal Services in Utah/Bar Asks High Court to "Unbundle" Legal Services
Author: Debra Moore
Sources: Utah Bar Journal/The Salt Lake Tribune

The Utah State Bar has asked the state's Supreme Court to approve the practice of legal services providers "unbundling" the services they provide to low-income people. In an article on the Bar's website, Debra Moore, the president of the Bar, states: "Unbundling is widely considered a 'win-win' for attorneys and a large potential market of middle-income clients who forego their legal rights because they are unable or unwilling to pay for full-service representation." Moore also notes that many attorneys already provide a form of unbundled services, and that the proposed rule amendment would resolve concerns over ethical and procedural rules originally created for more traditional legal practice. The Bar's petition recommends that the court: 1) clarify that legal services can be "limited" in scope; 2) make clear that attorneys may appear in particular hearings or proceedings and not for the duration of an entire case; 3) permit attorneys to draft legal pleadings for pro se clients; 4) allow attorneys to "directly communicate" with someone whose attorney is providing only limited representation; and 5) permit attorneys working in non-profit and court-annexed legal services programs to provide "limited legal services" without conducting the traditional required conflict checks. Moore says she anticipates the court will likely refer the petition to an advisory committee. Bill Zukosky, litigation director for LSC grantee DNA People's Legal Services, which has one office in Utah, says that unbundling "is necessary because there are so many clients and too few advocates. But we have to be cautious that clients who need full representation do not only get limited scope of representation just because we can do so." Bar Asks High Court to "Unbundle" Legal Services, The Salt Lake Tribune, Jan. 22, 2004, at B5; Debra Moore, "Unbundling" Legal Services in Utah, Utah Bar Journal (Dec. 2003), available at http://www.utahbarjournal.com/html/december_2003_0.html; also based on original reporting by Brennan Center staff.

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RSS

"Unbundling" Legal Services in Utah

by Debra Moore

By the time this article appears, the Utah State Bar Commission expects to file a petition with the Utah Supreme Court to amend and adopt rules to allow lawyers to better serve a growing demand for limited legal services – also known as unbundled or discrete task services. The petition will seek four key changes:

- Amend Rule 1.2 of the Utah Rules of Professional Conduct to clarify that an attorney and client may agree to limit the scope of the legal services to be provided.
- Amend the Utah Rules of Civil Procedure to allow an attorney to enter an appearance limited to a particular hearing or proceeding.
- Amend the Utah Rules of Civil Procedure to allow an attorney to draft legal pleadings for a client who is otherwise unrepresented in court.
- Amend Rules 4.2 and 4.3 of the Utah Rules of Professional Conduct to allow an attorney to directly communicate with a party who is represented under limited scope agreement, unless the attorney is notified in writing to work through counsel.
- Adopt Rule 6.5 of the ABA Model Rules of Professional Conduct, to allow an attorney to provided limited legal services as part of a non-profit or court-annexed program without checking for unknown conflicts.

As a practical matter, Utah attorneys are already providing limited scope services and engaging in some of the above practices. The purpose of the proposed rule amendments is to encourage more unbundling by resolving questions that arise under ethical and procedural rules that were drafted with only the traditional full service representation model in mind. The petition follows a September 2002 recommendation of the Utah Supreme Court Study Committee on the Delivery of Legal Services that the Court "consider, and when appropriate, adopt rules that allow greater flexibility in the delivery of legal services," with such consideration to include "authorization for lawyers to 'unbundle' legal services, that is, to break traditional legal services into smaller, less complex and expensive, constituent parts." The petition also implements a July 2003 recommendation of the Bar Commission's Task Force on Delivery of Legal Services.

Unbundling is widely considered a "win-win" for attorneys and a large potential market of middle-income clients who forego their legal rights because they are unable or unwilling to pay for full-service representation. At least ten states, including our neighboring states of Colorado, Nevada, and Wyoming, have preceded Utah in adopting unbundling rules. Proposals to adopt unbundling rules are also pending in several additional states.[1]

Numerous resources exist for attorneys interested in expanding their client base by unbundling. The keys to successful unbundling are a thorough initial client consultation and a clearly written limited services agreement. Guidance on these and other unbundling issues is available from the ABA Delivery of Legal Services Committee, which maintains a website accessible to non-members. In addition, California lawyer Forrest "Woody" Mosten has published *Unbundled Legal Services,* a how-to manual replete with helpful forms and other tools, which is available through either the ABA or Mosten's website. One of the pioneers of limited representation who coined the term "unbundling," Mosten was well-received when he spoke to Utah bar members about unbundling at the Mid-Year Meeting in March 2003 and the Fall Forum in September 2003.

Unbundling has been aptly described as a way for attorneys to "rediscover" the middle class. Of course, many Utah lawyers never lost sight of the middle-income market for their services to begin with. But with easy public access to legal information and competition from non-lawyers increasing rapidly, lawyers who serve middle-income Utahns must focus with a vengeance on the value added by their services. Unbundling effectively isolates, and highlights, that value and provides a way for ordinary Utahns to "rediscover" Utah lawyers.

1. In addition to the three neighboring states, states that have adopted unbundling rules include California (for family law cases only), Delaware, Florida, Maine, New Mexico, North Carolina, and Washington. Proposed rules are pending in Virginia, New York, Maryland, and Indiana.

The State Bar of Nevada

MEMORANDUM

To: Rachelle M. Resnick, Esq., Program Manager
Clark County Family Law Self Help Center
From: Rob Bare, Bar Counsel
Date: March 31, 1999

RE: Ethics Issues Regarding the Concept of Unbundled Legal Services

I. Unbundled Legal Services - a Definition

One option that an individual utilizing the Family Law Self Help Center's services has is to utilize an attorney who may provide legal services known as "unbundled" legal services. This means that the attorney will represent the individual client on only a part of the case, leaving the remainder of the case to be addressed by the client on their own.

For example, perhaps an attorney would be engaged to draft, file, and litigate to a conclusion a motion concerning spousal support. Alternatively, for example, an attorney may be retained only to draft and finalize a qualified domestic relief order (QDRO). In these examples, or in other relevant instances, the attorney would be involved only in dealing with the one specific legal issue, one part of the case, and would not be involved in another part of the case. This means, again, that in regard to other parts of the case, the client would address those on their own.

II. Supreme Court Rule 152 (Scope of Representation)

This ethics rule states in relevant part that "a lawyer may limit the objectives of the representation if the client consents after consultation." The interpretation of this rule over time, along with its clear meaning, is that the burden is clearly on the attorney to make sure that, in a limited scope of representation situation such as providing unbundled legal services, when the client leaves the office, so to speak, the client is fully aware of the limited nature of the attorney's representation. The reason this rule exists is to avoid a situation where a client draws a conclusion that an attorney is providing a service that is actually not being provided. Under the above ethics rule, it is important to remember that, again, the burden is on the attorney to make sure the client fully understands the limited scope of the representation. Of course this is done initially by fully consulting with the client and reaching a meeting of the minds (so to speak) regarding what the lawyer will do and will not do, and of clearly leaving certain portions of the case to the client to handle on their own,

I believe the best practice which should be utilized to insure that both the client and the lawyer in the unbundled legal services context fully understand the limited scope of representation is the following. In every case, the attorney and client should execute a written retainer agreement. Therein, in no uncertain terms, the following should be spelled out:

Attorney has been retained to provide "unbundled" legal services. This means that attorney will represent client on only a part of the case, leaving the remainder to be addressed by the client on their own,

In this specific case, Attorney will provide the following legal services:

[Attorney should fully spell out the limited scope of his/her representation, specifically detailing legal services to be provided and not provided.]

In practice, the above concerns pursuant to SCR152 may be some of the most important. This is because, it has been my experience, that when attorneys and clients fail to reach a mutual understanding as to what an attorney is doing and is not doing when the scope of representation is limited, major problems inevitably occur. This is because the client who draws the conclusion that the lawyer is doing something that he/she is not will often times be disappointed and angry when that matter is not handled. They then follow-up with the filing of a grievance with the State Bar of Nevada alleging the attorney failed to address an important aspect of the case. As shown above, this problem can be avoided by dearly spelling out the limited scope of representation in the unbundled legal services context.

III. Supreme Court Rule 155 (Fees)

This ethics rule deals with a lawyer's fees. The main tenet of this rule is that a lawyer's fee shall be reasonable and the rule goes on to list various factors to be considered in determining the reasonableness of a fee. Further, the rule requires that when a lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated to the client before or within a reasonable time after commencing the representation.

As with the scope of representation concern above, I believe the best practice would be to fully spell out, in writing, as part of the retainer agreement, exactly and specifically how the fee will be calculated. This should be done in a manner which leaves no question in the mind of the client as to what the attorney's fee will be based upon and how it will be calculated

IV. Supreme Court Rule 156 (Confidentiality of Information)

This ethics rule deals with the most basic tenet of ethical law, that being that an attorney has a duty to keep confidential and privileged certain communications and information relating to representation of a client unless the client consents to disclosure after consultation.

Applying the duty of confidentiality to the unbundled legal services concept, it should be made clear that though the attorney may be involved with only a portion of the case, nonetheless, the duty to keep client confidences still remains,

V. Supreme Court Rule 157 (Conflict of Interest: General Rule)

This ethics rule states in relevant part that a lawyer shall not represent a client if the representation of that client will be directly adverse to another client or if the representation may be materially limited by the lawyer's responsibilities to another client, to a third person, or by the lawyer's own interests.

In the unbundled legal services context, conflict checks similar to those conducted by attorneys in any other areas should be performed. That is to say, again, though the attorney may be involved only in a portion of the client's case, once becoming involved or even contemplating becoming involved, the lawyer should conduct a conflict check to see if any of the factors spelled out in SCR 157 are present.

VI. Supreme Court Rule 159 (Conflict of Interest: Former Client)

This ethics rule deals with potential conflicts of interest that may be present, given that the attorney may have represented another person in the same or substantially related matter in the past. As with SCR 157, here, again, an attorney involved in the unbundled legal services context must run a conflict check regarding former clients whom the lawyer may have represented either in the same or a substantially related matter to that which is presented by the current client.

VII. Conclusion

The above represents the most relevant ethics rules that may be encountered in practical application by clients and attorneys in dealing with unbundled legal services. Certainly, all other ethics rules that govern the practice of attorneys in the State of Nevada apply as well. However, the above seem to be, in my experience, the most relevant rules impacted by the concept of unbundled legal services. It seems that utilization of unbundled legal services by litigants in the family law arena can benefit both the public and the Bar. I believe all will run well as long as clients and attorneys clearly understand their prospective roles.

Source:

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Law Firms Find New Revenue in 'Unbundling'

Limited role in pro se suits grows

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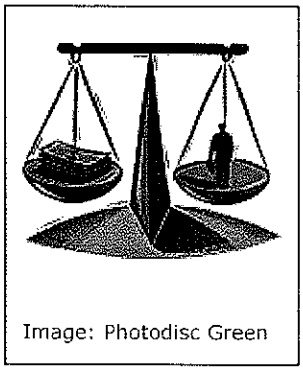

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Rules that allow lawyers to "unbundle" their services -- to represent typically cash-strapped clients for parts of their litigation -- are spreading across the United States.

In the past six years, nine states -- Alaska, California, Colorado, Florida, Maine, Nevada, New Mexico, Washington and Wyoming -- have adopted unbundling rules.

New Hampshire and Utah are in the process of changing their rules. Iowa, Illinois and Ohio are not far behind, while Connecticut is in an earlier exploratory phase, the results of which are unpredictable.

Proponents argue that unbundling provides a public service to clients who would not otherwise have any legal representation. They say it is also a potential stream of untapped revenue for law firms.

Critics counter that clients are better served when represented throughout their litigation.

Unbundling allows lawyers to limit their involvement in litigation in the same way that they often have contractually limited their involvement in transactional work for businesses, or have contracted to take a case to trial, but not to do the appeal.

An unbundled lawyer might, for example, advise clients of their rights in a divorce, help clients fill out forms, confine court appearances to child custody issues, and review the judgment. Other than that, clients could be on their own, if they want to proceed that way.

The new rules also facilitate and sanction unbundling for volunteer and legal services attorneys who had long provided unbundled services, called "limited-scope representation."

PLENTY OF BUSINESS

The unbundling of services targets pro se clients whose cases are most often found in family, small claims, housing, traffic and misdemeanor courts. But a 2001 National Center for State Courts study found that 9 percent of defendants who went to trial in contract cases didn't have a lawyer either.

"Some states -- such as California, Washington and Florida -- have courthouse facilitators to assist with detailed procedural information and one-on-one form preparation" for pro se clients, said William Hornsby, staff counsel to the American Bar Association

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In other states, volunteer lawyers play similar roles. Maricopa County, Ariz., has self-help centers where forms and technological tools take individuals through the procedural morass, he said, while many states provide forms through the Internet.

"But for many people that's just not enough," said Hornsby, a specialist in the ethical considerations of unbundling. "They need advice and sometimes more."

UNBUNDLING IN ACTION

Family lawyer Elizabeth Scheffee of Portland, Maine's Givertz, Hambley, Scheffee & Lavoie is an unbundling enthusiast. About 20 percent of her clients use her services on an unbundled basis. These clients' annual income ranges from $75,000 to $225,000, with a few millionaires tossed in, she said.

"It really very well suits a domestic-relations practice," said the former state bar president. "One reason why I really enjoy it is because it allows more legal representation for people of modest means."

She said that if she had to go to her own firm for a lawyer to handle her divorce, "I could not afford myself." She advises her clients of their rights, and helps them fill out legal forms that they can pick up for themselves at the court for $5 a packet.

"Typically, they're going to need a lawyer to draft the divorce judgment so it contains the magic words that are applicable to the client," Scheffee said. "For example, if they own real estate there is a certain way it has to refer to the real estate and allocate it to the parties."

Then there's the division of the pension, "which can be very tricky," Scheffee said. She hasn't "ironed out the wrinkles of appearing in court yet," she said, because she hadn't had much experience doing it for unbundled clients.

Los Angeles solo practitioner Forrest Mosten first championed unbundling in an article in an ABA Section of Family Law journal article in 1991. He has a "no-court rule" in his practice, even when he's doing full-service work, which means he will not make court appearances. In what he described as a very busy mediation-oriented practice, he recommends a variety of lawyers for in-court work.

"Some clients will hire me in an unbundled scope to manage the litigation with the litigator," Mosten said. "Just like an internist will manage the care of a patient who needs surgery."

Mosten represents clients in the same income group as Scheffee. For the working poor, there are few alternatives, at least in Los Angeles. But one nonprofit law firm, Levitt & Quinn, Family Law Center, provides only unbundled legal services, although the firm often sees cases through from beginning to end. Levitt & Quinn clients are charged on a sliding-scale fee basis that supports only half the office's overhead. The other half is raised privately.

"Two days a week we see new clients," said Sharon Hulse, acting director of legal services. "There's a line starting at 7 [a.m.] although the office doesn't open until 8." Full-time attorneys average about 80 cases and are paid on the bottom of the legal-aid scale, she said.

King County, Wash., Superior Court Commissioner Kimberly Prochnau has witnessed unbundling in action.

"Unbundling has increased the pool of volunteer attorneys," said Prochnau. "It has also made it more likely for people to be able to get an attorney at a critical stage of the proceedings," even if they can't afford the kind of retainer that would commit a lawyer through trial.

For example, while in her county, which includes Seattle, only 6.5 percent of family law cases are tried, preliminary hearings held within 14 days of filing often result in orders that affect child custody, child and spousal support, and other significant matters.

RULES CHANGE

The unbundling movement gained momentum after the 1999 Scottsdale, Ariz., Conference on Pro Se Litigation, sponsored by the American Judicature Society, which brought together teams from 49 states. Unbundling was one of the "action plans" that came out of the conference. Soon afterward, the ABA formed Ethics 2000, which recommended revisions to its model rules of professional conduct to facilitate unbundling. Those rules were adopted in 2002.

Unbundling requires revisions of state ethical rules and rules of civil procedure. The most controversial issues, as evidenced by states'

diverse procedural and substantive rules, are:

>• The scope of an attorney's duty to investigate the facts. Can a lawyer rely on the facts as presented by a client or is an independent investigation required?

>• Special appearances by counsel. In addition to contesting jurisdiction, should the rules allow them if a court has written notice of an attorney's limited scope of representation, and should the rules also facilitate an attorney's withdrawal?

>• Drafting of pleadings. Does a pro se litigant have to tell a court when a lawyer drafts a pleading?

>• Conflicts. Absent knowledge of a conflict, must a volunteer lawyer working under the auspices of a nonprofit organization have to run a conflicts check at his or her firm if the advice a client will get is short-term and limited?

THE CRITICS

The main concerns about unbundling that go beyond rule-making are:

• Clients are better served if they are fully represented.

>• Legal service clients need full representation far more than sophisticated clients.

>• Clients may not always understand the limits of the representation they have agreed to.

While Legal Services for New York City Executive Director Andrew Scherer doesn't think unbundling is a bad approach for parties of relatively equal bargaining power, when it comes to his clients, he's no fan.

"I think it gets a little more dicey when you have, for example, the government on one side and low-income clients on the other," he said.

That too would apply to situations where private parties who are better equipped to pursue the litigation are on the other side, such as in landlord/tenant disputes, he added.

That said, legal services organizations across the country have long offered limited-scope representation. For example, they have often helped clients fill out pleadings while not appearing with them in court. But that doesn't make it a best practice, Scherer insists.

"Advocacy is a dynamic you can't pick apart," he asserted. "It involves complex and nuanced skills . ... Our clients are often trying to keep their families together, keep their housing ... . It's a rare instance where unbundling can resolve those kinds of problems."

New York has not eased its rules on unbundling.

'HOME DEPOT MOVEMENT'

Ronald Staudt, a professor at Chicago-Kent College of Law, asserted that unbundling is part of the "self-help Home Depot movement.

"If people can go three-fourths the way down the road by themselves, is there a good reason that we as a profession shouldn't let them?" Staudt said.

"Our profession is client-centric, and if what the client wants is to pay less and only get pieces of service, we should give them what they want as long as it doesn't cause an ethical breach."

With grants from NCSC and others, Staudt directed a team that developed "A2J" -- Access to Justice -- a computer interface that facilitates the ability of individuals to appear unbundled or pro se. It interviews clients online and, using HotDocs software donated from LexisNexis, helps clients fill out legal forms and pleadings.

But if a client runs into a complication, the program takes them out of the interview and onto a lawyer-referral Web page. Sites could be programmed to include unbundled live chat and teleconferencing services.

STATES ARE WATCHING

As some states work their way through unbundling rules, others are watching.

In Texas, said Lora Livingston, an Austin state district court judge who is the chair of the ABA committee that Hornsby staffs, "We've had limited-scope representation for a long time. Anyone who's worked in a legal aid office knows that."

But Texas has not adopted the kind of rules that most unbundled states have, which allow lawyers to appear in court for limited

purposes, and that also facilitate their withdrawal.

"I think we should be working on rules that encourage lawyers [to offer unbundled services], because not every client needs soup-to-nuts representation," Livingston said. "[We need rules that make] it easier for lawyers to withdraw once their agreed-upon tasks have been completed," she added.

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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The views expressed here in have not been approved by the House of Delegates or the Board of Governors of the American Bar Association and, accordingly, should not be construed as representing the policy of the American Bar Association.

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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

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[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, California[5] and Florida[6] 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*

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[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.

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[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 on-going 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.

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[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.

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

[21] For the complete charge 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.

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[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 1.1[28], 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 4.2[32] and 4.3[33] 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' 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]

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[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

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[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

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[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 then 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

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[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
[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

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[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
[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

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[52] See http://courts.state.wy.us/RULES/04Uniform_Rules_for_District_Courts_of_the_State_of_Wyoming.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

[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]

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[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

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[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

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).

(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. Signing 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. Signing 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 REPRESENTATON 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

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), E 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 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).

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

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)

STATE OF VERMONT
VERMONT SUPREME COURT
FEBRUARY TERM, 2006

Order Promulgating Amendments to the Vermont Rules of Civil Procedure

Pursuant to Chapter II, Section 37, of the Vermont Constitution and 12 V.S.A. § 1, it is hereby ordered:

1. That Rule 4.1(d)(3) of the Vermont Rules of Civil Procedure be amended to read as follows (new matter underlined; deleted matter struck through):

RULE 4.1. ATTACHMENT

****

(d) Same: Execution; Service.

****

(3) *Service of Executed Writ.* After the attachment has been executed, a copy of the writ and all proofs of execution, together with the list of exemptions, must be promptly served upon the defendant. If the attachment was approved ex parte in accordance with paragraph (3) of subdivision (b), such service shall be made when the summons and complaint are served as provided in Rule 4. If the attachment was approved upon notice and hearing in accordance with paragraph (2) of subdivision (gb), or is a subsequent or additional attachment approved under subdivisions (g) and (b), such service shall be made in the manner provided in Rule 5. The plaintiff's attorney may direct the officer or other person making the attachment to make such service by a specific method under the appropriate rule, or the plaintiff's attorney may cause such service to be made by another method provided by the appropriate rule.

****

Reporter's Notes–2006 Amendment

Rule 4.1(d)(3) is amended to correct an editorial error made when the rule was amended in 1999.

2. That Rule 79.1(h) of the Vermont Rules of Civil Procedure be added to read as follows:

RULE 79.1. APPEARANCE AND WITHDRAWAL OF ATTORNEYS

****

(h) Limited Appearance.

(1) An attorney acting pursuant to an agreement with a client for limited representation that complies with the Vermont Rules of Professional Conduct may enter an appearance limited to one or more of the following purposes on behalf of a client who is pro se and who has entered, or will enter, a general appearance:

(A) Filing a complaint or other pleading.

(B) Filing or arguing a specific motion or motions.

(C) Conducting one or more specific discovery procedures.

(D) Participating in a pretrial conference or an alternative dispute resolution proceeding.

(E) Acting as counsel for a particular hearing or trial.

(F) Taking and perfecting an appeal.

(G) With leave of court, for a specific issue or a specific portion of a trial or hearing.

(2) An attorney who wishes to enter a limited appearance shall do so by filing with the clerk and serving pursuant to Rule 5 a written notice of limited appearance as soon as practicable prior to commencement of the appearance. The purpose and scope of the appearance shall be specifically described in the notice, which shall represent that the client is pro se and has entered, or will forthwith enter, a general appearance. The attorney's name and a brief statement of the purpose of the limited appearance shall be entered upon the docket The notice and all actions taken pursuant to it shall be subject to the obligations of Rule 11.

(3) An attorney who has entered a limited appearance shall be granted leave to withdraw as a matter of course when the purpose for which the appearance was entered has been accomplished. An attorney who seeks to withdraw before that purpose has been accomplished may do so only on motion and notice, for good cause and on terms, as provided in Rule 79.1(f).

(4) Every paper required by Rule 5 to be served upon a party's attorney that is to be served after entry of a limited appearance shall be served upon the party and upon the attorney entering that appearance unless the attorney has been granted leave to withdraw pursuant to paragraph (3) of this subdivision.

Reporter's Notes–2006 Amendment

Rule 79.1(h) is added to permit a lawyer acting pursuant to a limited representation agreement with a pro se client to enter a limited appearance for one or more purposes that the rule specifically permits. The rule thus facilitates "unbundling" of court-related legal services in order to assist both litigants and the courts by providing the assistance of a lawyer at critical junctures in a trial or other proceeding. The opportunity to make a limited appearance also addresses a further critical need by encouraging lawyers to take on pro bono clients without being committed to full representation. The idea of unbundling has been widely discussed in the bar and has been adopted in other states. See T. Garrett, "Unbundling Legal Services," 30 Vt. Bar Jour., no. 2, pp. 30-34 (2004); Me. R. Civ. P. 5, 11, 89; Me. Bar R. 3.4(i), (j), 3.5(a)(4), 3.6(a)(2). The present rule applies only to actions governed by the Vermont Rules of Civil Procedure. By virtue of V.R.F.P. 2(a)(2), 4(a)(2), 9(a)(2), V.R.C.P. 79.1 does not apply to actions in Family Court. Cf. V.R.F.P. 15(a).

At the outset, it is important to distinguish between two forms of unbundling: "Limited representation" embodies the whole range of legal services as to which a lawyer and client may agree to limit the objectives or scope. "Limited appearance" is a form of limited representation that refers to an appearance by a lawyer in a court proceeding on the client's behalf only for certain specific steps in the process as to which lawyer and client have agreed. "Limited representation" is an aspect of the lawyer-client relationship, controlled and defined by the Rules of Professional Conduct and the law of contract, agency, and tort. See V.R.P.C. 1.2(c) and Comment. The present amendment does not address these broader issues. It is intended to clarify some very specific procedural issues raised by the use of limited appearance.

Rule 79.1(h)(1) confines the use of limited appearance under the rule to situations in which the client is pro se and has or will enter a general appearance in that capacity. That general appearance by the client is not affected by a limited appearance under the rule and remains in effect for the duration of the action unless superseded by the general appearance of a lawyer for the client. The fact that the client has appeared generally should allow opposing counsel to communicate with the pro se client pursuant to V.R.P.C. 4.2 because of the difficulty of sorting out issues applicable only to the limited appearance. See T. Garrett, *supra*, at 33. It is the responsibility of the lawyer filing the limited

appearance to caution the client about such communications, which, of course must be conducted as provided in V.R.P.C. 4.3. While the concept of limited appearance may well be useful in situations where another lawyer has entered a general appearance for the client, those situations are best handled by agreement between the lawyers as to the role of each and the court's inherent power to control the course of the trial. The lawyer who has appeared generally has assumed the responsibility for receiving notice and for obligations such as those imposed by other provisions of Rule 79.1.

Under Rule 79.1(h)(1), the limited appearance must be pursuant to a specific agreement with the client entered into pursuant to V.R.P.C. 1.2 and must be for one or more of the seven specific purposes outlined in Rule 79.1(1)(A)-(G). Subparagraph (G), requiring leave of court for a limited appearance for part of a trial or hearing, recognizes the need of the trial judge to maintain control of the proceedings. "A specific issue" is a particular factual or legal question. "A specific portion of a trial or hearing" is a particular procedural step, such as the examination of a particular witness.

Rule 79.1(h)(2) requires the lawyer entering a limited appearance to file and serve a brief statement describing the scope of the appearance and making clear that the client is pro se and has or will enter a general appearance. The notice is to be provided "as soon as practicable," thus allowing the limited appearance to be undertaken without advance notice when necessary and appropriate. Ordinarily such notice should be given sufficiently in advance of the appearance to assure that opposing parties and counsel, as well as the court, are aware of the appearance. Entry of the appearance on the docket is intended to facilitate the notice provisions of paragraph (4). The notice of appearance itself, as well as the lawyer's actions under it, are subject to Rule 11.

Rule 79.1(h)(3) makes clear that a lawyer undertaking a limited appearance is not obligated to carry on the representation beyond the matters undertaken. Though a motion under Rule 79.1(f) for leave to withdraw is required, the motion will be granted as a matter of course if the purpose of the appearance has been accomplished. If that purpose has not been accomplished, however, the notice and motion provisions of Rule 79.1(f) for withdrawal after a case has been set for trial apply. In either case, the fact of withdrawal must be noted on the docket. Paragraph (3)

does not address the situation of a lawyer who goes beyond the scope of the limited appearance. Under its inherent power to control the trial, and subject to the wishes of the client, the court may extend the terms of the limited appearance, revoke it, or convert it to a general appearance.

Rule 79.1(h)(4) provides that for the duration of a limited appearance, any paper required under Rule 5 to be served on a lawyer for a party must be served both on the pro se party who has entered a general appearance and on the lawyer who has entered the limited appearance. This provision avoids the problem that would be faced by a pro se party in determining which papers are relevant to the limited appearance and thus should be transmitted by the party to the lawyer.

3. That Form 1 in the Appendix of Forms to the Vermont Rules of Civil Procedure be replaced to read as follows:

FORM 1. SUMMONS

STATE OF VERMONT _____ SUPERIOR COURT

COUNTY OF _____ Docket No. _____

_____
Plaintiff(s)

v.

SUMMONS

_____
Defendant(s)

THIS SUMMONS IS DIRECTED TO _____

1. **YOU ARE BEING SUED**. The plaintiff has started a lawsuit against you. The Plaintiff's Complaint against you is attached to this summons. Do not throw these papers away. They are official papers that affect your rights.

2. **YOU MUST REPLY WITHIN 20* DAYS TO PROTECT YOUR RIGHTS.** You must give or mail the Plaintiff **a written response** called an Answer within 20* days of the date on which you received this Summons. You must send a copy of your Answer to the [Plaintiff][Plaintiff's attorney] located at:

_____,

You must also give or mail your Answer to the Court located at:

_____

3. **YOU MUST RESPOND TO EACH CLAIM.** The Answer is your written response to the Plaintiff's Complaint. In your Answer you must state whether you agree or disagree with each paragraph of the Complaint. If you believe the Plaintiff should not be given everything asked for in the Complaint, you must say so in your Answer.

4. **YOU WILL LOSE YOUR CASE IF YOU DO NOT GIVE YOUR WRITTEN ANSWER TO THE COURT.** If you do not Answer within 20* days and file it with the Court, you will lose this case. You will not get to tell your side of the story, and the Court may decide against you and award the Plaintiff everything asked for in the complaint.

5. **YOU MUST MAKE ANY CLAIMS AGAINST THE PLAINTIFF IN YOUR REPLY.** Your Answer must state any related legal claims you have against the Plaintiff. Your claims against the Plaintiff are called Counterclaims. If you do not make your Counterclaims in writing in your Answer, you may not be able to bring them up at all. Even if you have insurance and the insurance company will defend you, you must still file any Counterclaims you may have.

6. **LEGAL ASSISTANCE.** You may wish to get legal help from a lawyer. If you cannot afford a lawyer, you should ask the court clerk for information about places where you can get free legal help. **Even if you cannot get legal help, you must still give the Court a written Answer to protect your rights or you may lose the case.**

_____ _____

[Plaintiff] [Plaintiff's attorney] *Dated*

Served on _____ _____

Date *Sheriff*

* Use 20 days, except that in the exceptional situations where a different time is allowed by the court in which to answer, the different time should be inserted.

Reporter's Notes–2006 Amendment

Form 1 as originally promulgated and as amended in 1999 and 2001 is entirely replaced by the present amendment. The purpose is to provide a simplified form that will be more understandable to the increasing numbers of pro se litigants. The new form is written in "plain English" to the extent possible. Rule 84 provides that the forms incorporated in the Appendix of Forms "are sufficient under the rules and are intended to indicate the simplicity and brevity of statement which the rules contemplate." While the use of the new Form 1 is thus not required, it is to be hoped that it will be generally adopted and used by both represented and unrepresented plaintiffs.

The new form consists of 6 separate paragraphs and has a seventh grade reading level. This is just above the 6th grade level generally recommended for use in public notices. This compares favorably with the current summons which has a 12.5 grade level and consists of a single, long paragraph. In addition, the focus of the summons has been changed away from the current bold, capitalized language regarding counterclaims involving insurance defense (while maintaining the direction to bring any counterclaims even in the event of insurance coverage). The proposed summons is more directly aimed at nonattorneys, providing clearer direction to those unfamiliar with the judicial process.

The form will be filed either by an attorney for the plaintiff or by a pro se plaintiff. The appropriate bracketed designation in paragraph 2 and the signature block should be chosen.

4. That Form 1A in the Appendix of Forms to the Vermont Rules of Civil Procedure be amended to read as follows (new matter underlined; deleted matter struck through):

FORM 1A. SUMMONS AND ORDER OF PUBLICATION

STATE OF VERMONT	(CHITTENDEN) SUPERIOR COURT
(CHITTENDEN) COUNTY, SS	Civil Action, Docket No. _____

A. B., Plaintiff	}	
of Burlington,	}	
Chittenden County	}	
v.	}	Summons and Order

C. D., Defendant, (Address Unknown) (formerly of Burlington, Chittenden County)	} } } }	for Publication

To the above-named Defendant:

You are hereby summoned and required to serve upon _____, plaintiff's attorney, whose address is, _____, an answer to plaintiff 's complaint in the above-entitled action within 41 days after the date of the first publication of this summons, which is _____, ~~1975~~ 20__. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Your answer must also be filed with the court. Unless otherwise provided in Rule 13(a), your answer must state as a counterclaim any related claim which you may have against the plaintiff, or you will thereafter be barred from making such claim in any other action. **YOUR ANSWER MUST STATE SUCH A COUNTERCLAIM WHETHER OR NOT THE RELIEF DEMANDED IN THE COMPLAINT IS FOR DAMAGE COVERED BY A LIABILITY INSURANCE POLICY UNDER WHICH THE INSURER HAS THE RIGHT OR OBLIGATION TO CONDUCT THE DEFENSE.** If you believe that the plaintiff is not entitled to all or part of the claim set forth in the complaint, or if you believe that you have a counterclaim against the plaintiff, you may wish to consult an attorney. If you feel that you cannot afford to pay an attorney's fee, you may ask the clerk of the court for information about places where you may seek legal assistance.

Plaintiff's action is (a complaint for divorce brought by plaintiff against defendant, in which plaintiff alleges that plaintiff has lived separate and apart from defendant for more than six consecutive months and that resumption of marital relations is not reasonably probable, seeking alimony, child custody, and other relief) (other brief statement of the action, property or credits affected, relief sought). A copy of the complaint is on file and may be obtained at the office of the clerk of this court. (Chittenden County Courthouse, Burlington), Vermont.

It appearing from the (verified complaint) (affidavit duly filed) in the above-entitled action that service cannot be made with due diligence by any of the methods prescribed in V.R.C.P. 4(d) through (f) inclusive, it is hereby ORDERED that service of the above process shall be made upon the defendant, C.D., by publication pursuant to V.R.C.P. [4(d)(1) and] 4(g). This order shall be published once a week for ~~three consecutive~~ ____ weeks on _____, ~~1975~~ 20__. _____ ~~1975~~ 20__, and _____ ~~1975~~, 20__. in the (Burlington Free Press), newspaper of general circulation in (Chittenden) County, and a copy of this order shall be mailed to the defendant, C. D., if his address is known.

Dated at (Burlington), Vermont, this _____ day of _____, ~~1975~~ 20__.

_____

_____

Judges of the (Chittenden) Superior Court

Reporter's Notes–2006 Amendment

Form 1A is amended to replace obsolete dates and to eliminate an inconsistency with Rule 4(g)(2) concerning the frequency of publication. The rule was amended in 1987 to change the frequency from three to "2 or more" successive weeks in order to reduce the cost of publication. As the Reporter's Notes to the 1987 amendment state, "The court's order should specify the number of weeks." Thus, the amended form leaves the number of weeks and the dates of publication to be filled in as provided in that order.

5. Paragraphs 1, 3 and 4 of this order shall become effective on April 14, 2006. The Reporter's Notes are advisory.

6. Paragraph 2 of this order shall become effective on April 14, 2006 for a period of two years up to and including April 11, 2008. Limited appearances entered into under V.R.C.P. 79.1(h) shall remain effective and governed by V.R.C.P. 79.1(h)(3) and (4) despite the expiration of the rule. On or before September 14, 2007, the Advisory Committee on the Vermont Rules of Civil Procedure will complete a review of the experience under V.R.C.P. 79.1(h) and will either (1) propose, and circulate for comment that V.R.C.P. 79.1(h), as adopted temporarily or as amended, become permanent, or (2) notify the Vermont Supreme Court that it recommends that the rule expire pursuant to the terms of this section. The Reporter's Notes are advisory.

7. That the Chief Justice is authorized to report these amendment to the General Assembly in accordance with the provisions of 12 V.S.A. § 1, as amended.

Dated in Chambers at Montpelier, Vermont, this 6th day of February, 2006.

Paul L. Reiber, Chief Justice

John A. Dooley, Associate Justice

Denise R. Johnson, Associate Justice

Marilyn S. Skoglund, Associate Justice

Brian L. Burgess, Associate Justice

Rule Change 1999(10)
The Colorado Rules of Civil Procedure
Chapter 2. Pleadings and Motions
C.R.C.P. 11. Signing 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. Signing 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) WELL-GROUNDED 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) WELL-GROUNDED 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 REPRESENTATON 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

SUGGESTED AMENDMENT -- 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.

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SUGGESTED NEW RULE -- 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).

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