

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

A White Paper

by the  
ABA Standing Committee  
on the  
Delivery of Legal Services

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## I. Introduction

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

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

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

## II. Background

When going to state court, most people proceed *pro se* most of the time. High volume state courts, including traffic, housing and small claims, are dominated by *pro se* litigants.<sup>1</sup> 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.<sup>2</sup> Anecdotal evidence suggests that *pro se* representation is increasing in other personal civil matters, as well.<sup>3</sup>

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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<sup>1</sup> 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](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.

<sup>2</sup> *Id.*, Greacen, at 7

<sup>3</sup> 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.<sup>4</sup> Courts in Washington, California<sup>5</sup> and Florida<sup>6</sup> 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.<sup>7</sup> And, several courts have established self-help centers, based on a model originated in the Maricopa County branch of the Superior Court of Arizona.<sup>8</sup> 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.<sup>9</sup>

*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 online document preparation company reports serving over one million customers since operations began in 2001.<sup>10</sup>

Even though the courts and the marketplace are providing substantial assistance to *pro se* litigants, the scope of this assistance is limited.<sup>11</sup> 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.<sup>12</sup> In some cases, *pro se*

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<sup>4</sup> 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.

<sup>5</sup> 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](http://www.selfhelpsupport.org/library.cfm?fa=detailItem&fromFa=detail&id=45467&folderID=40327&appView=folder&r=fa~~detail_id~~40327.appview~~folder)

<sup>6</sup> See Florida Rule 12.750 Family Self-Help Programs, at [http://phonl.com/fl\\_law/rules/famlawrules/famrul12750.htm](http://phonl.com/fl_law/rules/famlawrules/famrul12750.htm)

<sup>7</sup> 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>

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

<sup>9</sup> 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>

<sup>10</sup> See, [www.legalzoom.com](http://www.legalzoom.com)

<sup>11</sup> 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.wicourts.gov/sc/rulhear/DisplayDocument.pdf?content=pdf&seqNo=1129>

<sup>12</sup> 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.<sup>13</sup> 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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<sup>13</sup> 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.<sup>14</sup> 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.

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. Sixteen states have amended rules of ethics and/or rules of civil procedure in response to their analyses of the specific aspects of limited representation.<sup>15</sup> Several other states are at earlier stages of this process.<sup>16</sup>

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,<sup>17</sup> and others have identified specific issues that they do, or do not, wish to explore further.<sup>18</sup> 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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<sup>14</sup> Details about Ethics 2000 are at <http://www.abanet.org/cpr/e2k/home.html>

<sup>15</sup> AK, AZ, CA, CO, FL, IA, ME, MO, NE, NH, NM, OH, UT, VT, WA, and WY. See Court Rules at the ABA Pro Se/Unbundling Resource Center, at <http://www.abanet.org/legalservices/delivery/delunbundrules.html>

<sup>16</sup> They include Connecticut, Indiana and Massachusetts

<sup>17</sup> See the [Report of the Nebraska Supreme Court Committee on Pro Se Litigation](#) (Nov 2002)

<sup>18</sup> [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)<sup>19</sup>

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.<sup>20</sup>

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.<sup>21</sup> 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. However, a few states have created interesting variations. Florida has simply modified its

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<sup>19</sup> Model Rule 1.2 Reporter's Explanation of Changes (undated)

<sup>20</sup> For the complete change to the comment, see paragraphs 6 through 8, at <http://www.abanet.org/cpr/e2k/e2k-rule12.html>

<sup>21</sup> 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>

version of Rule 1.2(c) to require the client to consent to the limited representation in writing after consultation.<sup>22</sup>

Iowa has also modified its version of Rule 1.2(c) to require written consent, but, in doing so, created several exceptions. These exceptions include representation that consists solely of telephone consultation, representation provided by a lawyer employed by or participating in a nonprofit or court-annexed legal services program that consists solely of information, advice or the preparation of court forms, and representation that occurs as the result of court appointment for a limited purpose. The Iowa rule also clarifies that when written consent is required, it creates the presumption that the “representation is limited to the services described in writing and that the attorney does not represent the client generally, or in any matters other than those identified in the writing”<sup>23</sup>

On the other hand, Maine, Missouri, 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.<sup>24</sup>

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.<sup>25</sup>

Missouri Rule 4-1.2(c) requires informed consent in a writing signed by the client. The written notice must be substantially similar to the court approved form “Notice and Consent to Limited Scope Representation” provided in the comment to Rule 4-1.2. Similar to the Maine Limited Representation Agreement, the Missouri form defines limits

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<sup>22</sup> See, <http://www.flabar.org/divexe/rttfb.nsf/8bf68c7a6fda323085256bc800648cce/b97185a8d94f11f985256e1600596e31?OpenDocument>.

<sup>23</sup> See, <http://www.judicial.state.ia.us/wfdata/frame8314-1671/File39.pdf>

<sup>24</sup> See Appendix to Maine Rule 3.4(i) at <http://mebaroverseers.org/Maine%20Bar%20Rules/rule%203.4.htm>; Appendix to Missouri Rule 1.2(c) at <http://www.courts.mo.gov/courts/ClerkHandbooksP2RulesOnly.nsf/c0c6ffa99df4993f86256ba50057dcb8/8195dff3462d90ba86256ca6005211c1?OpenDocument>; and Appendix to Wyoming Rule 1.2(c) at [http://courts.state.wy.us/CourtRules\\_Entities.aspx?RulesPage=AttorneysConduct.xml](http://courts.state.wy.us/CourtRules_Entities.aspx?RulesPage=AttorneysConduct.xml).

<sup>25</sup> See, <http://www.mebaroverseers.org/Maine%20Bar%20Rules/rule%203.4.htm>

to the lawyer's representation, and explicitly states that the lawyer will not provide any other service without a written revision to the agreement. The form contains a checklist of services the lawyer may provide and identifies costs and fees associated with the representation. The client must indicate that he or she understands the provisions set out in the limited representation agreement, and must provide contact information for the court.<sup>26</sup>

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.<sup>27</sup>

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.

The second noteworthy issue involves the relationship between Model Rule 1.2(c)<sup>28</sup>, governing the scope of representation, and Model Rule 1.1<sup>29</sup>, governing competence. As noted in the introduction, court administrators and non-lawyer 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

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<sup>26</sup> See, <http://www.courts.mo.gov/courts/ClerkHandbooksP2RulesOnly.nsf/c0c6ffa99df4993f86256ba50057dcb8/8195dff3462d90ba86256ca6005211c1?OpenDocument>

<sup>27</sup> See, [http://courts.state.wy.us/CourtRules\\_Entities.aspx?RulesPage=AttorneysConduct.xml](http://courts.state.wy.us/CourtRules_Entities.aspx?RulesPage=AttorneysConduct.xml)

<sup>28</sup> See, [http://www.abanet.org/cpr/mrpc/rule\\_1\\_2.html](http://www.abanet.org/cpr/mrpc/rule_1_2.html)

<sup>29</sup> See, [http://www.abanet.org/cpr/mrpc/rule\\_1\\_1.html](http://www.abanet.org/cpr/mrpc/rule_1_1.html)

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.”<sup>30</sup> (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.”<sup>31</sup>

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 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.<sup>32</sup>

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

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<sup>30</sup> See, [http://www.abanet.org/cpr/mrpc/rule\\_1\\_1\\_comm.html](http://www.abanet.org/cpr/mrpc/rule_1_1_comm.html)

<sup>31</sup> See, [http://www.abanet.org/cpr/mrpc/rule\\_1\\_2\\_comm.html](http://www.abanet.org/cpr/mrpc/rule_1_2_comm.html)

<sup>32</sup> Supra note 21.

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.

At least one state, Wyoming, has amended its rules to address competence in limited representation. Comment [4] to Wyoming Rule 1.1 states, in part, “A lawyer may accept representation where the requisite level of competence can be achieved in reasonable preparation. This applies as well to a lawyer who is appointed as counsel for an unrepresented person...A lawyer and client may agree, pursuant to Rule 1.2(c) or Rule 6.5, to limit the scope of the representation. In such circumstances, competence means the legal knowledge, skill, thoroughness and preparation reasonably necessary for the limited representation...”<sup>33</sup>

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<sup>33</sup> See, [http://courts.state.wy.us/CourtRules\\_Entities.aspx?RulesPage=AttorneysConduct.xml](http://courts.state.wy.us/CourtRules_Entities.aspx?RulesPage=AttorneysConduct.xml)

#### IV. Rules Clarifying Communications Between Counsel and Parties

ABA Model Rules 4.2<sup>34</sup> and 4.3<sup>35</sup> 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 nine states that have adopted policies governing this paradigm have amended their counterpart rules, giving direction to lawyers who oppose *pro se* litigants in court.<sup>36</sup>

Colorado's rules are somewhat inconsistent. It first places the burden on the *pro se* party to communicate the fact of any limited representation to opposing counsel. Rule 4.2, governing communications with a person represented by counsel, states, in part, "A *pro se* party to whom limited representation has been provided ...is considered to be unrepresented for purposes of this rule unless the lawyer has knowledge to the contrary."<sup>37</sup>

However, Colorado Rule 4.3, 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.<sup>38</sup>

While Nebraska has adopted the Model Rule 4.2, it has added a comment meant to govern communication in limited representation. Comment [10] to Nebraska Rule 3-504.2 states, "In the event an "Entry of Limited Appearance" is filed, opposing counsel may communicate with such lawyer's client on matters outside the scope of limited representation, and by filing such limited appearance, the lawyer and the client shall be deemed to have consented to such communication." As the rule indicates, it is applicable only in matters where the limited representation attorney has entered a limited appearance with the court and does not govern communication in other circumstances.<sup>39</sup>

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<sup>34</sup> See, [http://www.abanet.org/cpr/mrpc/rule\\_4\\_2.html](http://www.abanet.org/cpr/mrpc/rule_4_2.html)

<sup>35</sup> See, [http://www.abanet.org/cpr/mrpc/rule\\_4\\_3.html](http://www.abanet.org/cpr/mrpc/rule_4_3.html)

<sup>36</sup> AK, CO, FL, ME, MO NE, NH, UT and WA

<sup>37</sup> See, <http://www.cobar.org/index.cfm/ID/20495/subID/22459/CETH/>

<sup>38</sup> Id

<sup>39</sup> See, <http://www.supremecourt.ne.gov/rules/pdf/Ch3Art5.pdf>

Florida, Iowa, Maine, New Hampshire, Utah and Washington address the issues with nearly identical language.<sup>40</sup> 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. Comment [11] to Washington Rule 4.2 states, “An otherwise unrepresented person to whom limited representation is being provided or has been provided in accordance with Rule 1.2(c) 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), Iowa Rule 32:4.2(b), Maine Rule 3.6(f), New Hampshire Rule 4.2 and Utah Rule 4.2(b) are all virtually identical.

Florida, Washington and Utah all have similar versions of Rule 4.3, 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.

Alaska and Missouri address communication in limited representation as part of a modified version of ABA Model Rule 1.2(c). The language in Alaska Rule 1.2(c) (3)<sup>41</sup> and Missouri Rule 4-1.2 (e)<sup>42</sup> is nearly identical and finds that an otherwise unrepresented person to whom limited representation is being provided is considered unrepresented for Rule 4.2 and 4.3. Exceptions to this rule include written notice of the matters or time period for which opposing counsel should communicate with the limited representation lawyer.

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

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<sup>40</sup> 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.

<sup>41</sup> See, <http://www.state.ak.us/courts/prof.htm#1.2>

<sup>42</sup> See, <http://www.courts.mo.gov/courts/ClerkHandbooksP2RulesOnly.nsf/c0c6ffa99df4993f86256ba50057dcb8/8195dff3462d90ba86256ca6005211c1?OpenDocument>

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 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, Iowa, Missouri and Washington have addressed this issue by permitting the lawyer to rely on the *pro se* party's representation of facts in most situations. Washington Rule CR 11(b), which is fundamentally identical to the Colorado, Iowa and Missouri rules<sup>43</sup>, 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.*<sup>44</sup> (Ital. added)

Maine Bar Rule 3.6(a)(2) clarifies conduct during limited representation and is applicable to the provision of drafting assistance. It states, "[A lawyer shall not] 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 representation of the

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<sup>43</sup> See Colorado RCP 11(b) at <http://www.michie.com/colorado/lpext.dll/corules/2/3?f=templates&fn=document-frame.htm&2.0>, Iowa Rule 1.423(2) at <http://www.legis.state.ia.us/Rules/Current/court/courtrules.pdf>, and Missouri Rule 55.03(c)(3) at <http://www.courts.mo.gov/courts/ClerkHandbooksP2RulesOnly.nsf/0/7db1c05900034fdc86256ca60052152c?OpenDocument>

<sup>44</sup> See, [http://www.courts.wa.gov/court\\_rules/?fa=court\\_rules.display&group=sup&set=CR&ruleid=supcr11](http://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=sup&set=CR&ruleid=supcr11)

client and the preparation shall be adequate within the scope of the limited representation.”<sup>45</sup>

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*,<sup>46</sup> 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)<sup>47</sup> and Rule of County Court Civil Procedure 311(b)<sup>48</sup> provide that pleadings drafted by a lawyer must include the lawyer’s name, address, telephone number and registration number. Iowa Rule 1.423 also requires disclosure, including the name and contact information for the attorney providing drafting assistance. The rule clarifies that an attorney need not sign the document.<sup>49</sup>

The Nebraska rule that governs document preparation shares similarities with rules from Colorado and Iowa. However, the rule is not contained in the state’s Rules of Civil Procedure, but rather is an amendment to the state’s Rules of Professional Conduct. Nebraska Rule 3-501.2 (c) states, “A lawyer may prepare pleadings, briefs, and other documents to be filed with the court so long as such filings clearly indicate thereon that said filings are “Prepared By” and the name, business address, and bar number of the lawyer preparing the same.” A Nebraska lawyer is not required to sign the document once the nature of assistance and contact information has been disclosed.<sup>50</sup>

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.”<sup>51</sup>

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

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<sup>45</sup> See, <http://mebaroverseers.org/Maine%20Bar%20Rules/rule%203.6.htm>

<sup>46</sup> 29 Fordham Urban L J 1145 (2002)

<sup>47</sup> See, [http://www.michie.com/colorado/lpext.dll/corules/2/3/242/447?f=templates&fn=document-frame.htm&2.0#JD\\_2-r11](http://www.michie.com/colorado/lpext.dll/corules/2/3/242/447?f=templates&fn=document-frame.htm&2.0#JD_2-r11)

<sup>48</sup> See, <http://www.michie.com/colorado/lpext.dll?f=templates&fn=main-h.htm&cp>

<sup>49</sup> See, <http://www.legis.state.ia.us/Rules/Current/court/courtrules.pdf>

<sup>50</sup> See, <http://www.supremecourt.ne.gov/rules/pdf/Ch3Art5.pdf>

<sup>51</sup> See, <http://www.clarkcountycourts.us/clerk/rules/EDCR.pdf>

documents.<sup>52</sup> 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.”<sup>53</sup>

New Hampshire Rule of Civil Procedure 17 closely resembles Florida Rule 12.040, by requiring disclosure but not the attorney’s name or contact information. The rule indicates that any pleading drafted by a limited representation attorney must contain the statement “This pleading was prepared with the assistance of a New Hampshire attorney.” The stipulation only applies when the attorney has not entered an appearance with the court, or when a previously filed appearance does not include representation related to the specified document.<sup>54</sup>

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. Family Law 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.”<sup>55</sup> California Civil Rule 3.37 creates a nearly identical provision for document preparation in civil matters not related to family law.<sup>56</sup>

Missouri Rule 55.03 resembles the California rules and states, in part, “...An attorney who assists in the preparation of a pleading, motion, or other filing for an otherwise self-represented person is not required to sign the document...”

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...”<sup>57</sup>

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<sup>52</sup> See, [http://www.flcourts.org/gen\\_public/family/forms\\_rules/04familylawrules.pdf](http://www.flcourts.org/gen_public/family/forms_rules/04familylawrules.pdf)

<sup>53</sup> See, <http://www.flabar.org/divexe/rrtfb.nsf/8bf68c7a6fda323085256bc800648cce/b97185a8d94f11f985256e1600596e31?OpenDocument>

<sup>54</sup> See, <http://www.nhbar.org/uploads/pdf/RulesCivilProcedureDraft011807.pdf>

<sup>55</sup> See, [http://www.courtinfo.ca.gov/rules/documents/pdfFiles/title\\_5.pdf](http://www.courtinfo.ca.gov/rules/documents/pdfFiles/title_5.pdf)

<sup>56</sup> See, [http://www.courtinfo.ca.gov/rules/index.cfm?title=three&linkid=rule3\\_37](http://www.courtinfo.ca.gov/rules/index.cfm?title=three&linkid=rule3_37)

<sup>57</sup> See, [http://courts.state.wy.us/CourtRules\\_Entities.aspx?RulesPage=DistrictCourt.xml](http://courts.state.wy.us/CourtRules_Entities.aspx?RulesPage=DistrictCourt.xml)

Iowa Rule 1.423(3) makes a similar exception for attorneys who provide drafting assistance by stating in part, “The identification of an attorney who has provided drafting assistance in the preparation of a pleading or paper shall not constitute an entry of appearance by the attorney...”<sup>58</sup> Nebraska Rule of Professional Conduct 3-501.2 (c) creates an almost identical provision.<sup>59</sup>

To summarize:

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

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<sup>58</sup> See, <http://www.legis.state.ia.us/Rules/Current/court/courtrules.pdf>

<sup>59</sup> See, <http://www.supremecourt.ne.gov/rules/pdf/Ch3Art5.pdf>

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. 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."<sup>60</sup>

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."<sup>61</sup> Missouri Rule 55.03 contains a nearly identical requirement.<sup>62</sup>

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. New Mexico Rules of Civil Procedure clarify that the disclosure must occur in the form of a written notice that identifies the nature of the limitation. The rules require that the attorney note the limitation in the signature block of any paper the attorney files and also require that the signature block include an address where service may be made on the client.<sup>63</sup>

Several states require the use of court approved forms to notify the court of an attorney's limited appearance. California Civil Rule 3.36 permits an attorney to make a limited appearance in a civil case, other than a family law matter, so long as the party and attorney provide written notice of their agreement. The rule requires the filing and service of the court-approved Notice of Limited Scope Representation, which outlines the

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<sup>60</sup> See, <http://www.clarkcountycourts.us/clerk/rules/EDCR.pdf>

<sup>61</sup> See, [http://courts.state.wy.us/CourtRules\\_Entities.aspx?RulesPage=DistrictCourt.xml](http://courts.state.wy.us/CourtRules_Entities.aspx?RulesPage=DistrictCourt.xml)

<sup>62</sup> See, <http://www.courts.mo.gov/courts/ClerkHandbooksP2RulesOnly.nsf/0/7db1c05900034fdc86256ca60052152c?OpenDocument>

<sup>63</sup> See, Rule of Civil Procedure for the District Court 1-089, Rule of Civil Procedure for the Magistrate Courts 2-107 and Rule of Civil Procedure for the Metropolitan Courts 3-107 at <http://www.conwaygreene.com/nmsu/lpext.dll?f=templates&fn=main-h.htm&2.0>

representation and includes signatures from both client and attorney.<sup>64</sup> California Family and Juvenile Rule 5.71 creates a provision that requires a Notice of Limited Scope Representation in family court matters.<sup>65</sup>

Similarly, Arizona Rule of Family Law Procedure 9(b) governs limited appearances in family law proceedings and requires the filing of a Notice of Limited Scope Representation that specifies the matter or issues for which the attorney will represent the party. While specifically allowing limited appearances with written notification, it clarifies that “nothing in the rule shall limit an attorney’s ability to provide limited services to a client without appearing of record in any judicial proceedings”.<sup>66</sup>

Delaware Family Court Rule of Civil Procedure 5(b)(2) permits an attorney to enter an appearance by filing a written notice of appearance using a Family Court generated form. The notice must specify the matter for which the attorney will appear, and the appearance is then limited to the specific petition filed.<sup>67</sup>

New Hampshire Rule of Professional Conduct 1.2(f)(1) stipulates that a lawyer may provide limited representation to a client involved in a proceeding before a tribunal, if the limitations are fully disclosed and explained, and the client gives informed consent. The sample form provided in Rule 1.2(g) was devised to meet the requirement for full disclosure when an attorney makes a limited appearance.<sup>68</sup> Rule of Professional Conduct 1.2(f)(1) is supplemented by Rule of Civil Procedure 17(c). The rule further clarifies that an attorney providing limited representation may file a limited appearance in a non-criminal case. It states in part “...An attorney who has filed a Limited Appearance and who later files a pleading or motion outside the scope of the limited representation, shall be deemed to have amended the Limited Appearance to extend to such filing...”<sup>69</sup>

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.”<sup>70</sup>

Nebraska includes a similar requirement. Nebraska Rule 3-501.2 permits limited appearances, with a written requirement. It states, “If, after consultation, the client consents in writing, a lawyer may enter a “Limited Appearance” on behalf of any

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<sup>64</sup> See, [http://www.courtinfo.ca.gov/rules/index.cfm?title=three&linkid=rule3\\_36](http://www.courtinfo.ca.gov/rules/index.cfm?title=three&linkid=rule3_36)

<sup>65</sup> See, [http://www.courtinfo.ca.gov/rules/index.cfm?title=five&linkid=rule5\\_71](http://www.courtinfo.ca.gov/rules/index.cfm?title=five&linkid=rule5_71)

<sup>66</sup> See, [http://www.supreme.state.az.us/rules/ramd\\_pdf/R-05-0008.pdf](http://www.supreme.state.az.us/rules/ramd_pdf/R-05-0008.pdf)

<sup>67</sup> See, [http://courts.delaware.gov/Rules/?FCcivill\\_jan06.pdf](http://courts.delaware.gov/Rules/?FCcivill_jan06.pdf)

<sup>68</sup> See, [http://www.courts.state.nh.us/rules/pcon/pcon-1\\_2.htm](http://www.courts.state.nh.us/rules/pcon/pcon-1_2.htm)

<sup>69</sup> See, <http://www.nhbar.org/uploads/pdf/RulesCivilProcedureDraft011807.pdf>

<sup>70</sup> See, [http://www.flcourts.org/gen\\_public/family/forms\\_rules/04familylawrules.pdf](http://www.flcourts.org/gen_public/family/forms_rules/04familylawrules.pdf)

otherwise unrepresented party involved in a court proceeding, and such appearance shall clearly define the scope of the lawyer's limitation.<sup>71</sup>

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..."<sup>72</sup>

Washington Rules CR 70.1 and CRLJ 70.1 and Iowa Rule 1.404 (3) address an important issue. The Washington 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."<sup>73</sup> [Ital. added] Iowa Rule 1.404(3) is substantively similar.<sup>74</sup> The 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.

Similarly, Alaska Rule of Civil Procedure 81(d) explicitly allows limited appearances, and requires that an attorney file and serve an entry of appearance before or during the proceeding. The entry of appearance must state that the attorney's appearance is limited and must identify the limitation by date, time period or subject matter. It then requires the attorney to serve all parties of record with the limited entry of appearance.<sup>75</sup>

Utah and Vermont permit limited appearances so that an attorney may act as counsel for a specific motion, discovery procedure, or hearing. Utah Rule 75(b) more clearly defines limited appearances and requires the attorney to file a Notice of Limited Appearance signed by attorney and self-represented party. It states, in part, "...The Notice shall specifically describe the purpose and scope of the appearance and state that the party remains responsible for all matters not specifically described in the notice. The clerk shall enter on the docket the attorney's name and a brief statement of the limited appearance..."<sup>76</sup> Vermont Rule 79.1(1) is nearly identical.<sup>77</sup>

In addition to rules that specifically address limited appearances, several states have amended their rules of civil procedures to govern service of pleadings and other papers in limited appearances. While requirements for service vary in the states of Washington, Maine, Missouri, New Hampshire, Arizona and Utah, all have rules that specifically define when, if at all, service is required upon the limited representation attorney.

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<sup>71</sup> See, <http://www.supremecourt.ne.gov/rules/pdf/Ch3Art5.pdf>

<sup>72</sup> See, [http://www.courts.state.me.us/rules\\_forms\\_fees/rules/MRCivPPlus6-07.pdf](http://www.courts.state.me.us/rules_forms_fees/rules/MRCivPPlus6-07.pdf)

<sup>73</sup> See, [http://www.courts.wa.gov/court\\_rules/?fa=court\\_rules.display&group=sup&set=CR&ruleid=supcr70.1](http://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=sup&set=CR&ruleid=supcr70.1)

<sup>74</sup> See, <http://www.legis.state.ia.us/Rules/Current/court/courtrules.pdf>

<sup>75</sup> See, <http://www.state.ak.us/courts/civ2.htm#81>

<sup>76</sup> See, <http://www.utcourts.gov/resources/rules/urcp/urcp075.html>

<sup>77</sup> See, <http://www.utcourts.gov/resources/rules/urcp/urcp075.html>

Washington Rules CR 70.1 and CRLJ 70.1 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.”<sup>78</sup> Delaware Rule 5(b)(2), Iowa Rule 1.442(2) and Utah Rule 5(b)(1) are similar, and only require service on the attorney in matters within the scope of the Notice of Limited Appearance.<sup>79</sup>

New Hampshire and California require service in all matters. New Hampshire Rule of Civil Procedure 3(b) states, in part, “When an attorney has filed a limited appearance under Rule 14(d) on behalf of an opposing party, copies of pleadings filed and communications to the court shall be furnished both to the opposing party who is receiving the limited representation and to the limited representation attorney...” Once the attorney files a withdrawal of limited appearance, service is only made on the self-represented litigant.<sup>80</sup> California Civil Rule 3.36(b) is substantially similar.<sup>81</sup>

Arizona Rule 9(B) creates a similar provision, and requires service on the limited representation attorney for all matters. It clarifies that service on an attorney who has made a limited appearance does not extend the attorney’s responsibility for representation beyond the specific matter for which the attorney appeared.<sup>82</sup>

Missouri Rule 43.01(b) requires service on the self represented person and not the attorney unless the attorney serves the opposing party with a copy of the notice of limited appearance that establishes a time period for service on the attorney.<sup>83</sup>

In contrast, Maine Rule 5(b) requires service only upon the self-represented person. It states, in part, “...When an attorney has filed a limited appearance under Rule 11(b), service upon the attorney is not required...”<sup>84</sup>

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

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<sup>78</sup> See, [http://www.courts.wa.gov/court\\_rules/?fa=court\\_rules.display&group=sup&set=CR&ruleid=super70.1](http://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=sup&set=CR&ruleid=super70.1)

<sup>79</sup> See, Utah Rule 5(b)(1) at <http://www.utcourts.gov/resources/rules/urcp/urcp005.html> , Iowa Rule 1.442(2) at <http://www.legis.state.ia.us/Rules/Current/court/courtrules.pdf>, and Delaware Rule 5(b)(2) at [http://courts.delaware.gov/Rules/?FCcivill\\_jan06.pdf](http://courts.delaware.gov/Rules/?FCcivill_jan06.pdf)

<sup>80</sup> See, <http://www.nhbar.org/uploads/pdf/RulesCivilProcedureDraft011807.pdf>

<sup>81</sup> See, California Rule 3.36(b) at [http://www.courtinfo.ca.gov/rules/index.cfm?title=three&linkid=rule3\\_36](http://www.courtinfo.ca.gov/rules/index.cfm?title=three&linkid=rule3_36)

<sup>82</sup> See, [http://www.supreme.state.az.us/rules/ramd\\_pdf/R-05-0008.pdf](http://www.supreme.state.az.us/rules/ramd_pdf/R-05-0008.pdf)

<sup>83</sup> See, <http://www.courts.mo.gov/courts/ClerkHandbooksP2RulesOnly.nsf/0/f54a7a01ed6d17e186256ca600521339?OpenDocument>

<sup>84</sup> See, [http://www.courts.state.me.us/rules\\_forms\\_fees/rules/MRCivPPlus8-08/RULE%205.pdf](http://www.courts.state.me.us/rules_forms_fees/rules/MRCivPPlus8-08/RULE%205.pdf)

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 most often 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 and Maine provide 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."<sup>85</sup>

Maine rules create a nearly identical provision.<sup>86</sup>

Vermont Rule 79.1 states, in part, "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." It also outlines a procedure for termination when the attorney seeks to withdraw before completing limited representation.<sup>87</sup>

Delaware Rule 5(b)(2) creates a similar provision. It states, in part, "...[an appearance] shall terminate when the time for appeal has elapsed from the final order entered by the Court." The rule clarifies that withdrawal before this time period is possible only through application by the attorney and by order of the court.<sup>88</sup>

Washington, Florida, Iowa and Alaska rules require the lawyer to file a notice of completion or termination. Each state 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)."<sup>89</sup> Florida Rule 12.040(c)<sup>90</sup>, Iowa Rule 1.404(4)<sup>91</sup> and Alaska Rule 81(e)<sup>92</sup> are adaptations of this provision and require notice to be upon the client and all other parties.

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<sup>85</sup> See, [http://courts.state.wy.us/CourtRules\\_Entities.aspx?RulesPage=DistrictCourt.xml](http://courts.state.wy.us/CourtRules_Entities.aspx?RulesPage=DistrictCourt.xml)

<sup>86</sup> See, Maine Bar Rule 3.4(a)(3) at <http://mebaroverseers.org/Maine%20Bar%20Rules/rule%203.4.htm> and Maine Rule of Civil Procedure 89(a) at [http://www.courts.state.me.us/rules\\_forms\\_fees/rules/MRCivPPlus8-08/RULE%2082-89.pdf](http://www.courts.state.me.us/rules_forms_fees/rules/MRCivPPlus8-08/RULE%2082-89.pdf)

<sup>87</sup> See, [http://michie.lexisnexis.com/vermont/lpext.dll/vtrules/e/198/1a8?f=templates&fn=document-frame.htm&2.0#JD\\_vrcp-791](http://michie.lexisnexis.com/vermont/lpext.dll/vtrules/e/198/1a8?f=templates&fn=document-frame.htm&2.0#JD_vrcp-791)

<sup>88</sup> See, [http://courts.delaware.gov/Rules/?FCcivill\\_jan06.pdf](http://courts.delaware.gov/Rules/?FCcivill_jan06.pdf)

<sup>89</sup> See, [http://www.courts.wa.gov/court\\_rules/?fa=court\\_rules.display&group=sup&set=CR&ruleid=supcr70.1](http://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=sup&set=CR&ruleid=supcr70.1)

<sup>90</sup> See, [http://www.flcourts.org/gen\\_public/family/forms\\_rules/04familylawrules.pdf](http://www.flcourts.org/gen_public/family/forms_rules/04familylawrules.pdf)

<sup>91</sup> See, <http://www.legis.state.ia.us/Rules/Current/court/courtrules.pdf>

<sup>92</sup> See, [www.state.ak.us/courts/civ2.htm#81](http://www.state.ak.us/courts/civ2.htm#81)

Missouri and Utah require written notice, but do not require such notice to include contact information for the otherwise self-represented litigant. Missouri Rule 55.03(c) states, “An attorney who files a notice of limited appearance withdraws when the attorney has fulfilled the duties set forth in the notice and files a termination of limited appearance with the court.”<sup>93</sup> Missouri Rule of Professional Conduct 4-1.16(c) supplements Rule 55.03(c). Rule 4-1.16(c) clarifies that a lawyer who files a notice of termination of limited appearance need not comply with the law requiring permission from the tribunal. It states, in part, “. . . Except when such notice [termination of limited appearance] is filed, a lawyer shall continue representation when ordered to do so by a tribunal notwithstanding good cause for terminating the representation.”<sup>94</sup> Utah Rule 74(b) is substantively similar to Missouri Rule 55.03(c), but does not include a counterpart in its Rules of Professional Conduct.<sup>95</sup>

New Hampshire Rule 17(f) permits automatic termination, so long as the attorney provides the court, and all other parties, with a “withdrawal of appearance”. The rule also addresses withdrawal when the attorney has not yet completed all limited representation tasks. In such circumstances, the attorney must follow traditional procedures for withdrawal.<sup>96</sup> New Mexico rules create nearly identical requirements for withdrawal from limited appearances.<sup>97</sup>

Nebraska Rule 3-501.2(e) creates a similar provision, but with an additional requirement. It requires the limited representation attorney to file a “Certificate of Completion of Limited Representation” within ten days of completion of representation and for copies to be served on all other parties. The rule further clarifies that filing of such certificate does not require court approval.<sup>98</sup>

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.<sup>99</sup>

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<sup>93</sup> See, <http://www.courts.mo.gov/courts/ClerkHandbooksP2RulesOnly.nsf/0/7db1c05900034fdc86256ca60052152c?OpenDocument>

<sup>94</sup> See, <http://www.courts.mo.gov/courts/ClerkHandbooksP2RulesOnly.nsf/c0c6ffa99df4993f86256ba50057dcb8/202f47458d8080c986256ca6005211aa?OpenDocument>

<sup>95</sup> See, <http://www.utcourts.gov/resources/rules/urcp/urcp074.html>

<sup>96</sup> See, <http://www.nhbar.org/uploads/pdf/RulesCivilProcedureDraft011807.pdf>

<sup>97</sup> See, Rule of Civil Procedure for the District Court 1-089, Rule of Civil Procedure for the Magistrate Court 2-108, Rule of Civil Procedure for the Metropolitan Court 3-108 at <http://www.conwaygreene.com/nmsu/lpext.dll?f=templates&fn=main-h.htm&2.0>

<sup>98</sup> See, <http://www.supremecourt.ne.gov/rules/pdf/Ch3Art5.pdf>

<sup>99</sup> See, <http://www.clarkcountycourts.us/clerk/rules/EDCR.pdf>

California Civil Rule 3.36<sup>100</sup> and Family and Juvenile Rule 5.71<sup>101</sup> include 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 the 15 days, a hearing is set to determine whether the lawyer will be given leave to withdraw.

Arizona Rule 9(B) states that an attorney may withdraw or be substituted as attorney of record. The rule outlines two ways in which an attorney may withdraw- either with or without consent. In the event an attorney completes all tasks specified in the limited representation agreement, the attorney may file a Notice of Withdrawal and Consent. The notice states the attorney will no longer represent the party, and includes contact information for the self-represented party. A copy is provided to all other parties.

In the event an Arizona attorney has completed the tasks specified in the Notice of Limited Scope Representation but the client has not signed a Notice of Withdrawal with Consent, the attorney may make a motion to withdraw. If, after served upon client and all other parties, no objection is filed in ten dates, the court will sign the motion. If an objection is filed, the court may conduct a hearing to determine if they attorney did complete all tasks outlined in the limited representation agreement.<sup>102</sup>

## 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,

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<sup>100</sup> See, <http://www.courtinfo.ca.gov/rules/index.cfm?title=three>

<sup>101</sup> See, [http://www.courtinfo.ca.gov/rules/documents/pdfFiles/title\\_5.pdf](http://www.courtinfo.ca.gov/rules/documents/pdfFiles/title_5.pdf)

<sup>102</sup> See, [http://www.supreme.state.az.us/rules/ramd\\_pdf/R-05-0008.pdf](http://www.supreme.state.az.us/rules/ramd_pdf/R-05-0008.pdf)

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.<sup>103</sup>

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."<sup>104</sup>

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

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<sup>103</sup> See, [http://www.abanet.org/cpr/mrpc/rule\\_6\\_5.html](http://www.abanet.org/cpr/mrpc/rule_6_5.html)

<sup>104</sup> Model Rule 6.5 Reporter's Explanation of Changes, at <http://www.abanet.org/cpr/e2k/e2k-rule65.html>

access limited legal services in a way that maintains protection against the adverse consequences of conflicts of interests.

Thirty-eight states have either adopted Model Rule 6.5, or have adopted a substantively similar rule.<sup>105</sup> States that have adopted Model Rule 6.5 include Arizona, Delaware, Idaho, Louisiana, Montana, New Jersey, North Carolina, South Dakota, and Virginia.<sup>106</sup> 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.<sup>107</sup> Several other states are considering the rule.

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

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<sup>105</sup> Research conducted by the StC on the Delivery of Legal Services

<sup>106</sup> For a chart showing the status of state action on Ethics 2000, see [http://www.abanet.org/cpr/jclr/ethics\\_2000\\_status\\_chart.pdf](http://www.abanet.org/cpr/jclr/ethics_2000_status_chart.pdf)

<sup>107</sup> See, Washington RPC 6.5, at [http://www.courts.wa.gov/court\\_rules/?fa=court\\_rules.display&group=ga&set=RPC&ruleid=garpc6.5](http://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=ga&set=RPC&ruleid=garpc6.5).

## Appendix A Worksheet

### 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 Florida Rule 4-1.2(c) Missouri 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 Iowa Rule 32:1.2(c) and Wyoming Rule 1.2(c) for exceptions.
    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) and Missouri Rule 4-1.2 appendices.
    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) and Missouri Rule 4-1.2 appendices.
- 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. See Comment [5] to Wyoming Rule 1.1.
  - 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 Colorado Rule 4.2, Florida Rule 4-4.2(b), Iowa Rule 32:4.2(b), Maine Rule 3.6(f), New Hampshire Rule 4.2, Utah Rule 4.2(b), Washington Rule 4.2, Alaska Rule 1.2(c)(3) and Missouri Rule 4-1.2(e).
    - 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 Washington 4.3, Florida 4-4.3(b) and Utah 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? See Comment [10] to Nebraska Rule 3-504.2.
- 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 Washington CR 11(b) and CRLJ 11(b), Colorado CRCP Rule 11(b), Iowa Rule 1.423(2), Maine Rule 3.6(a)(2) and Missouri Rule 55.03(c)(3).
- 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 Colorado CRCP 11(b) and Rule of County Court Civil Procedure 11(b), Iowa Rule 1.423, and Nebraska Rule 3-501.2(c).
    - 2. Lawyer must state the limitation of the services in first paragraph of pleading. See Nevada Rule 5.28.
    - 3. Lawyer's assistance must be certified in the pleadings or documents, See Florida Family Law Rules of Procedure 12.040

4. Document must state, “Prepared with the assistance of counsel”  
See Florida 4-1.2(c) and New Hampshire Rule 17.
5. No obligation to disclose that the lawyer prepared the forms. See  
California Rules 5.70(a) and 3.37 and Missouri Rule 55.03.

IX. Document Preparation – Entry of Appearance

- A. If the filing of signed pleadings creates the entry of an appearance, should the rule be amended to exempt lawyers providing limited scope representation?  
See Wyoming Rule 102(a)(1), Iowa Rule 1.423(3) and Nebraska Rule 3-501.2(c).

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 Nevada Rule 5.28 and New Mexico Rules 16-303(E), 1-089(A), 2-107(C), and 3-107(C).
  2. Permit written appearance to be limited by its terms to a particular proceeding or matter. See Wyoming Rule 102 and Missouri Rule 55.03.
- B. How do we assure the otherwise self-represented litigant understands the limits of the representation?
  1. Require litigant to sign an acknowledgement, See Florida Rule 12.040 and Nebraska 3-501.2(d).
  2. Require the appearance to state the precise scope of the limited representation. See Arizona Rule 9(b), California Civil Rule 3.36, Delaware Rule 5(b)(2), Maine Rule 11(b), New Hampshire Rule 1.2(f)(1), Utah Rule 75 and Vermont Rule 79.1(1). See also Maine Rule 3.4(i) appendix, New Hampshire Rule 1.2(g) and Arizona Rule 97, Form 1.
- C. 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 Rules CR 70.1 and CRLJ 70.1, Iowa Rule 1.404(3), Alaska 81(d).

XI. Limited Appearance – Obligation to Serve Pleadings and Other Papers

- A. What is the opposing side’s obligation to serve pleadings and other papers to counsel who files a limited appearance?
  1. Service is required only in connection with the specific proceedings for which the lawyer has appeared. See Washington Rules CR 70.1 and CRLJ 70.1, Utah 5(b)(1), Delaware Rule 5(b)(2), and Iowa Rule 1.442(2) .
  2. Service is required for all matters until the attorney files a withdrawal of limited appearance. See New Hampshire Rule 3, California 3.36(b), and Arizona Rule 9(B).

3. Service is required only if opposing party served with copy of limited appearance that establishes a time period for service on attorney. See Missouri Rule 43.01(b).
4. Service is not required. See Maine Rule 5(b).

## 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 Wyoming Rule 102, Maine Rule 3.4(a)(3), Vermont Rule 79.1, and Delaware Rule 5(b)(2).
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 Washington Rules CR 70.1 and CRLJ 70.1, Florida Rule 12.040, Iowa Rule 1.404(4) and Alaska Rule 81(e).
3. The appearance ends with the filing of a notice of completion (no contact information required). See Missouri Rules 55.03, Missouri Rule 4-1.16(c), Utah Rule 74(b) and New Mexico Rules 1-089, 2-108 and 3-108.
4. The appearance ends when the lawyer files a substitution of attorney, substituting the client, or files a withdrawal of appearance. A copy of the limited services retainer agreement must be attached and copies filed served on the client, all parties or their lawyers. See Nevada Rule 5.28(b), New Hampshire Rule 17(f) and Nebraska 3-501.2(e).
5. With notice and opportunity for a hearing. See California Rules 5.71 and 3.36.
6. The appearance ends when the attorney files a notice of withdrawal and obtains client consent. If no consent obtained, a motion of withdrawal required. See Arizona Rule 9(B)(2).

## 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 service

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## **Model Rules of Professional Conduct**

### **Client-Lawyer Relationship**

#### **Rule 1.1 Competence**

##### **Comment**

##### **Thoroughness and Preparation**

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

## **Client-Lawyer Relationship**

### **Rule 1.2: Scope Of Representation And Allocation Of Authority Between Client And Lawyer**

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

#### **Comment**

##### **Agreements Limiting Scope of Representation**

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

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

## **Public Service**

### **Rule 6.5 Nonprofit And Court-Annexed Limited Legal Services Programs**

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

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

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

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

### **Comment**

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

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

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

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

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

## **Alaska Rules of Professional Conduct**

### **Rule of Professional Conduct 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.

(1) If a written fee agreement is required by Rule 1.5, the agreement shall describe the limitation on the representation.

(2) The lawyer shall discuss with the client whether a written notice of representation should be provided to other interested parties.

(3) An otherwise unrepresented person to whom limited representation is being provided or has been provided in accordance with this rule is considered to be unrepresented for purposes of Rules 4.2 and 4.3 unless the opposing lawyer knows of or has been provided with:

(A) a written notice stating that the lawyer is to communicate only with the limited representation lawyer as to the subject matter of the limited representation; or

(B) a written notice of the time period during which the lawyer is to communicate only with the limited representation lawyer concerning the subject matter of the limited representation.

## Alaska Rule of Civil Procedure

### Rule 81: Attorneys

(d) Limited Appearance By Counsel. A party in a non-criminal case may appear through an attorney for limited purposes during the course of an action, including, but not limited to, depositions, hearings, discovery, and motion practice, if the following conditions are satisfied:

(1) The attorney files and serves an entry of appearance with the court before or during the initial action or proceeding that expressly states that the appearance is limited, and all parties of record are served with the limited entry of appearance; and.

(2) The entry of appearance identifies the limitation by date, time period, or subject matter.

(e) Withdrawal of Attorney.

(1) An attorney who has appeared for a party in an action or proceeding may be permitted to withdraw as counsel for such party only as follows:

(A) For good cause shown, upon motion and notice of hearing served upon the party in accordance with Rule 77 and after the withdrawing attorney provides

(i) to the client a list of pending pretrial or post-trial deadlines, appellate deadlines, motion deadlines, and hearing dates and times; and

(ii) to the court the last known address and telephone number of the attorneys client and a certification that the attorney has complied with (e)(1)(A)(i) of this rule; or

(B) Where the party has other counsel ready to be substituted for the attorney who wishes to withdraw; or

(C) Where the party expressly consents in open court or in writing to the withdrawal of the party's attorney, the party has provided in writing or on the record a current service address and telephone number, and the attorney who wishes to withdraw has provided to the client a list of pending pretrial or post-trial deadlines, appellate deadlines, motion deadlines, and hearing dates and times; or

(D) In accordance with the limitations set forth in any limited entry of appearance filed pursuant to Civil Rule 81(d). An attorney may withdraw under this subparagraph by filing a notice with the court, served on all parties of record, stating that the attorney's limited representation has concluded; certifying that the attorney has taken all actions necessitated by the limited representation; and providing to the court a current service address and telephone number and to the client a list of pending pretrial or post-trial

deadlines, appellate deadlines, motion deadlines, and hearing dates and times. Upon the filing of such notice, the withdrawal shall be effective, without court action or approval.

## Arizona Rules of Family Law Procedure

### Rule 9: Duties of Counsel

#### **B. Limited Scope Representation: Appearance and Withdrawal.**

This provision shall be deemed experimental in nature and shall expire three (3) calendar years from the initial effective date of these rules unless otherwise extended.

1. *Limited Appearance.* An attorney may make a limited appearance subject to E.R.1.2, *Arizona Rules of Professional Conduct*, by filing a Notice of Limited Scope Representation as prescribed in Rule 97, Form 1, stating that the attorney and the party have a written agreement that the attorney will provide limited scope representation to the party and specifying the matter or issues with regard to which the attorney will represent the party. Service on an attorney who has made a limited appearance for a party shall be valid, to the extent permitted by statute and Rule 43(C), in all matters in the case but shall not extend the attorney's responsibility for representation of the client beyond the specific matter for which the attorney has appeared. Nothing in this rule shall limit an attorney's ability to provide limited services to a client without appearing of record in any judicial proceedings.

2. *Withdrawal and Substitution.* In addition to the provisions for withdrawal of counsel pursuant to paragraph A of this rule, an attorney who has made a limited appearance in an action shall be permitted to withdraw, or be substituted, as attorney of record in any pending action as set forth in this rule.

a. *With Consent.* Upon the attorney's completion of the task specified in the Notice of Limited Scope Representation, the attorney shall file a Notice of Withdrawal of Attorney with Consent, signed by both the attorney and the party, stating that the attorney will no longer be representing the party, and, unless protected pursuant to Rule 7, stating the last known address and telephone number of the party who will no longer be represented, and shall lodge a form of order to be signed by the court. The attorney shall provide a copy of the notice to the party who will no longer be represented and to all other parties or their attorneys, if they are represented by counsel.

b. *Without Consent.* Notwithstanding paragraph A, an attorney who has completed the task specified in the Notice of Limited Scope Representation may use the procedure in this rule to request that the attorney be withdrawn as counsel in the case in which the attorney has appeared before the court as attorney of record and the client has not signed a Notice of Withdrawal with Consent. Such request shall be made by motion and shall be served upon the client and all other parties or their attorneys, along with a proposed form of order. If no objection is filed within ten (10) days from the date the motion is served on the client, the court shall sign the order. After the order is signed, the attorney shall serve a copy of the signed order on the client. If an objection is filed within ten (10) days of service of the motion, the court may conduct a hearing to determine whether the task for which the attorney appeared has been completed.

Rule 97, FORM 1: NOTICE OF LIMITED SCOPE REPRESENTATION

Name: \_\_\_\_\_  
Mailing Address: \_\_\_\_\_  
City, State, Zip Code: \_\_\_\_\_  
Daytime Phone Number: \_\_\_\_\_  
Evening Phone Number: \_\_\_\_\_  
Representing:  Self  Petitioner  Respondent  
State Bar Number: \_\_\_\_\_

ARIZONA SUPERIOR COURT, COUNTY OF \_\_\_\_\_,

Case No. \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
Petitioner/Plaintiff

ATLAS No.

\_\_\_\_\_  
Respondent/Defendant

NOTICE OF LIMITED SCOPE REPRESENTATION

COMES NOW the undersigned attorney and enters a Notice of Limited Appearance for  Petitioner  Respondent \_\_\_\_\_, pursuant to ARFLP 27.

1. Counsel's appearance in this matter shall be limited in scope to the following matter(s): (Select all that are applicable, and provide detailed description of services, including any scheduled appearances, as needed.)

- Protective Orders
- Order of Protection
- Injunction Against Harassment
- Injunction Against Workplace Harassment
- Voluntary acknowledgment of paternity
- Establishment of Child Support (IV-D)
- Rule 38(b) motion

(specify) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

U.C.C.J.E.A. Hearing

\_\_\_\_\_  
\_\_\_\_\_

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Temporary Orders (Pre-Decree) (specify any limitations)

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Accelerated or Expedited Petition (Pre-Decree)

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- Resolution Management Conference
- Arbitration
- Mediation
- Other ADR Process (specify)

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Settlement enforcement, or modifications; custody or parenting time enforcement or modification; or other)

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- Enforcement of Decree or Order (specify, as follows):
- Child support

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Custody & parenting time

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Spousal maintenance

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Property/debt issues

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Other:

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Modification of Decree or Order (specify as follows):

Child support

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Custody & parenting time

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Spousal maintenance

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Other:

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Emergency Petition (Post-Decree)

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Qualified Domestic Relations Order

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Filing of Foreign Decree

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Warrant to take Physical Custody \_\_\_\_\_  
\_\_\_\_\_

Child Custody or Parenting Time by a Non-parent  
\_\_\_\_\_  
\_\_\_\_\_

Other motion and hearing thereon, specifically:  
\_\_\_\_\_  
\_\_\_\_\_

Attend Deposition(s) of (names)  
\_\_\_\_\_

Conduct the following discovery:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Other:  
\_\_\_\_\_  
\_\_\_\_\_

Case No. \_\_\_\_\_

2. Counsel named above is attorney of record and available for service of process in accordance with Rule 27, ARFLP. Service on counsel shall be valid, to the extent permitted by statute and Rule 43(C), in all matters in the case but shall not extend the counsel's responsibility for representation of the client beyond the specific matter for which the attorney has appeared. For service directly upon the party, the party's name, address and phone number are listed below.

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
City, State Zip Code: \_\_\_\_\_  
Telephone: \_\_\_\_\_

3. The opposing party, or his/her counsel [ ] may [ ] may not directly contact the party represented by the undersigned attorney regarding matters outside the scope of this limited representation without first consulting the undersigned attorney.

4. Counsel's representation of client will terminate at the conclusion of the hearing noted above, if shown, or at the conclusion of the matter noted above, upon the filing of a Notice of Withdrawal of Attorney, pursuant to Rule 27, ARFLP.

5. This accurately sets forth the terms of the written agreement between counsel and the party for limited scope legal representation.

\_\_\_\_\_  
Date Attorney

I have read and approve of this notice.

\_\_\_\_\_  
Date Client

ORIGINAL of the foregoing filed with the Clerk of the Superior Court;  
COPIES of the foregoing mailed/delivered this \_\_\_\_\_ day of  
\_\_\_\_\_, \_\_\_\_\_, to:

The Honorable \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attorney for \_\_\_\_\_

## 2009 California Rules of Court

### **Civil Rule 3.36: Notice of limited scope representation and application to be relieved as attorney**

#### **(a) Notice of limited scope representation**

A party and an attorney may provide notice of their agreement to limited scope representation by serving and filing a *Notice of Limited Scope Representation* (form MC-950).

#### **(b) Notice and service of papers**

After the notice in (a) is received and until either a substitution of attorney or an order to be relieved as attorney is filed and served, papers in the case must be served on both the attorney providing the limited scope representation and the client.

#### **(c) Procedures to be relieved as counsel on completion of representation**

Notwithstanding rule 3.1362, an attorney who has completed the tasks specified in the *Notice of Limited Scope Representation* (form MC-950) may use the procedures in this rule to request that he or she be relieved as attorney in cases in which the attorney has appeared before the court as an attorney of record and the client has not signed a *Substitution of Attorney-Civil* (form MC-050).

#### **(d) Application**

An application to be relieved as attorney on 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 Attorney on Completion of Limited Scope Representation* (form MC-955).

#### **(e) Filing and service of application**

The application to be relieved as attorney must be filed with the court and served on the client and on all other parties or attorneys for parties in the case. The client must also be served with a blank *Objection to Application to Be Relieved as Attorney on Completion of Limited Scope Representation* (form MC-956).

#### **(f) No objection**

If no objection is served and filed with the court within 15 days from the date that the *Application to Be Relieved as Attorney on Completion of Limited Scope Representation* (form MC-955) is served on the client, the attorney making the application must file an updated form MC-955 indicating the lack of objection, along with a proposed *Order on*

*Application to Be Relieved as Attorney on Completion of Limited Scope Representation* (form MC-958). The clerk must then forward the order for judicial signature.

**(g) Objection**

If an objection to the application is served and filed within 15 days, the clerk must set a hearing date on the *Objection to Application to Be Relieved as Attorney on Completion of Limited Scope Representation* (form MC-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 the attorney.

**(h) Service of the order**

If no objection is served and filed and the proposed order is signed under (f), the attorney who filed the *Application to Be Relieved as Attorney on Completion of Limited Scope Representation* (form MC-955) must serve a copy of the signed order on the client and on all parties or the attorneys for all parties who have appeared in the case. The court may delay the effective date of the order relieving the attorney until proof of service of a copy of the signed order on the client has been filed with the court.

Rule 3.36 adopted effective January 1, 2007.

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**Civil Rule 3.37: Nondisclosure of attorney assistance in preparation of court documents**

**(a) Nondisclosure**

In a civil 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 documents that he or she was involved in preparing the documents.

Rule 3.37 adopted effective January 1, 2007.

**Family and Juvenile 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.

**(b) Attorney's fees**

If a litigant seeks a court order for attorney's fees incurred as a result of document preparation, the litigant must disclose to the court information required for a proper determination of attorney's fees—including the name of the attorney who assisted in the preparation of the documents, the time involved or other basis for billing, the tasks performed, and the amount billed.

(Subd (b) amended effective January 1, 2007.)

**(c) Applicability**

This rule does not apply to an attorney who has made a general appearance or has contracted with his or her client to make an appearance on any issue that is the subject of the pleadings.

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**Rule 5.71: Application to be relieved as counsel on completion of limited scope representation**

**(a) Applicability of this rule**

Notwithstanding rule 3.1362, 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).

(Subd (a) amended effective July 1, 2007.)

**(b) Notice**

An application to be relieved as counsel on 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).

*(Subd (b) amended effective January 1, 2007.)*

**(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 *Objection to Application to Be Relieved as Counsel Upon Completion of Limited Scope Representation* (form FL-956).

*(Subd (c) amended effective January 1, 2007.)*

**(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 5.71 amended effective July 1, 2007; adopted as rule 5.171 effective July 1, 2003; previously renumbered effective January 1, 2004; previously amended effective January 1, 2007*

## Colorado Rules of Professional Conduct

### **Rule 1.2: Scope of Representation and Allocation of Authority Between Client and Lawyer**

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

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### **Rule 4.2: Communication with Person Represented by Counsel**

In representing a client, a 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 law or a court order.

[9A] 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 Rule 1.2, is considered to be unrepresented -for purposes of this Rule unless the lawyer has knowledge to the contrary.

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### **Rule 4.3: Dealing with Unrepresented Person**

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.

[2A] 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), Rule 1.2, and Rule 4.2. Such parties are considered to be unrepresented for purposes of this Rule.

## Colorado Rules of Civil Procedure

### Rule 11: Signing of Pleadings

**(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).

**Source:** Entire rule amended and adopted June 17, 1999, effective July 1, 1999.

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## Colorado County Rules of Civil Procedure

### Rule 311: Signing of Pleadings

**(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).

Source: Entire rule amended July 22, 1993, effective January 1, 1994; entire rule amended and adopted June 17, 1999, effective July 1, 1999

## **Delaware Family Court Rules of Civil Procedure**

### **Rule 5: Service and filing of pleadings and other papers.**

#### **(b)(2) Appearance of attorney: When; how made; withdrawal. --**

(A) An attorney shall appear for the purpose of representing a party by filing a written notice of appearance using a Family Court generated form. The notice of appearance shall specify the matter(s) in which the attorney will represent the party. Once an attorney has filed a notice of appearance in a particular matter, copies of all notices given to the party with regard to that matter shall also be given to the party's counsel. No appearance shall be withdrawn except upon application by the attorney and order of the Court for good cause.

(B) Any appearance by an attorney in accordance with subparagraph (A) shall be limited to representation with respect to the specific petition filed and shall terminate when the time for appeal has elapsed from the final order entered by the Court.

## **Florida Rules of Professional Conduct**

### **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 gives informed consent in writing. If the attorney and client agree to limit the scope of the representation, the lawyer shall advise the client regarding applicability of the rule prohibiting communication with a represented person.

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### **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.

## 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.

## **Iowa Rules of Professional Conduct**

### **Rule 32:1.2: Scope of Representation and Allocation of Authority Between Client and Lawyer**

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

(1) The client's informed consent must be confirmed in writing unless:

(i) the representation of the client consists solely of telephone consultation;

(ii) the representation is provided by a lawyer employed by a nonprofit legal services program or participating in a nonprofit court-annexed legal services program and the lawyer's representation consists solely of providing information and advice or the preparation of court-approved legal forms; or

(iii) the court appoints the attorney for a limited purpose that is set forth in the appointment order.

(2) If the client gives informed consent in a writing signed by the client, there shall be the presumption that:

(i) the representation is limited to the attorney and the services described in the writing; and

(ii) the attorney does not represent the client generally or in matters other than those identified in the writing.

### **Rule 32:4.2: 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 32:1.2(c) 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 representation.

## Iowa Rules of Civil Procedure

### Rule 1.404: Appearances

**1.404(3) Limited appearance.** Pursuant to Iowa R. Prof'l Conduct 32:1.2(c), an attorney's role may be limited to one or more individual proceedings in the action, if specifically stated in a notice of limited appearance filed and served prior to or simultaneously with the proceeding. If the attorney appears at a hearing on behalf of a client pursuant to a limited representation agreement, the attorney shall notify the court of that limitation at the beginning of that hearing.

**1.404(4) Termination of limited appearance.** At the conclusion of a proceeding in which an attorney has appeared pursuant to a limited representation agreement, the attorney's role terminates without the necessity of leave of court upon the attorney's filing a notice of completion of limited appearance. The notice of completion of limited appearance shall state that the attorney was retained to perform a limited service; shall describe the limited service; shall state that the service has been completed; and shall include the personal identification number, address, telephone number and, if available, facsimile transmission number of the client. The attorney shall serve a copy of the notice on the client and all other parties to the action or their attorneys. [Report October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002; March 12, 2007, effective May 15, 2007]

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### Rule 1.423: Limited Representation Pleadings and Papers

**1.423(1) Disclosure of limited representation.** Every pleading or paper filed by a pro se party that was prepared with the drafting assistance of an attorney who contracted with the client to limit the scope of representation pursuant to Iowa R. Prof'l Conduct 32:1.2(c) shall state that fact before the signature line at the end of the pleading or paper that was prepared with the attorney's assistance. The attorney shall advise the client that such pleading or other paper must contain this statement. The pleading or paper shall also include the attorney's name, personal identification number, address, telephone number and, if available, facsimile transmission number, but shall not be signed by the attorney. If the drafting assistance was provided as part of services offered by a nonprofit legal services organization or a volunteer component of a nonprofit or court-annexed legal services program, the name, address, telephone number and, if available, facsimile transmission number of the program may be included in lieu of the business address, telephone number, and facsimile transmission number of the drafting attorney.

**1.423(2) Drafting attorney's duty.** In providing drafting assistance to the pro se party, the attorney shall determine, to the best of the attorney's knowledge, information, and belief, that the pleading or paper 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 filed for any improper purpose, such as to harass or to cause an unnecessary

delay or needless increase in the cost of litigation. The attorney providing drafting assistance may rely on the pro se party's representation of facts, unless the attorney has reason to believe that such representation is false or materially insufficient, in which instance the attorney shall make an independent, reasonable inquiry into the facts.

**1.423(3) Not an appearance by attorney.** The identification of an attorney who has provided drafting assistance in the preparation of a pleading or paper shall not constitute an entry of appearance by the attorney for purposes of rule 1.404(1) and does not authorize service on the attorney or entitle the attorney to service as provided in rule 1.442. [Report March 12, 2007, effective May 15, 2007]

### **Rule 1.442: Service and Filing of Pleadings and Other Papers**

**1.442(2) *How service is made.*** Service upon a party represented by an attorney shall be made upon the attorney unless service upon the party is ordered by the court. Service on an attorney who has made a limited appearance for a party shall constitute valid service on the represented party only in connection with the specific proceedings for which the attorney has appeared, including any hearing or trial at which the attorney appeared. Service shall be made by delivering, mailing, or transmitting by fax (facsimile) a copy to the attorney or to the party at the attorney's or party's last known address or, if no address is known, by leaving it with the clerk of court. Delivery within this rule means: handing it to the attorney or to the party; leaving it at the attorney's or party's office; or, if the office is closed or the person to be served has no office, leaving it at the attorney's or party's dwelling house or usual place of abode with some person of suitable age and discretion residing therein. Service by mail is complete upon mailing.

## Maine Bar Rules

### **Rule 3.4: Identifying Commencement, Continuation and Termination of Representation**

#### **(a) Disclosure of Interest, Commencement, and Termination: General Provisions.**

(3) *Termination.* Representation of a client shall be deemed terminated upon the earlier of the following, provided that all conditions and terms of Rule 3.5 have been satisfied:

(i) A date expressly or implicitly stated in an oral or written statement by the client to the lawyer, terminating the representation;

(ii) A date expressly or implicitly communicated by the lawyer to the client, orally or in writing, sent to the client at the client's last known address, withdrawing from or terminating the representation; or

(iii) The completion of the services which were the subject of the representation.

(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.

## LIMITED REPRESENTATION AGREEMENT

(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.)

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 check-ups;
  - 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

### **Rule 3.5: Withdrawal from Employment**

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

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### **Rule 3.6: Conduct During Representation**

(a)(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

(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.

## Maine Rules of Civil Procedure

### Rule 5: Service and Filing of Pleadings and Other Papers

**(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.

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### Rule 11: Signing of Pleadings and Motions; Sanctions

**(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.

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### Rule 89: Withdrawal of Attorneys; Visiting Lawyers; Temporary Practice with Limited Legal Services Organizations

**(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.

## Missouri Rules of Professional Conduct

### Rule 1.2: Scope of Representation

(c) A lawyer may limit the scope of representation if the client gives informed consent in a writing signed by the client to the essential terms of the representation and the lawyer's limited role. Use of a written notice and consent form substantially similar to that contained in the comment to this Rule 4-1.2 creates the presumptions:

(1) the representation is limited to the lawyer and the services described in the form, and

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

(d) The requirement of a writing signed by the client does not apply to:

(1) an initial consultation with any lawyer, or

(2) pro bono services provided through a nonprofit organization, a court-annexed program, a bar association, or an accredited law school,

(3) services provided by a not-for-profit organization funded in whole or in part by the Legal Services Corporation established by 42 USC Sec. 2996b.

(e) An otherwise unrepresented party to whom limited representation is being provided or has been provided is considered to be unrepresented for purposes of communication under Rule 4-4.2 and Rule 4-4.3 except to the extent the lawyer acting within the scope of limited representation provides other counsel with a written notice of a time period within which other counsel shall communicate only with the lawyer of the party who is otherwise self-represented.

### COMMENT

#### Scope of Representation

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

[2] A lawyer may assist a self-represented litigant on a limited basis without undertaking the full representation of the client on all issues related to the legal matter for which the lawyer is engaged. Any doubt about the scope of representation should be resolved in a manner that promotes the interests of justice and those of the client and opposing party. Use of a written agreement for limited representation is required, except as provided in this Rule 4-1.2. If a written agreement is not required by Rule 4-1.2, the better practice is for the attorney to memorialize in writing the contact and services provided. The initial consultation ends when the lawyer and the client agree that the lawyer will or will not undertake the representation. A lawyer may provide legal advice during an initial consultation. The lawyer shall explain to the client the risks and benefits of limited representation during consultation on limiting the scope of representation. An agreement for limited representation does not exempt a lawyer from the duty to provide competent representation; however, the limitation of the scope of representation is a factor to be considered when determining the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation as required in Rule 41.1.

The following is a notice and consent to limited representation form that is appropriate:

**Notice and Consent to Limited Representation**

To help you with your legal matters, you, the client, and \_\_\_\_\_, the lawyer, agree that the lawyer will limit the representation to helping you with a certain legal matter 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 limited help:

- The lawyer DOES NOT HAVE TO GIVE MORE HELP than the lawyer and you agreed; and
- The lawyer DOES NOT HAVE TO HELP WITH ANY OTHER PART of your legal matter.

While performing the limited legal services, the lawyer:

- Is not promising any particular outcome; and
- Is relying entirely on your disclosure of facts and will not make any independent investigation unless expressly agreed to in writing in this document.

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

I, the lawyer, agree to help you by performing the following limited services listed below and no other service, unless we revise this agreement in writing.

[INSTRUCTIONS: Check every item either **Yes** or **No** - do not leave any item blank.

Delete all text that does not apply.]:

**Y N**

- a) \_\_\_ Give legal advice through office visits, telephone calls, facsimile (fax), mail or e-mail
- b) \_\_\_ Advise about alternate means of resolving the matter including mediation and arbitration
- c) \_\_\_ Evaluate the client's self-diagnosis of the case and advise about legal rights and responsibilities.
- d) \_\_\_ Review pleadings and other documents prepared by you, the client
- e) \_\_\_ Provide guidance and procedural information regarding filing and serving documents
- f) \_\_\_ Suggest documents to be prepared
- g) \_\_\_ Draft pleadings, motions and other documents
- h) \_\_\_ Perform factual investigation including contacting witnesses, public record searches, in-depth interview of you, the client
- i) \_\_\_ Perform legal research and analysis
- j) \_\_\_ Evaluate settlement options
- k) \_\_\_ Perform discovery by interrogatories, deposition and requests for admissions
- l) \_\_\_ Plan for negotiations
- m) \_\_\_ Plan for court appearances
- n) \_\_\_ Provide standby telephone assistance during negotiations or settlement conferences
- o) \_\_\_ Refer you, the client, to expert witnesses, special masters or other attorneys
- p) \_\_\_ Provide procedural assistance with an appeal
- q) \_\_\_ Provide substantive legal arguments in an appeal
- r) \_\_\_ Appear in court for the limited purpose of \_\_\_\_\_

\_\_\_\_\_

s) \_\_\_ \_\_\_ Other: \_\_\_\_\_

I will charge to the Client the following costs: \_\_\_\_\_

\_\_\_\_\_

I will charge to the Client the following fee for my limited legal representation:

\_\_\_\_\_

\_\_\_\_\_ Date: \_\_\_\_\_

[Type Lawyer's name)

**CLIENT'S CONSENT**

I have read this Notice and Consent form and I understand it. I agree that the legal services listed above are the ONLY legal services to be provided by the lawyer. 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 more legal help. If the lawyer is giving me advice or is helping me with legal or other documents, I understand the lawyer will stop helping me when the services listed above have been completed. The address I give below is my permanent address where I can be reached. I understand that it is important that the court handling my case and other parties to the case be able to reach me at the address after the lawyer ends the limited representation. I therefore agree that I will inform the Court and other parties of any change in my permanent address.

In exchange for the Lawyer's limited representation, I agree to pay the attorney's fee and costs described above.

Sign your name: \_\_\_\_\_

Print your name: \_\_\_\_\_

Print your address: \_\_\_\_\_

Phone number: \_\_\_\_\_ FAX: \_\_\_\_\_

Message Phone: \_\_\_\_\_ Name: \_\_\_\_\_

Email address: \_\_\_\_\_

**Rule 1.16: Declining or Terminating Representation**

(c) A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation unless the lawyer has filed a notice of termination of limited appearance. Except when such notice is filed, a lawyer shall continue representation when ordered to do so by a tribunal notwithstanding good cause for terminating the representation.

## Missouri Rules of Civil Procedure

### **Rule 43.01: Service of Pleadings and Other Papers**

(b) Service on Attorney. Whenever under these rules or any of the statutes of this state service is required or permitted to be made upon a party represented by an attorney of record, the service shall be made upon the attorney unless service upon the party is ordered by the court. When a party is represented by more than one attorney, service may be made upon any such attorney. If an attorney has filed a notice of limited appearance for an otherwise self-represented person, service shall be made on the self-represented person and not on the attorney unless the attorney acting within the scope of limited representation serves the other party or the other party's attorney with a copy of the notice of limited appearance setting forth a time period within which service shall be upon the attorney.

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### **Rule 55.03: Signing of Pleadings, Motions and Other Papers; Appearance and Withdrawal of Counsel; Representations to Court; Sanctions**

(a) Signature Required. Every pleading, motion and other filing shall be signed by at least one attorney of record in the attorney's individual name or, if the party is not represented by an attorney, shall be signed by the party. An attorney who assists in the preparation of a pleading, motion, or other filing for an otherwise self-represented person is not required to sign the document. Every filing made electronically must add a certificate verifying that the original was signed by the attorney or party shown as the filer. The original signed filing must be maintained by the filer for a period of not less than the maximum allowable time to complete the appellate process.

Each filing shall state the filer's address, Missouri bar number, if applicable, telephone number, facsimile number, and electronic mail address, if any.

An unsigned filing or an electronic filing without the required certification shall be stricken unless the omission is corrected promptly after being called to the attention of the attorney or party filing same.

(b) Appearance and Withdrawal of Counsel. An attorney who appears in a case shall be considered as representing the parties for whom the attorney appears for all purposes in that case, except as otherwise provided in a written notice of limited appearance. If a notice of limited appearance is filed, service shall be made as provided in Rule 43.01(b).

An attorney appears in a case by:

(1) Participating in any proceeding as counsel for any party unless limited by a notice of limited appearance;

(2) Signing the attorney's name on any pleading, motion, or other filing except that an attorney who assisted in the preparation of a pleading, motion, or other filing and whose name appears on the pleading, motion, or other filing solely in that limited capacity has not entered an appearance in the matter; or

(3) Making a written appearance. A written entry of appearance may be limited by its terms to a particular proceeding or matter by filing a notice of limited appearance.

An attorney who files a notice of limited appearance withdraws when the attorney has fulfilled the duties set forth in the notice and files a termination of limited appearance with the court

## Nebraska Rules of Professional Conduct

### **Rule 3-501.2: Scope of Representation and Allocation of Authority Between Client and Lawyer**

(a) Subject to paragraphs (b), (c), (d), (e), and (f), a lawyer shall abide by a client's decisions concerning the objectives of representation 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 settle 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) A lawyer may limit the scope of his or her representation of a client if the limitation is reasonable in the lawyer's judgment under the circumstances and the client gives informed consent to such limited representation.

(c) A lawyer may prepare pleadings, briefs, and other documents to be filed with the court so long as such filings clearly indicate thereon that said filings are "Prepared By" and the name, business address, and bar number of the lawyer preparing the same. Such actions by the lawyer shall not be deemed an appearance by the lawyer in the case. Any filing prepared under this rule shall be signed by the litigant designated as "pro se," but shall not be signed by the lawyer preparing the filing.

(d) If, after consultation, the client consents in writing, a lawyer may enter a "Limited Appearance" on behalf of an otherwise unrepresented party involved in a court proceeding, and such appearance shall clearly define the scope of the lawyer's limited representation.

(e) Upon completion of the "Limited Representation," the lawyer shall within 10 days file a "Certificate of Completion of Limited Representation" with the court. Copies shall be provided to the client and opposing counsel or opposing party if unrepresented. After such filing, the lawyer shall not have any continuing obligation to represent the client. The filing of such certificate shall be deemed to be the lawyer's withdrawal of appearance which shall not require court approval.

(f) 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.

§ 3-501.2(a) through (f) amended August 28, 2008; § 3-501.2(c) amended October 21, 2008.

### **Rule 3-504.2: Communication with Person Represented by Counsel**

In representing a client, a 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 law or a court order.

#### **Comment**

[10] In the event an “Entry of Limited Appearance” is filed, opposing counsel may communicate with such lawyer’s client on matters outside the scope of limited representation, and by filing such limited appearance, the lawyer and the client shall be deemed to have consented to such communication.

Comment [10] of § 3-504.2 adopted August 27, 2008.

## **Rules of Practice for the Eighth Judicial District of Nevada**

### **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 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 agree to represent the client and shall contain the client’s address, or last known address, and telephone number at which the client may 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.]

## New Hampshire Rules of Professional Conduct

### Rule 1.2: Scope of Representation and Allocation of Authority Between Client and Lawyer

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent. In providing limited representation, the lawyer's responsibilities to the client, the court and third parties remain as defined by these Rules as viewed in the context of the limited scope of the representation itself; and court rules when applicable.

(f) In addition to requirements set forth in Rule 1.2(c),

(1) a lawyer may provide limited representation to a client who is or may become involved in a proceeding before a tribunal (hereafter referred to as litigation), provided that the limitations are fully disclosed and explained, and the client gives informed consent to the limited representation. The form set forth in section (g) of this Rule has been created to facilitate disclosure and explanation of the limited nature of representation in litigation. Although not prohibited, the provision of limited representation to a client who is involved in litigation and who is entitled as a matter of law to the appointment of counsel is discouraged.

(2) a lawyer who has not entered an applicable limited appearance, and who provides assistance in drafting pleadings, shall advise the client to comply with any rules of the tribunal regarding participation of the lawyer in support of a pro se litigant.

(g) *Sample form.*

### CONSENT TO LIMITED REPRESENTATION

#### Limited Representation

To help you in litigation, you and a lawyer may agree that the lawyer will represent you in the entire case, or only in certain parts of the case. "Limited representation" occurs if you retain a lawyer only for certain parts of the case.

When a lawyer agrees to provide limited representation in litigation, the lawyer must act in your best interest and give you competent help. However, when a lawyer and you agree that the lawyer will provide only limited help,

you -- the lawyer DOES NOT HAVE TO GIVE MORE HELP than the lawyer and agreed.

-- the lawyer DOES NOT HAVE TO help with any other part of your case.

If you and a lawyer have agreed to limited representation in connection with litigation, you should complete this form and sign your name at the bottom. Your 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:

1. \_\_\_ Provide you general advice about your legal rights and responsibilities in connection with potential litigation concerning:

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which advice shall be provided as:

\_\_\_ consultation at a one-time meeting, or  
\_\_\_ consultation at an initial meeting and further meetings,  
telephone \_\_\_\_\_ calls or correspondence (by mail, fax or email) as needed, or  
as requested by you.

2. \_\_\_ Assist in the preparation of your court or mediation matter regarding

by:

[Case name]

___ explaining court procedures	___ legal research and analysis regarding _____
___ reviewing court papers and other documents prepared by or for you	___ preparation for court hearing regarding _____
___ suggesting court papers for you to prepare	___ preparation for mediation
___ drafting the following court papers for your use: _____	___ other: _____

\_\_\_\_\_

\_\_\_\_\_

3. \_\_\_\_\_ Representing you in Court regarding \_\_\_\_\_,  
[Case name]  
but only for the following specific matter(s):

\_\_\_\_\_ Motion for \_\_\_\_\_

\_\_\_\_\_ Temporary hearing

\_\_\_\_\_ final hearing

\_\_\_\_\_ trial

\_\_\_\_\_ other:

\_\_\_\_\_

\_\_\_\_\_

4. \_\_\_\_\_ Other limited service:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

### Consent

I have read this Consent to Limited Representation Form and I understand what it says. As the lawyer's client, 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;

-- the lawyer is not promising any particular outcome;

-- because of the limited services to be provided, the lawyer has limited his or her investigation of the facts to that necessary to carry out the identified tasks with

competence and in compliance with court rules;

-- if the lawyer goes to court with me, the lawyer does not have to help me afterwards, unless we both agree in writing.

I agree the address below is my permanent address and telephone number where I may be reached. I understand that it is important that my lawyer, the opposing party and the court handling my case, if applicable, be able to reach me at this address. I therefore agree that I will inform my lawyer or any Court and opposing party, if applicable, of any change in my permanent address or telephone number.

**A separate fee agreement** (\_\_\_\_ was / \_\_\_\_ was not) also signed by me and my lawyer.

\_\_\_\_\_

[print or type your name] **Client's Name** [print or type your full mailing street/apartment address]

\_\_\_\_\_

[sign your name]

[print or type City, State and Zip Code]

\_\_\_\_\_

**Date**

[print or type your Phone Number]

\_\_\_\_\_

[print or type your name] **Lawyer's Name**

[print or type name of law firm]

\_\_\_\_\_

[sign your name]  
Code]

[print or type Street, City, State and Zip

\_\_\_\_\_

**Date**

[print or type your Phone Number]

**Rule 4.2: Communication with Person Represented by Counsel**

In representing a client, a 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 law or a court order. An otherwise unrepresented party to whom limited representation is being provided or has been provided in accordance with Rule 1.2(f)(1) is considered to be unrepresented for purposes of this Rule, except to the extent the limited representation lawyer provides other counsel written notice of a time period within which other counsel shall communicate only with the limited representation lawyer.

## **New Hampshire Rules of Civil Procedure**

### **Rule 3: Filing and Service**

(b) When an attorney has filed a limited appearance under Rule 14(d) on behalf of an opposing party, copies of pleadings filed and communications addressed to the court shall be furnished both to the opposing party who is receiving the limited representation and to the limited representation attorney. After the limited representation attorney files that attorney's "withdrawal of limited appearance" form, as provided in Rule 15(e), no further service need be made upon that attorney. All such pleadings or communications shall contain a statement of compliance herewith.

### **Rule 17: Appearance and Withdrawal**

(c) **Limited Appearance of Attorneys.** To the extent permitted by Rule 1.2 of the New Hampshire Rules of Professional Conduct, an attorney providing limited representation to an otherwise unrepresented litigant may file a Limited Appearance in a non-criminal case on behalf of such unrepresented party. The Limited Appearance shall state precisely the scope of the limited representation, and the attorney's involvement in the matter shall be limited only to what is specifically stated. The requirements of Rule 17(a), (b) and (c) of these New Hampshire Rules of Civil Procedure shall apply to every pleading and motion signed by the limited representation attorney. An attorney who has filed a Limited Appearance, and who later files a pleading or motion outside the scope of the limited representation, shall be deemed to have amended the Limited Appearance to extend to such filing. An attorney who signs a Pleading or Motion, or any amendment thereto which is filed with the court (with the exception of a Special Appearance and motion challenging the court's jurisdiction over the defendant), will be considered to have filed a General Appearance and, for the remainder of that attorney's involvement in the case, shall not be considered as a limited representation attorney under these rules; provided, however, if such attorney properly withdraws from the case and the withdrawal is allowed by the court, the attorney could later file a Limited Appearance in the same matter.

(f) **Automatic Termination of Limited Representation.** Any Limited Representation Appearance filed by an attorney, as authorized under Professional Conduct Rules 1.2(f) and 14(d), shall automatically terminate upon completion of the agreed representation, without the necessity of leave of court, provided that the attorney shall provide the court a "withdrawal of limited appearance" from giving notice to the Court and all parties of the completion of the limited representation and termination of the limited appearance. Any attorney having filed a Limited Appearance who seeks to withdraw prior to the completion of the limited representation stated in the Limited Appearance, however, must comply with Rule 17(d).

(g) **Pleading prepared for Unrepresented Party.** When an attorney provides limited representation to an otherwise unrepresented party, by drafting a document to be filed by such party with the court in a proceeding in which (1) the attorney is not entering any

appearance, or (2) the attorney has entered a Limited Appearance which does not include representation regarding such document, the attorney is not required to disclose the attorney's name on such pleading to be used by that party; any pleading drafted by such limited representation attorney, however, must conspicuously contain the statement "This pleading was prepared with the assistance of a New Hampshire attorney." The unrepresented party must comply with this required disclosure. Notwithstanding that the identity of the drafting attorney need not be required to be disclosed under this rule, by drafting a pleading to be used in court by an otherwise unrepresented party, the limited representation attorney shall be deemed to have made those same certifications as set forth in Rule 18(a) despite the fact the pleading need not be signed by the attorney.

## **New Mexico Rules of Professional Conduct**

### **Rule 16-303: Candor Toward the Tribunal**

E. Limited entry of appearance; lawyer's duty. In all proceedings where a lawyer appears for a client in a limited manner, that lawyer shall disclose to the tribunal the scope of representation.

## New Mexico Rules of Civil Procedure

### District Court Rule 1-089: Entry of Appearance; Withdrawal or Substitution of Attorneys

**A. Entry of appearance.** When an attorney represents a party, the attorney shall file an entry of appearance, unless the court filed an order appointing the attorney. Filing a pleading pursuant to Rule 1-007 NMRA signed by an attorney constitutes an entry of appearance under this rule.

If an attorney's appearance is limited pursuant to Paragraph C of Rule 16-102 NMRA, the attorney shall:

- (1) file an entry of appearance entitled "Limited Entry of Appearance" that identifies the nature of the limitation;
- (2) note the limitation in the signature block of any paper the attorney files; and
- (3) include in the signature block of any paper the attorney files an address where service may be made on the party.

**B. Withdrawal by court order required.** An attorney shall obtain a court order permitting withdrawal when:

- (1) the attorney has appeared without limitation; or
- (2) the attorney's appearance is limited pursuant to Paragraph A of this rule and the attorney has not completed the purpose of the representation. A copy of any order permitting an attorney to withdraw shall be filed with the clerk and served on all parties.

The court may place conditions on an order approving withdrawal as justice requires, such as directing the substitution of counsel with an accompanying written notice filed with the clerk and served on the parties or ordering the attorney withdrawing on behalf of a party to file with the clerk and serve on the parties a notice of an address where service may be made upon the party.

When an order permitting withdrawal will result in a party to an action not being represented by an attorney, the order shall reasonably advise that the unrepresented party shall have twenty (20) days to retain an attorney or be deemed to have entered an appearance pro se. The withdrawing attorney shall serve a copy of the order permitting withdrawal on the unrepresented party pursuant to Paragraph B of Rule 1-005 NMRA.

**C. Withdrawal upon completion of limited representation.** An attorney whose appearance is limited as set forth in Paragraph A of this rule and who has completed the purpose of the limited representation need not obtain a court order permitting withdrawal. Such an attorney shall file with the clerk and serve on all parties a notice of withdrawal or substitution of counsel. If an attorney ceases to act without complying with the provisions of this rule, upon motion of any party or upon the court's own motion, the court may enter an order requiring any actions that the court deems necessary.

### **Magistrate Court Rule 2-107: Pro Se and Attorney Appearance**

**C. Attorney appearance.** A party may appear, prosecute, defend and appeal any proceeding by an attorney. Whenever an attorney undertakes to represent a party, the attorney shall file a written entry of appearance showing the attorney's name, address and telephone number. For the purpose of this rule, the filing of any pleading or paper signed by counsel constitutes an entry of appearance. If entry of appearance is made by the filing of a pleading on behalf of a party, the attorney shall set forth on the pleading the attorney's address and telephone number. If an attorney's appearance is limited pursuant to Paragraph C of Rule 16-102 NMRA, the attorney shall:

- (1) file an entry of appearance entitled "Limited Entry of Appearance" that identifies the nature of the limitation;
- (2) note the limitation in the signature block of any paper the attorney files; and
- (3) include in the signature block of any paper the attorney files an address at which service may be made on the client.

### **Magistrate Court Rule 2-108: Withdrawal or Substitution of Attorneys**

**A. Approval of court.** An attorney or firm who has appeared without limitation in a cause may withdraw from it upon motion and approval of the court. The motion shall be substantially in the form approved by the Supreme Court. Approval of the court may be conditioned upon substitution of other counsel or the filing by a party of an address at which service may be made upon the party, with proof of service on all other parties, or otherwise. Following withdrawal by counsel, an unrepresented party shall have twenty (20) days within which to secure counsel or be deemed to have entered an appearance pro se. Withdrawing counsel or substitute counsel shall serve on all parties a copy of the motion requesting written consent to withdraw and shall file proof of service with the court prior to entry of the court's order. Attorneys whose appearances are limited as set forth in Paragraph C of Rule 2-107 NMRA need not obtain consent of the court before withdrawing or otherwise ceasing to act in the matter, except if the purpose of the limited representation is not completed.

### **Metropolitan Court Rule 3-107: Pro Se and Attorney Appearance**

**C. Attorney appearance.** A party may appear, prosecute, defend and appeal any proceeding by an attorney. Whenever an attorney undertakes to represent a party, the attorney shall file a written entry of appearance showing the attorney's name, address and telephone number. For the purpose of this rule, the filing of any pleading or paper signed by counsel constitutes an entry of appearance. If entry of appearance is made by the filing of a pleading on behalf of a party, the attorney shall set forth on the pleading the attorney's address and telephone number. If an attorney's appearance is limited pursuant to Paragraph C of Rule 16-102 NMRA, the attorney shall:

- (1) file an entry of appearance entitled "Limited Entry of Appearance" that identifies the nature of the limitation;
- (2) note the limitation in the signature block of any paper the attorney files; and
- (3) include in the signature block of any paper the attorney files an address at which service may be made on the client.

**Metropolitan Court Rule 3-108: Withdrawal or Substitution of Attorneys**

**A. Consent and notice.** An attorney or firm who has appeared without limitation in a cause may withdraw from it upon motion and approval of the court. The motion shall be substantially in the form approved by the Supreme Court. Approval of the court may be conditioned upon substitution of other counsel or the filing by a party of an address at which service may be made upon the party, with proof of service on all other parties, or otherwise. Following withdrawal by counsel, an unrepresented party shall have twenty (20) days within which to secure counsel or be deemed to have entered an appearance pro se. Withdrawing counsel or substitute counsel shall serve on all parties a copy of the motion requesting written consent to withdraw and shall file proof of service with the court. Attorneys whose appearances are limited as set forth in Paragraph C of Rule 3-107 NMRA need not obtain consent of the court before withdrawing or otherwise ceasing to act in the matter, except if the purpose of the limited representation is not completed.

## Utah Rules of Professional Conduct

### **Rule 4.2: Communication with Persons Represented by Counsel**

(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.

### **Rule 4.3: Dealing with Unrepresented Persons**

(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**

[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.

## Utah Rules of Civil Procedure

### Rule 5: Service and Filing of Pleadings and Other Papers

(b)(1) If a party is represented by an attorney, service shall be made upon the attorney unless service upon the party is ordered by the court. If an attorney has filed a Notice of Limited Appearance under Rule 75 and the papers being served relate to a matter within the scope of the Notice, service shall be made upon the attorney and the party.

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### Rule 74: Withdrawal of Counsel

(b) An attorney who has entered a limited appearance under Rule 75 shall withdraw from the case by filing and serving a notice of withdrawal upon the conclusion of the purpose or proceeding identified in the Notice of Limited Appearance. An attorney who seeks to withdraw before the conclusion of the purpose or proceeding shall proceed under subdivision (a).

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### Rule 75: Limited Appearance

(a) An attorney acting pursuant to an agreement with a party for limited representation that complies with the Utah Rules of Professional Conduct may enter an appearance limited to one or more of the following purposes:

- (a)(1) filing a pleading or other paper;
- (a)(2) acting as counsel for a specific motion;
- (a)(3) acting as counsel for a specific discovery procedure;
- (a)(4) acting as counsel for a specific hearing, including a trial, pretrial conference, or an alternative dispute resolution proceeding; or
- (a)(5) any other purpose with leave of the court.

(b) Before commencement of the limited appearance the attorney shall file a Notice of Limited Appearance signed by the attorney and the party. The Notice shall specifically describe the purpose and scope of the appearance and state that the party remains responsible for all matters not specifically described in the Notice. The clerk shall enter on the docket the attorney's name and a brief statement of the limited appearance. The Notice of Limited Appearance and all actions taken pursuant to it are subject to Rule 11.

(c) Any party may move to clarify the description of the purpose and scope of the limited appearance.

(d) A party on whose behalf an attorney enters a limited appearance remains responsible for all matters not specifically described in the Notice.

## Vermont Rules of Civil Procedure

### Rule 79.1: Appearance and Withdrawal of Attorneys

#### **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.

Amended Dec. 12, 1985, eff. April 1, 1986; Nov. 25, 1986, eff. March 1, 1987; Feb. 6, 2006, eff. April 14, 2006; March 15, 2006, eff. June 30, 2006.

## Washington Rules of Professional Conduct

### **Rule 1.2: Scope of Representation and Allocation of Authority Between Client and Lawyer**

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

Additional Washington Comment (14)

#### **Agreements Limiting Scope of Representation**

[14] An agreement limiting the scope of a representation shall consider the applicability of Rule 4.2 to the representation. (The provisions of this Comment were taken from former Washington RPC 1.2(c).) See also Comment [11] to Rule 4.2 for specific considerations pertaining to contact with an otherwise represented person to whom limited representation is being or has been provided.

[Amended effective September 1, 2006.]

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### **Rule 4.2: Communication with Person Represented by Counsel**

In representing a client, a 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 law or a court order.

Additional Washington Comments (10 - 11)

[11] An otherwise unrepresented person to whom limited representation is being provided or has been provided in accordance with Rule 1.2(c) 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. (The provisions of this Comment were taken from former Washington RPC 4.2(b)).

### **Rule 4.3: Dealing with an Unrepresented Person**

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.

Additional Washington Comments (3 - 4)

[3] An otherwise unrepresented person to whom limited representation is being provided or has been provided in accordance with Rule 1.2(c) 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. (The provisions of this Comment were taken from former Washington RPC 4.3(b))

## Washington Superior Court Civil Rules and Civil Rules of Limited Jurisdiction

### Rule CR 4.2: Process- Limited Representation

(a) An attorney may undertake to provide limited representation in accordance with RPC 1.2 to a person involved in a court proceeding.

(b) Providing limited representation of a person under these rules shall not constitute an entry of appearance by the attorney for purposes of CR 5(b) and does not authorize or require the service or delivery of pleadings, papers or other documents upon the attorney under CR 5(b). Representation of the person by the attorney at any proceeding before a judge, magistrate, or other judicial officer on behalf of the person constitutes an entry of appearance pursuant to RCW 4.28.210 and CR 4(a)(3), except to the extent that a limited notice of appearance as provided for under CR 70.1 is filed and served prior to or simultaneous with the actual appearance. The attorney's violation of this Rule may subject the attorney to the sanctions provided in CR 11(a).

[Effective October 29, 2002]

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### Rule CR 11: Signing of Pleadings, Motions and Legal Memoranda: Sanctions

(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 legal memorandum, and that to the best of the attorney's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances: (1) it is well grounded in fact, (2) it is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law or the establishment of new law, (3) 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, and (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief. 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.

[Amended effective January 1, 1974; September 1, 1985; September 1, 1990; September 17, 1993; October 15, 2002; September 1, 2005.]

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### **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).

[Effective October 29, 2002.]

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### **Rule CRLJ 4.2: Process – Limited Representation**

(a) An attorney may undertake to provide limited representation in accordance with RPC 1.2 to a person involved in a court proceeding.

(b) Providing limited representation of a person under these rules shall not constitute an entry of appearance by the attorney for purposes of CR 5(b) and does not authorize or require the service or delivery of pleadings, papers or other documents upon the attorney under CRLJ 5(b). Representation of the person by the attorney at any proceeding before a judge, magistrate, or other judicial officer on behalf of the person constitutes an entry of appearance pursuant to RCW 4.28.210 and CRLJ 4(a)(3), except to the extent that a limited notice of appearance as provided for under CRLJ 70.1 is filed and served prior to or simultaneous with the actual appearance. The attorney's violation of this Rule may subject the attorney to the sanctions provided in CRLJ 11(a).

[Effective October 29, 2002]

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### **Rule CRLJ 11: Signing and Drafting of Pleadings, Motions and Legal Memoranda: Sanctions**

(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 legal memorandum, and that to the best of the attorney's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances: (1) it is well grounded

in fact, (2) it is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law or the establishment of new law, (3) 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, and (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief. 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.

[Amended effective September 1, 1990; September 1, 1994; October 15, 2002; September 1, 2005.]

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### **Rule CRLJ 70.1: Appearance by Attorney**

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

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

## Wyoming Rules of Professional Conduct

### Rule 1.1: Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

#### 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 treatment than matters of lesser complexity and consequence. A lawyer and a client may agree, pursuant to Rule 1.2(c) or Rule 6.5, to limit the scope of the representation. In such circumstances, competence means the legal knowledge, skill, thoroughness and preparation reasonably necessary for the limited representation.

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### Rule 1.2: Scope of Representation

(c) A lawyer may limit the scope of the representation pursuant to Rule 6.5 or if the limitation is reasonable under the circumstances and the client makes an informed decision.

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

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

(3) 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:

- (i) the representation is limited to the attorney and the services described in the form; and
- (ii) the attorney does not represent the client generally or in any matters other than those identified in the form.

#### Comment

[7] 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 Courts 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.

**APPENDIX I: Appendix to Rule 1.2 of the Rules of Professional Conduct**

**NOTICE AND CONSENT TO LIMITED REPRESENTATION  
NOTICE**

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

When a lawyer agrees to help you for a short time or for a particular purpose, the lawyer must act in your best interest and give you competent help. When a lawyer and you agree that the lawyer will provide such limited help,

--- The lawyer **DOES NOT HAVE TO GIVE MORE HELP** than the lawyer and you agreed.

--- The lawyer **DOES NOT HAVE TO** help with any other part of your legal problem.

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

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

Advise you about the following issues:

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

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

\_\_\_\_\_  
Attorney's Name

**Consent**

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

\_\_\_\_\_  
Print Your Name

\_\_\_\_\_  
Mailing Address

\_\_\_\_\_  
Sign Your Name

\_\_\_\_\_  
City State and Zip Code

\_\_\_\_\_  
Date

\_\_\_\_\_  
Phone Number

## **Uniform Rules of the District Court of the State of Wyoming**

### **Rule 102: Appearance and Withdrawal of Counsel**

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

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

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

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

(a)(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)