APPENDIX

The attached appendices include limited assistance retainer agreements and other practice forms. Neither the Modest Means Task Force, nor the ABA, has approved or endorsed any of them, or any provision in them. Instead, individual lawyers in various states have developed these forms for their practices. Before using any form, or any provision in a form, a lawyer should determine that the form or provision is valid and accepted in that lawyer's jurisdiction and is appropriate for that lawyer's practice.

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APPENDIX 1: UNBUNDLED LEGAL SERVICES--LOOKING AT ISSUES OF LIABILITY AND GOOD PRACTICES*

Defining "Unbundled" Legal Services The term refers to discrete task representation, i.e. situations in which a client hires an attorney to assist with specific elements of a matter such as legal advice, document preparation (or review) and/or limited appearances. The client and attorney agree on discrete tasks to be performed for a particular fee or pro bono. Depending on the nature of the attorney's involvement, the attorney may or may not enter an appearance with the court. The client represents him/herself in other aspects of the case.

Why should attorneys consider offering unbundled services? There are many reasons why attorneys are expanding their practices to respond to increasing demand for discrete task representation in appropriate cases. The ***Appendix*** summarizes some of the national trends and factors that have lead to the rise in pro se litigation and thus to the increased need for discrete task representation as an option for new clients.

So the question is asked: How can I offer these services safely, without running undue risk of exposure? How can I weed out the cases and clients who are not suitable for limited service? How should I document my file on the limitations of my involvement? How do I get out at the end of my agreed services? The following piece is designed to assist attorneys in flagging and addressing areas of concern.

Unbundling is not substantially different from the rest of your practice, however there are some specialized issues which require consideration. In some instances, full representation may serve the client better.

Deciding on whether to take the case

1. **Work within your expertise -**Strongly consider rejecting an "unbundled" case in areas of law in which you or your firm have little or no experience. Taking a case for the "learning experience" is a red flag for limited representation. It takes significant expertise in an area to be able to anticipate what issues will come up in any given case and that is what is necessary to give good counsel and to avoid liability. You have a duty to warn the client about related issues, and you cannot warn them about possibilities you do not anticipate. Have a referral list handy for cases outside your expertise.
2. **Don't be pressured by emergencies -**Pay particular attention to prospective clients who have last-minute emergencies and seek "unbundled" representation. Limited representation does not mean that you do not have to provide competent assistance or zealous advocacy. A rush for a "quick document review" is much riskier if you will only be involved in that brief transaction than if you enter your appearance to stave off some pending disaster that you can sort out later. Consider advice on ways to move the deadline, if possible, to allow adequate time for review or representation. Refer out if appropriate.
3. **A good diagnostic interview is critical -** Unlike a full representation case, if you miss a critical issue in the initial interview you will generally not get another chance to pick up the pieces later in the case. Both experienced and inexperienced attorneys will find a checklist of issues in the relevant practice area to be extremely helpful in conducting a

good diagnostic interview. [Model checklists are available online at www.unbundledlaw.org].

4. **Be wary of clients who take a "musical chairs" approach to finding legal help -** Consider carefully the requests from prospective "unbundled" clients who have involved multiple attorneys in the same case. Bouncing around may be an indicator that the client is searching for the "right" answer after being given what they believe are unsatisfactory responses to previous analyses of their situation. You should avoid helping to facilitate situations in which a client may blame you for his/her discontent with the outcome. *On the other hand*, you may find that previous attorneys were uncomfortable with taking a "piece" of the case and that your prospective client simply had trouble finding an attorney like yourself who was willing to work effectively with them in an "unbundled" fashion. The client may have been misperceived as "difficult" because s/he was seeking more of a partnership relationship than the traditional full representation model envisions.
5. **Be careful of clients who have unrealistic expectations or limited capacity -** A prospective client may be unrealistic about what s/he can achieve alone or about the nature of your limited representation. Part of your obligation in offering "unbundled" services is to teach or coach the client about the legal system and the available remedies. Few non-attorneys will arrive on your doorstep with totally "realistic" expectations. Their beliefs are likely to have been shaped by what they have seen on TV, what they believe is fair, or what they have been told by neighbors or friends. You bring the experience and expertise with the legal system. If you believe that you will not be successful at reining in unrealistic expectations, be careful. It may be difficult for the pro se litigant to carry out their plan with your guidance if they have trouble "hearing" your advice. Not every client is temperamentally suited to representing him/herself.
6. **Identify those with hidden motives -** Be wary if the prospective clients have trouble focusing on the legal outcome even after you have carefully explained the possible remedies available to them. Emotional needs may be driving the request for assistance. While many cases involve an emotional component, pro se litigants who seek revenge are unlikely to be happy with the limited results that the legal system provides and even unhappier with "unbundled" services. Their disappointment may lead to a resentment, which (in turn) may lead to difficulties collecting your fee or complaints about your services.
7. **Identify those with a history of domestic violence seeking "unbundled" help in cases involving the batterer -** Survivors of domestic violence face special issues when considering self-representation. The power inequities and intimidation present in an abusive situation must be considered. They may raise serious questions about her/his ability to maintain balance necessary to pursue an action against the batterer. On the other hand, coaching the domestic violence survivor to successfully confront the batterer for the first time may be the best service you can render. The client may not be seeking unbundled services solely for financial reasons; they may be looking specifically for someone who can give them the tools to successfully enforce their own rights. Discuss these issues openly with the client. Work with the prospective client to identify possible free sources of legal assistance or ways in which your full representation fees might be met, if pro bono is not an option.
8. **Be wary of glossing over the fee structure and its relation to services -** If during your initial interview, you find that the prospective client is reluctant to discuss or agree on

fees, be cautious. It is critical that the client understands that "unbundled" services not only limit your fees but that it *also* limits the services. If anything, your fee arrangement must be clearer in unbundled relationships than in full service, since there is a greater likelihood of a misunderstanding about what services you e agreed to perform and the client has agreed to pay for. In the event of a dispute, your efforts to collect unpaid legal fees can be a catalyst for malpractice claims.

After you take the case

9. **Develop and use an intake form** that lists the key issues and allows room to insert unusual ones and give a completed copy to the client. It is a contemporaneous record that documents your file, reminds you to ask about related issues, memorializes the limitations on scope, and educates the client.
10. **Use checklists** to note who is going to do what before the next meeting and give a copy to the client.
11. **Use a clear retainer agreement detailing the scope of representation-** A good limited services retainer agreement will spell out exactly what you are doing for the client and what responsibilities the client will take on. There should be no confusion about the scope of the representation. It is equally or more important to document what you are not doing as to document what you are. Look at the www.unbundledlaw.org website for sample retainer agreements.
12. **Inexperienced practitioners may wish to review their initial analysis with more experienced colleagues -** As noted earlier, limited experience handling cases such as the one presented by an "unbundled" client poses special challenges for newer attorneys or those new to a particular practice area. An experienced practitioner can validate your analysis, suggest additional issues to explore or offer warnings about a particular proposed course of action.
13. **Practice defensively – document all decisions** – This is good advice in any type of legal work, but in "unbundled" cases, good file documentation and communication with the client are even more important. In an "unbundled" case, it is particularly essential to document instances in which you offer advice on a particular path for the pro se litigant to take, especially if you suspect (or know) that the client may not take your advice.
14. **Be sure to memorialize any changes** in the scope of your representation as it changes. Checklists that attach to the retainer agreement are a simple and reliable way to do this. Be sure that you and the client both sign off on any changes in scope.
15. **Use prepared handouts** to describe unbundling and to provide generalized information on issues that recur, such as division of personal property, severing joint tenancies, or any other commonly occurring event. [They are available online at www.unbundledlaw.org]. Note on your intake sheet which ones you gave to the client and on what date.
16. **Explain the "why" -** Unbundled cases are pursued in partnership with the client. A client who understands the "big picture" and the tradeoffs will not only be more successful in self-representation but also less likely to blame you for perceived inadequate assistance or unwanted outcomes. An explanation of the various forms which unbundled representation may take is available online at www.unbundledlaw.org.
17. **Don't make non-client laypersons part of your "team."** "Unbundling" may create an informal feeling to the attorney-client relationship. But remember this is between you and

your client, not you, your client, Aunt Mary, and others the client may want to get involved. Further, allowing third parties to participate may destroy the attorney-client privilege.

18. **Refrain from providing forms with no assistance/review.** Some of the forms which will be required are simply too complicated for a pro se litigant to complete without assistance. Your expert assistance in the completion of these forms is not only a "best practice" but will also reduce any liability.
19. **Do not encourage a pro se client to attempt to handle a matter that is too technical or difficult**, such as preparation of a QDRO. Part of your responsibility as an attorney is to counsel a person *against* such an attempt pro se and to help them understand the cost/benefit analysis of using their litigation budget wisely. Also, do not encourage a pro se litigant who may not be able to handle the issue because of language barriers, mental illness and the like. It may be the simplest issue in the world, but if the litigant doesn't speak English and there is no interpreter, it won't be successful. This is an individualized assessment. Be creative in your fees or look for other ways to assist the client with the needed representation.
20. **Do not expose a client to possible Rule 11 sanctions** (or the state equivalent). A best practice is to satisfy yourself that the pleading would withstand Rule 11 scrutiny if your name were on it; or if not, at least advise the client about Rule 11.
21. **Be aware of risky advice** such as sending a client to file a domestic violence complaint to get the advantage in a custody or equitable distribution case. While there is no rule against this, it is not encouraged in many jurisdictions. And, while you as an attorney may be able to placate an irate judge, your pro se client is extremely unlikely to be able to do so.

Ending the relationship

22. **Let the client know when your involvement has ended.** There should be no surprises either to you or the client, and no unstated expectations of continued participation on your part. Send out a notice at the end of your involvement in a matter that involves a series of steps. Notify the client that you believe you have completed your part and advise him/her to get in touch with you immediately if s/he disagrees.
23. **If you have entered an appearance**, **let the court know about ending the relationship as well** - Use a substitution of attorney or notice of withdrawal, if available. If it is not available, create one – perhaps attaching your limited retainer agreement. Give notice to the other side. A sample for is available at www.unbundledlaw.org.

* This was a joint work product of Ayn Crawley, Maryland Legal Assistance Network, M. Sue Talia, private attorney in California, the Honorable Jane Harper, Family Court Judge, Mecklenburg, NC.

APPENDIX 2: A SELF-ASSESSMENT TEST FOR LAWYERS WHO MAY BE INTERESTED IN PROVIDING LIMITED SCOPE LEGAL ASSISTANCE TO CLIENTS.*

___ I want to spend more time in direct contact with clients and less time interacting with lawyers on the opposing side or the court system.
___ I am able to give up control of doing the legal work myself and am comfortable in helping clients who do most of the work on their own.
___ I am flexible with changing roles with clients and even adapting to new roles requested by the client (that do not conflict with my own professional or personal ethical boundaries).
___ I am willing to accept payment for current work only and begin an engagement without an advance retainer or deposit.
___ I like helping people make better decisions.
___ I like having people get help they can less "unafford."
___ I am able to handle watching clients take my sound advice and make poor or self-destructive decisions, and still be willing to help them pick up the pieces and try to make lemonade out of lemons.
___ I like to teach clients skills and concepts that will make their case go better--and maybe even improve their lives.
___ I like to prevent problems from ever ripening into conflict.
___ I like to reduce my billing load and work on more of a cash and carry basis.
___ I like to have more control over my life by not being subject to canceling vacations or working nights and weekends.
___ I am willing to try new approaches that are different than the way I currently practice or even different from the way I was trained.
___ I like working with people who like to shop for bargains.
___ I am willing to work with people who may have a high mistrust or disregard for lawyers.
___ I want to provide clients with space in my office so they can do their own background reading, watch helpful videos, do their own legal research, prepare their own work, or just relax and calm down.
___ I want to meet and learn from other innovative and caring lawyers who share a common set of goals and professional commitments that I do.*

*Prepared by Forrest S. Mosten

APPENDIX 3: DESCRIPTION OF UNBUNDLING FOR CLIENTS AND POTENTIAL CLIENTS*

What is unbundling?

Unbundling is a way that an attorney can help you with part of your case while you do part of it yourself. For example:

. you can consult with an attorney to prepare or review your paperwork, but attend the hearing yourself;

. you can represent yourself through the whole case, and periodically consult with an attorney who can coach you on the law, procedures and strategy;

. you can do the preparation yourself and hire an attorney just to make the court appearance for you;

. you may want to do your own investigation of the facts ("discovery") and ask the attorney to assist you in putting the information in a format which is useful to the court.

. you may ask the attorney to be on "standby" while you attend the settlement conference yourself.

How will I determine which parts I can do myself and when an attorney's help will be important?

With coaching, you may be able to handle the whole case yourself, except for a few technical areas where the attorney can help you. It really is between you and the attorney how much of your case you hire them to do. If you do this, it is important to keep returning to the same attorney. Otherwise, you're paying a new person to get up to speed on your case each time that you consult.

Some areas of the law are *extremely technical* and it is rare for non-attorneys to effectively handle them. Among these are pension rights, stock options, and business interests. You will almost certainly need the assistance of an attorney if you have any of these issues in your case.

Why it is important to discuss your case thoroughly with your attorney.

It is important to thoroughly discuss all the information about/issues of your case with your attorney before deciding which parts you want to do yourself and which ones the attorney will assist you with. It is equally important to realize that there may be issues presented by your case that you aren't even aware of. If you don't make sure to tell your attorney all-important information about your case, how will you know?

Sometimes new issues will pop up after your case is started. If they do, it is important to advise your attorney and discuss them, so that you know the potential legal consequences to you. Remember that your attorney can only advise you on matters you tell him/her about, so it is essential that you provide complete information about your case.

When is my agreement with the attorney finished?

You should discuss this question with your attorney, and you should be aware of when the attorney's part is completed and they are no longer working on your case with you. Be sure to ask your attorney about this question, so there is no misunderstanding.

Communication and Teamwork = Successful Case.

Remember, you and your attorney are working as a team. That means good communication and a clear understanding of each person's assignments is essential. You will be taking more responsibility for your case than in a traditional attorney-client situation, so you should be willing to raise questions that you aren't sure about.*

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APPENDIX 4: ADVICE ABOUT LIMITED SCOPE LEGAL SERVICES FOR CLIENTS AND POTENTIAL CLIENTS*

What are "limited legal services"?

Limited legal services are provided most often in family law matters. Rather than representing you all through your divorce or other family law matter, an attorney can help you represent yourself, or represent you at one hearing but leave you to represent yourself for the rest of the case. You would pay the attorney for the portions of your case that he or she helped you with. Some of the services that may be offered by an attorney offering limited legal services are:

Advise you of the appropriate legal action(s) to take in your circumstances
Advise you of the forms appropriate for your case
Preparation of dissolution papers or other legal documents
Review documents
Explain the meaning of legal documents/language
Advise you how to conduct yourself in Court
Advise you on filing and serving documents or scheduling hearings
Advise you of your rights and responsibilities Appear for/with you at one hearing

You will still be responsible for most, if not all, activities relating to your case.

Some (but not necessarily all) of these activities may be 1) obtaining and completing the correct forms, 2) filing completed forms with the Court, 3) following case schedules, 4) having papers served, 5) appearing and arguing your case in a Court hearing, or 6) presenting your final papers.

How much will limited legal services cost?

There is no set cost for limited legal services. Attorneys usually charge their regular hourly rate for such services, but the actual charges may vary depending on the specific circumstances and services rendered. There is no retainer fee, but you will have to pay for the services at the time, or before, you receive them.

How do you know if you can use limited legal services?

Call an attorney who provides limited services (see next page for information on finding a limited services attorney). After you discuss your situation, the attorney will be able to advise you on whether you can use these services. It is more likely that you will be able to use limited legal services if your family law matter is uncontested or, if there is disagreement, you and the other party want to work towards a settlement. If you have already started a dissolution and you get lost in the system, limited services might be able to assist you in moving forward again.

How do you find a limited legal services attorney?

In King County, the King County Bar Association's Lawyer Referral Service has a panel of attorneys who offer limited legal services. In addition, Northwest Women's Law Center can refer you to such attorneys in many other parts of Washington State, as well as in King County. King County Bar Association Lawyer Referral Service -- (206) 623-2551 Northwest Women's Law Center -- (206) 621-7691

Suggestions for making the most of limited legal services.

1. If you have Court documents, or any other documents pertinent to your case, be sure to take all of them with you to show the attorney.

2. Gather all relevant information about your family law situation, such as lists of property (including real property and pension information), debts, etc.. Have this information in writing.

3. Have an organized idea, preferably in writing, of what your goals are; for example, the schedule arrangements you are seeking for the children.

4. Be prepared to take detailed notes of the attorney's advice.

5. If you have a hearing scheduled, have with you names, addresses and phone numbers of witnesses who can sign affidavits or give testimony on your behalf.

6. When you have agreed with the attorney on what services will be performed for what fees, request that the agreement be in writing.

How you should act in Court

1. Be on time, and be prepared to spend at least half the day for a motion.

2. Dress neatly.

3. Do not bring your children to the downtown Courthouse *if you can avoid it. (There are no facilities for children and you may have* a *hard time concentrating on what you need to do if you also need to watch your children.)* At the Kent Regional Justice Center you may make child care arrangements by calling (253) 854-5625.

4. Check in with the clerk and be seated.

5. Review your paperwork while you wait.

6. When the clerk reads the list of scheduled cases, answer when your name is called.

7. When your case is called for the hearing, go to the bench and stand facing the Judge/Commissioner.

8. The Judge/Commissioner may ask you to speak, then the other parent or the attorney, then you to reply (or vice-versa). Speak to the Judge/Commissioner, not the other parent or attorney. Don't interrupt, even if you strongly disagree with what is said. You may use notes as you speak. Stick to the facts and be brief. You may have only about five minutes to speak.

9. During the hearing:

a) The Judge/Commissioner may ask you questions. If you don't understand a question, say so. Don't answer until you understand.

b) Stay on point. If you don't know an answer, say so.

c) Take your time when answering. Give the answer as much thought as you need. Explain your answer if needed.

d) Be respectful. Address the Judge/Commissioner/commissioner as "Your Honor."

e) Wait until it is your turn to speak, or ask to speak again.

f) Don't be sarcastic or argumentative.

g) Be exact about dates and times or be clear if you are only giving an estimate.

h) Speak clearly and distinctly. Use words you are comfortable with.

10. Remain polite during and after the Judge/Commissioner's ruling. Do not interrupt the Judge/Commissioner. If you need a clarification of the ruling, ask the Judge/Commissioner after

he or she is through making their ruling. Ask the Judge/Commissioner which of the parties will write the Court order. The Judge/Commissioner must sign the order before it is effective.

11. You may bring a friend for moral support, but that person may not speak unless the Judge/Commissioner asks the friend to testify.

12. Don't laugh or talk about the case in the hall or restroom in such a way that the other parent, attorneys and witnesses may hear you.*

*Prepared by Joan Anderson, King County Bar Association, and King County Superior Court Family Law Facilitators.

APPENDIX 5: SAMPLE LIMITED SCOPE LEGAL SERVICES RETAINER AGREEMENT (No. 1)*

This agreement is made between the attorney and client named at the end of this agreement.

1. Nature of Agreement. This agreement describes the relationship between the attorney and client. Specifically, this agreement defines:

a. The general nature of the client's case;

b. The responsibilities and control that the client agrees to retain over the case;

c. The services that the client seeks from the attorney in his or her capacity as attorney at law;

d. The limits of the attorney's responsibilities;

e. Methods to resolve disputes between attorney and client; and

g. The method the client will use to pay for services rendered by the attorney.

2. Nature of Case. The client is requesting services from the attorney in the following matter:

_____

_____

_____

3. Client Responsibilities and Control. The client intends to handle his or her own case and understands that he or she will remain in control of the case and be responsible for all decisions made in the course of the case. The client will:

a. Cooperate with the attorney or office by complying with all reasonable requests for information in connection with the matter for which the client is requesting services;

b. Keep the attorney or office advised of the client's concerns and any information pertinent to the client's case;

c. Provide the attorney with copies of all correspondence to and from the client relevant to the case; and

d. Keep all documents related to the case in a file for review by the attorney.

4**. Services Sought by Client.** The client seeks the following services from the attorney:

___ a. Legal advice: office visits, telephone calls, fax, mail, electronic mail.

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

___ c. Evaluation of the client's self-diagnosis of the case and advice about the client's legal rights.

___ d. Guidance and procedural information for filing or serving documents.

___ e. Review of correspondence and court documents.

___ f. Preparation of documents and/or suggestions concerning documents to be prepared.

___ g. Factual investigation: contact of witnesses, searches of public records, in-depth interview of client.

___ h. Legal research and analysis.

___ i. Discovery: interrogatories, depositions, requests for document production.

___ j. Planning for negotiations, including role-playing with the client.

___ k. Planning for court appearances to be made by the client, including role-playing with the client.

___ l. Backup and troubleshooting during the trial.

___ m. Referrals to other counsel, experts, or professionals.

___ n. Counseling the client about an appeal.

___ o. Procedural help with an appeal and assistance with substantive legal argumentation in an appeal.

___ p. Preventive planning and/or legal checkups.

___ q. Other: _____

_____

_____

5. Attorney's Responsibilities. The attorney shall exercise due professional care and observe strict confidentiality in providing the services identified by checkmark in paragraph 4 above. In providing those services, the attorney SHALL NOT:

a. Represent, speak for, appear for, or sign papers on the client's behalf;

b. Provide services listed in paragraph 4 that are not identified by a checkmark; or

c. Make decisions for the client about any aspect of the case.

6. Method and Payment for Services.

a. Hourly fee. The current hourly fee charged by the attorney for services under this agreement is as follows:

Senior Partner: $ _____

Junior Partner: $ _____

Associate: $ _____

Unless a different fee arrangement is specified in clause (b) or (c) of this paragraph, the hourly fee shall be payable at the time of the service.

b. Payment from Retainer. The client has the option of setting up a deposit fund with the attorney. Services are then paid for from this retainer account as they occur. If a retainer is established under this clause, the attorney shall mail the client a billing statement summarizing the type of services performed, the costs and expenses incurred, and the current balance in the retainer after the appropriate deductions have been made. The client may replenish the retainer or continue to draw the fund down as additional services are delivered. If the retainer becomes depleted, the client must pay for additional services as provided in clause a or c of this paragraph.

c. Flat Rate Charges. The attorney has the option of agreeing to provide one or more of the services described in Paragraph 4 at a flat rate. Any such agreement shall be set out in writing, dated, signed by both attorney and client, and attached to this agreement.

d. Attorneys' Fees. Should it be necessary to institute any legal action for the enforcement of this agreement, the prevailing party shall be entitled to receive from the other party all court costs and reasonable attorneys' fees incurred in that action.

7. Resolving Disputes Between Client and Attorney.

a. Notice and Negotiation. If any dispute between client and attorney arises under this agreement, attorney and client agree to meet and confer within 10 days of either client or attorney giving written notice that the dispute exists. The purpose of this meeting and conference will be to negotiate a solution short of further dispute resolution proceedings.

b. Mediation. If the dispute is not resolved through negotiation, the client and attorney shall attempt, within 15 days of failed negotiations, to agree on a neutral mediator whose role will be to facilitate further negotiations within 15 days. If the attorney and client cannot agree on a neutral mediator, they shall request that the [local or state] bar association select a mediator. The mediation shall occur within 15 days after the mediator is selected. The attorney and client shall share the costs of mediation, provided that payment of the costs and any attorneys' fees may also be mediated.

c. Arbitration. If mediation fails to produce a full settlement of the dispute satisfactory to both client and attorney, client and attorney agree to submit to binding arbitration under the rules of the [governing] bar association. This arbitration must take place within 60 days of the failure of mediation. Fees and attorneys' fees for arbitration and prior mediation may be awarded to the prevailing party.

8. Amendments and Additional Services. This written agreement governs the entire relationship between the client and attorney. All amendments shall be in writing and attached to this agreement. If the client wishes to obtain additional services from the attorney as defined in paragraph 4, a photocopy of paragraph 4 that clearly denotes which extra services are to be provided must be signed and dated by both attorney and client and attached to this agreement. Such a photocopy shall qualify as an amendment to this agreement.

9. Statement of Client's Understanding. I have carefully read this agreement and believe that I understand all of its provisions. I signify my agreement with the following statements by initialing each one:

___ I have accurately described the nature of my case in paragraph 2.

___ I will remain in control of my case and assume responsibility for my case as described in paragraph 3.

___ The services that I want the attorney to perform in my case are identified by checkmarks in paragraph 4. I take responsibility for all other aspects of my case.

___ I accept the limitations on the attorney's responsibilities identified in paragraph 5.

___ I shall pay the attorney for services rendered as described in paragraph 6.

___ I will resolve any disputes I have with the attorney under this agreement in the manner described in paragraph 7.

___ I understand that any amendments to this agreement must be in writing, as described in paragraph 8.

___ I acknowledge that the attorney has advised me that I have the right to consult another independent attorney to review this agreement and to advise me on my rights as a client before I sign this agreement.

_____ _____

Client Attorney

Date: _____

* This model agreement is derived from an agreement in *Lawyer's Guide to Being a Client Coach* (1994), published by the California State Bar Committee on Delivery of Legal Services for Middle Income Persons.

APPENDIX 6: SAMPLE LIMITED SCOPE LEGAL SERVICES RETAINER AGREEMENT (No. 2)*

IDENTIFICATION OF PARTIES: This agreement, executed in duplicate with each party receiving an executed original, is made between _____, hereafter referred to as "Attorney," and _____, hereafter referred to as "Client."

1. NATURE OF AGREEMENT: This agreement describes the relationship between the Attorney and Client. Specifically, this Agreement defines:

a. The general nature of Client's case;
b. The responsibilities and control that Client agrees to retain over the case;
c. The services that Client seeks from Attorney in his/her capacity as an attorney at law;
d. The limits of Attorney's responsibility;
e. Methods to resolve disputes between Attorney and Client; and
f. The method of payment by Client for services rendered by Attorney.

2. NATURE OF CASE: The Client is requesting services from Attorney in the following matter: _____

_____

_____

3. CLIENT RESPONSILITIES AND CONTROL. Client intends to retain control over the case and understands that he/she will remain in control of the case and be responsible for all decisions made in the course of the case. Client agrees to:

a. Cooperate with Attorney or office by complying with all reasonable requests for information in connection with the matter for which Client is requesting services;
b. Keep attorney or office advised of Client's concerns and any information that is pertinent to Client's case;
c. Provide Attorney with copies of all pleadings and correspondence to and from Client regarding the case;
d. Immediately provide Attorney with any new pleadings or motions received from the other party; and
e. Keep all documents related to the case in a file for review by Attorney.

4. SERVICES SOUGHT BY CLIENT. Client seeks the following services from Attorney (indicate by writing YES or NO):

a. ___ Legal advice: office visits, telephone calls, fax, mail, email;
b. ___ Advice about availability of alternative means to resolving the dispute, including mediation and arbitration;
c. ___ Evaluation of Client's 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, including simulated role playing with Client;
n. ___ Planning for court appearances, including simulated role playing with Client;
o. ___ Standby telephone assistance during negotiations or settlement conferences;
p. ___ Backup and troubleshooting during the hearing or trial;
q. ___ Referring Client to expert witnesses, special masters or other counsel;
r. ___ Counseling Client about an appeal;
s. ___ Procedural assistance with an appeal and assisting with substantive legal argument in an appeal;
t ___ Provide preventive planning and/or schedule legal check-ups;
u.___ Other: _____

5. ATTORNEY'S RESPONSIBILITIES: Attorney shall exercise due professional care and observe strict confidentiality in providing the services identified by the word "YES" in Paragraph 4 above. In providing those services, Attorney SHALL NOT:

a. Represent, speak for, appear for, or sign papers on the Client's behalf;
b. Become attorney of record on any court papers or litigate on Client's behalf;
c. Provide services which are not identified by the word "YES" in Paragraph 4;
d. Make decisions for Client about any aspect of the case;
e. Protect Client's property by means of restraining orders while discovery and/or negotiations are in progress.

The Client may request that Attorney provide additional services. If Attorney agrees to provide additional services, those additional services will be specifically listed in an amendment to this Agreement, and initialed and dated by both parties. The date that both the Attorney and the Client initial any such list of additional services to be provided will be the date on which the Attorney becomes responsible for providing those additional services. If the Client decides to retain the Attorney as the Client's Attorney of record for handling the entire case on the Client's behalf, the Client and the Attorney will enter into a new written Agreement setting forth that fact, and the Attorney's additional responsibilities in the Client's case.

6. METHOD OF PAYMENT FOR SERVICES:

a. HOURLY FEE:

The current hourly fee charged by Attorney for services under this agreement is 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. Attorney will charge in increments of one tenth of an hour, rounded off for each particular activity to the nearest one tenth of an hour.

If, while this agreement is in effect, Attorney increases the hourly rate(s) being charged to clients generally for Attorney's fees, that increase may be applied to fees incurred under this agreement, but only with respect to services provided thirty days or more after written notice of the increase is mailed to Client. If Client chooses not to consent to the increased rate(s), Client may terminate Attorney's services under this agreement by written notice effective when received by Attorney.

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's fees and costs incurred by Client. This amount will deposited by Attorney in Attorney's trust account. Client authorizes Attorney to withdraw the principal from the trust account to pay Attorney's fees and costs as they are incurred by Client. Any interest earned will be paid, as required by law, to the State Bar of California to fund legal services for indigent persons. The deposit is refundable. If, at the termination of services under this agreement, the total amount incurred by Client for Attorney's fees and costs is less than the amount of the deposit, the difference will be refunded to Client.

c. COSTS:

Client shall pay Attorney's 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's 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's behalf. Client acknowledges that Attorney has made no promises about the total amount of Attorney's fees to be incurred by Client under this agreement.

d. Should it be necessary to institute any legal action for the enforcement of this agreement, the prevailing party shall be entitled to receive all court costs and reasonable attorney fees incurred in such action from the other party.

7. DISCHARGE OF ATTORNEY: Client may discharge Attorney at any time by written notice effective when received by Attorney. Unless specifically agreed by Attorney and Client, Attorney will provide no further services and advance no further costs on Client's behalf after receipt of the notice. Notwithstanding the discharge, Client will remain obligated to pay Attorney at the agreed rate for all services provided and to reimburse Attorney for all costs incurred prior to such discharge.

8. WITHDRAWAL OF ATTORNEY: Attorney may withdraw at any time as permitted under the Rules of Professional Conduct of the State Bar of California. The circumstances under which the Rules permit such withdrawal include, but are not limited to, the following: A) The client consents, B) the client's conduct renders it unreasonably difficult for the Attorney to carry out the employment effectively, and C) the client fails to pay Attorney's fees or costs as required by his or her agreement with the Attorney. Notwithstanding Attorney's withdrawal, Client will remain obligated to pay Attorney at the agreed rate for all services provided, and to reimburse Attorney for all costs incurred before the withdrawal. At the termination of services under this agreement, Attorney will release promptly to Client on request all of Client's papers and property.

9. RESOLVING DISPUTES BETWEEN CLIENT AND ATTORNEY

a. Notice and Negotiation. If any dispute between Client and Attorney arises under this agreement regarding the payment of fees, Attorney's professional services rendered to or for Client, and any other disagreement, regardless of the nature of the facts or legal theories involved, both Attorney and Client agree to meet and confer within ten (10) days of written notice by either Client or Attorney that the dispute exists. The purpose of this meeting and conference will be to negotiate a solution short of further dispute resolution proceedings.

b. Mediation. If the dispute is not resolved through negotiation, Client and Attorney shall attempt, within fifteen (15) days of failed negotiations, to agree on a neutral mediator whose role will be to facilitate further negotiations within fifteen (15) days. If the Attorney and Client cannot agree on a neutral mediator, they shall request that the Contra Costa Bar Association select a mediator. The mediation shall occur within fifteen (15) days after the mediator is

selected. The Attorney and Client shall share the costs of the mediation, provided that the payment of costs and any attorney's fees may be mediated.

c. Arbitration. If mediation fails to produce a full settlement of the dispute satisfactory to both Client and Attorney, Client and Attorney agree to submit to binding arbitration under the rules the American Arbitration Association in the office nearest to Contra Costa, California, in accordance with the Commercial Rules of the American Arbitration Association prevailing at the time of arbitration. In such event, each side shall bear his/their own costs and attorney fees.

10. AMENDMENTS AND ADDITIONAL SERVICES. This written Agreement governs the entire relationship between Client and Attorney. All amendments shall be in writing and attached to this agreement. If Client wishes to obtain additional services from Attorney as defined in Paragraph 4, a photocopy of Paragraph 4 which clearly demotes which extra services are to be provided, signed and dated by both Attorney and Client and attached to this Agreement, shall qualify as an amendment.

11. SEVERABILITY IN EVENT OF PARTIAL INVALIDITY: If any provision of this agreement is held in whole or in part to be unenforceable for any reason, the remainder of that provision and of the entire agreement will be severable and remain in effect.

12. ERRORS AND OMISSIONS INSURANCE.

a. [Option 1] Per State of California Business & Professions Code §6147(a)(6), Attorney maintains errors and omissions insurance coverage applicable to the services to be rendered herein.

b. [Option 2] Attorney does not maintain errors and omissions coverage and has not filed with the State Bar an executed copy of a written agreement, as provided by state law and State Bar rules, guaranteeing payment of all claims established against Attorney by his/her clients for errors or omissions arising out of Attorney's practice of law. This statement is required by Business and Professions Code section 6148.

13. STATEMENT OF CLIENT'S UNDERSTANDING. I have carefully read this Agreement and believe that I understand all of its provisions. I signify my agreement with the following statements by initialing each one:

a. ___ I have accurately described the nature of my case in Paragraph 2;

b. ___ I will remain in control of my case and assume responsibility for my case as described in Paragraph 3;

c. ___ The services that I want Attorney to perform in my case are identified by the word "YES" in Paragraph 4. I take responsibility for all other aspects of my case;

d. ___ I accept the limitations on Attorney's responsibilities identified in Paragraph 5;

e. ___ I shall pay Attorney for services as described in Paragraph 6;

f. ___ I will resolve any disputes 1 may have with Attorney under this Agreement in the manner described in Paragraph 9;

g. ___ I understand that any amendments to this Agreement shall be in writing, as described in Paragraph 10;

h. ___ I acknowledge that 1 have been advised by Attorney that I have the right to consult with another independent attorney to review this Agreement and to advise me on my rights as a client *before* I sign this Agreement.

Dated: _____ _____
Client

Dated:_____ _____
Attorney

*Prepared by M. Sue Talia

APPENDIX 7: SAMPLE LIMITED SCOPE LEGAL SERVICES RETAINER AGREEMENT (No. 3)*

This Limited Services Agreement ("Agreement") is entered into between _____ ("Client"), and _____ ("Attorney"). They agree as follows:

1. Attorney's Explanation of the Terms of This Agreement

As Attorney has explained to Client, this Agreement is different from the usual attorney-client agreement for several reasons. First, unlike the usual agreement, this Agreement is for (a) limited legal service(s), rather than for the complete array of services that lawyers often provide to their clients in the pre-litigation and litigation phases of a lawsuit. Second, in this Agreement, Client has agreed to do a number of different things, or to arrange for another person to complete these tasks. Third, the total fee will be less than the Attorney's normal full-service attorney's fee, because the scope of the legal services that Attorney has agreed to provide to client is limited to those checked below and/or the following:_____

_____

_____

2. Scope of Legal Representation.

A. The Limited Legal Service(s) That Attorney Has Promised To Provide. The promised limited legal services promised in this Agreement are:

___ Advice re: availability of alternative means to settle dispute/agency referral

___ Evaluation of client's self-diagnosis/advice as to legal rights

___ Service Problems: Needs assistance with service by posting or publication

___ Review of correspondence and court documents; preparation of documents to be preparation

___ Factual Investigation: contacting witnesses, public record searches, interviews of experience

___ Legal Research and analysis

___ Negotiation of voluntary separation agreement to settle substantive issues

___ Assistance with or preparation of preliminary or evidentiary motions

___ Pre-mediation/pre-settlement conference legal consult

___ Post-mediation agreement review

___ Backup and troubleshooting during trial

___ Assistance or negotiation of discovery issues/disputes during litigation

___ Full scale legal representation at emergency hearing/pendente lite stage

___ Full scale legal representation throughout litigation

___Counseling or procedural assistance with appeal

B. Services Not Listed Above Will Not Be Provided. If a legal service is not listed in Para. 2 (A), Attorney has not agreed to provide it to Client. In this matter, the excluded services include, but are not limited to: _____

_____

_____

Again, the true test is whether the service is listed in Para. 2 (A). If not, Attorney will not provide it.

3. Effective Date of Agreement.

This Agreement will take effect upon the execution of it by both parties, i.e., at a time when both parties have signed it.

4. Automatic Termination of Agreement. This Agreement automatically will terminate when Attorney has provided the services set forth herein without any further act or communication by either Attorney or Client. If Attorney requests Client to do so, Client will support, as requested by Attorney, Attorney's right to stop representing Client when Attorney has met his obligations.

5. Attorney's Fee.

Attorney will charge Client the following in this matter:

A. An initial retainer fee in this matter in the amount of $ _____, which Attorney will expend at Attorney's hourly rate of $_____. The unexpended portion (if any) will be returned to Client.

B. Attorney's hourly rate in this matter will be $_____ .

C. Attorney may agree to "cap" the total fee (the maximum amount that Attorney will charge) at the total amount of $_____ .Yes___ No___.

D. Attorney may agree to Charge Client a total fee in the amount of $_____ , whether or not Attorney spends more or less than_____ hours on this matter. Yes___. No___.

6. Costs, Expenses, and Other Expenditures.

There may be additional costs and expenses in this matter, for example, filing fees; the costs of transcribing testimony taken at a hearing or trial; subpoena costs; an expert's fees (if appropriate for the matter); the costs of an investigator or of other methods to discover and obtain factual information; document-reproduction expenses; discovery costs (including those of depositions); out-of-jurisdiction travel, lodging, meal, and related expenses; the costs of long-distance phone calls, facsimile transmissions; other forms of communication; and the costs required to reasonably conduct on-line legal research (if necessary). Client, not Attorney, is responsible for these costs.

7. Obligations of Client.

To help Attorney represent Client effectively, and to reduce the costs of the representation, Client agrees:

A. At Attorney's request, to provide and to help Attorney obtain all information (in whatever form it may appear) that Client or someone to whom Client may make an appropriate request possesses;

B. To make himself or herself available for any meetings, interviews, or other events that Attorney requires, including at Attorney's office if requested;

C. To carefully consider Attorney's advice before making any major decisions;

D. To make himself/herself available to provide sworn testimony, e.g., in a deposition, affidavit, trial or other proceedings, when Attorney requests this.

E. To immediately tell Attorney if and when Client moves (changes residences), changes jobs, changes a phone number or other electronic means of communication, or otherwise makes it difficult for Attorney to communicate with Client;

F. To inform Attorney about any new developments or information in the matter, e.g., court notices, letters from the opposing party, new factual developments, or other similar developments;

G. To respond to Attorney's communications (Letters, telephone calls, or other forms of electronic forms of communication) as soon as reasonably possible;

H. To otherwise, as indicated by Attorney, help Attorney provide the services identified in Para. 2(A) and to effectively represent Client; and

I. To perform, or have another person or entity perform, the following additional tasks:

8. Possible Conflicts of Interest. If Attorney determines that he represents another client whose interests conflict, or are likely to conflict, with Client's interests, Attorney reserves the right to terminate this Agreement, while protecting the confidentiality of any privileged information that Client has provided to Attorney.

9. Ground To Terminate This Agreement.

A. Client may terminate this Agreement for any or no reason, although Client still will be legally obligated under this Agreement to meet Client's obligations to Attorney, including the obligation to pay to Attorney the agreed-upon attorney's fee to the extent it has been earned.

B. Attorney may terminate this Agreement if, in Attorney's sole judgment, Client has failed to fulfill one of Client's material obligations under this Agreement, or for other good cause, or for any other reason authorized by law (including the ethical rules that govern lawyers).

10. Client's Informed Consent.

Client has carefully read this Agreement and considered the additional information and advice that Attorney has provided to Client. Client understands the possible risks and benefits of the limited-service representation described in this Agreement. Understanding those possible risks and benefits, Client voluntarily, knowingly and intentionally enters into this Agreement with Attorney.

Date: _____ _____
Attorney

Date: _____ _____
Client

*Prepared by Maryland Legal assistance Network, available at:
http://www.unbundledlaw.org/retainer_agreements/legal_services.htm

APPENDIX 8: STATE OF MAINE SUPREME JUDICIAL COURT LIMITED REPRESENTATION AGREEMENT (Sample No. 4)*

Date:_____, 20__.
1. The client, _____, retains the attorney,_____, to perform limited legal services in the following matter:_____
_____
_____

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;

1.____ Discovery: interrogatories, depositions, requests for document production;

m.____ Planning for negotiations;

n.____ Planning for court appearances;

0.____ Standby telephone assistance during negotiations or settlement conferences;

p.____ Referring client to expert witnesses. special masters, or other counsel;

q ____ Counseling client about an appeal;

r.____ Procedural assistance with an appeal and assisting with substantive legal argument in an appeal;

s.____ Provide preventive planning and/or schedule legal checkups;

t.____ Other: _____
_____
_____

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

a. Hourly Fee:

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

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

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

b. Payment from Deposit:

For a continuing consulting role, client will pay to attorney a deposit of $_____, to be received by attorney on or before _____, and to be applied against

attorney fees and costs incurred by client. This amount will be deposited by attorney in attorney trust account. Client authorizes attorney to withdraw funds from the trust account to pay attorney fees and costs as they are incurred by client. The deposit is refundable. If, at the termination of services under this agreement, the total amount incurred by client for attorney fees and costs is less than the amount of the deposit, the difference will be refunded to client. Any balance due shall be paid within thirty days of the termination of services.

c. Costs:

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

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

a. the attorney is not promising any particular outcome,

b. the attorney has not made any independent investigation of the facts and is relying entirely on the client limited disclosure of the facts given the duration of the limited services provided, and

c. the attorney has no further obligation to the client after completing the above described limited legal services unless and until both attorney and client enter into another written representation agreement.

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

WE HAVE EACH READ THE ABOVE AGREEMENT BEFORE SIGNING IT.

Signature of client _____

Signature of attorney _____

Date: _____

* This form was approved by the Maine Supreme Judicial Court. Used in conjunction with Rule 3.4(i), a rule allowing Maine attorneys to provide limited representation in litigation, see Appendix 22, the 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.

APPENDIX 9: SAMPLE LIMITED SCOPE LEGAL SERVICES RETAINER AGREEMENT (No. 5)*

Attorney_____
Client_____
Date: _____

This is a legally binding contract. Please read it carefully and make certain that you understand all of the terms and conditions that apply to you ("Client"), and to your attorney ("Attorney"). We encourage you to take this contract home with you, to review it with another attorney if you wish, and to ask us any questions you may have before signing. By signing this agreement you acknowledge that you have carefully read and fully understand all of the following terms and you intend to be legally bound by them.

1. Limited scope of representation. Client employs the attorney to act only in the limited matter(s) specifically described herein. Attorney agrees to perform the following specific tasks(s) in accordance with the mutual terms and conditions set forth in this agreement:

_____

_____

_____

Attorney shall have no responsibility, and Client shall take full responsibility, for any other matter.

2. Client responsibilities and control: Client understands and agrees to retain control over the case at all times and be responsible for all decisions made in the course of the case, unless noted otherwise in this Agreement. Client affirmatively states that Client will handle all issues and tasks not specifically undertaken by attorney. Client shall cooperate with Attorney by complying with all requests for information and keep attorney advised of all new information that relates to services listed above.

3. Additional services and representation. This written Agreement governs the entire relationship between Client and Attorney. All amendments shall be in writing and signed by Client and Attorney.

4. Termination of representation. Either party may terminate this Agreement by giving written notice to the other subject to court approval if necessary. Upon termination, Client will remain obligated to pay Attorney at the agreed rate for all services provided and to reimburse attorney for all costs provided under this agreement.

5. Fees and costs. Client agrees to pay Attorney for the services set forth herein as follows: _____

6. Attorneys fees and costs. In the event that suit is brought by either party for breach of contract, the breaching party shall be entitled to attorney's fees and costs.

7. No guarantees of successful outcome. Client acknowledges that Attorney has made no guarantees as to the outcome of Client's legal matter.

8. Governing law. This agreement shall be governed by the law of the State of Florida.

9. Client's understanding. By signing below, Client affirms that Client has carefully read this agreement, understands all of its provisions, agrees to them freely and voluntarily and intends to be bound by them.

BY SELECTING ONLY A LIMITED SERVICE OR SERVICES, CLIENT UNDERSTANDS THAT THERE MAY BE OTHER ISSUES AND CONSIDERATIONS WHICH ARE VERY IMPORTANT TO THEIR CASE, BUT WHICH THEY DO NOT WANT

ATTORNEY TO HANDLE. CLIENT TAKES COMPLETE RESPONSIBILITY FOR EVERYTHING THAT CLIENT DOES NOT WANT ATTORNEY TO DO.

Date: _____ _____
Client

Date: _____ _____
Attorney

* This form is being considered by the Family Law Section of the Florida Bar, as the Supreme Court of Florida considers proposed rules on limited legal assistance.

APPENDIX 10: SAMPLE LIMITED SCOPE LEGAL SERVICES RETAINER AGREEMENT (No. 6)*

THIS AGREEMENT is entered into this day of , 2003, in Seattle, Washington, by and between CLIENT (hereinafter referred to as "Client") and LIEBERMAN & SMITH, LLP (hereinafter referred to as "Counsel").

I. Services.

Client hereby retains Counsel to perform the following limited legal services:

A. Review and analyze opposing party's documents requesting temporary orders.

B. Advise Client as to best manner and means of responding to said documents.

C. Assist in preparation of responsive documents, declarations and exhibits.

D. Assist in preparation of arguments for hearing. [OR]

E. Appear on client's behalf at the hearing for _____currently noted for (Date) _____, 2003.

Counsel shall file a Limited Notice of Appearance in this action, and representation of Client shall terminate as per section VII of this Agreement.

Client and Counsel are in full agreement that Counsel's representation and appearance in this matter shall be limited to those services stated herein. Nothing in this Agreement shall be construed as authorizing Counsel to accept any service of any documents in this matter, nor shall this Agreement permit or require Counsel to respond to any pleadings other than those specifically listed above.

II. Fees.

Client shall pay Counsel's fees as follows:

A. Client agrees to pay Counsel at a rate of $_____ per hour and $_____ per hour of court time for all services, excluding costs.

B. The responsibility to provide legal services will be accepted and work will begin when Counsel receives an advance fee deposit of $ _____.

III. Advance Fee Deposit.

The advance fee deposit will be placed into Counsel's trust account and withdrawn to pay for costs as costs are incurred. Fee payments shall be withdrawn from the trust account on the 5th day of the month after the month covered by each monthly statement mailed to Client. Total fees that may be incurred in this case cannot be accurately predicted. The initial advance fee deposit in no way represents a guarantee or representation of the total fees that may be incurred in this case.

IV. IOLTA Trust Account.

Unless otherwise directed, the advance fee deposit shall be placed into an IOLTA Trust Account, which shall remit no interest to Client. Interest earned from this account will be credited to the Washington State Bar Association's Charitable Foundation.

V. Advances, Expenses, and Other Charges.

Client shall be responsible for advances and expenses as follows:

A. Client authorizes Counsel to retain and Client agrees to pay the fees of any person or entity hired by Counsel to provide services deemed reasonably necessary to prosecute Client's claims.

B. Client agrees to reimburse Counsel for all out-of-pocket expenses paid by Counsel. Such expenses include, but are not limited to, charges for: serving papers, messenger services, witnesses, long distance telephone calls, copying materials, clerical assistance, and

postage. In the absence of a second written agreement, Client will pay these expenses as they are incurred.

VI. Client Responsibilities.

Client agrees as follows:

A. To cooperate fully with Counsel and to provide all information known by or available to Client as to the matter, including providing Counsel at all times with a current address and telephone number.

B. Client will pay the charges incurred, as billed, within fifteen (15) days of the billing date. Any outstanding balances not paid when due as agreed above will accrue an interest charge of one percent (1%) per month on the outstanding balance, including accrued interest from the due date until paid.

VII. Termination of Representation.

A. The parties agree that the relationship established by this Agreement shall terminate at the conclusion of the hearing on _____. Said hearing is currently noted for (Date) _____, 2003. However, if a continuance of the hearing date is requested by either party and granted, Counsel's representation in this matter shall continue and shall terminate only upon completion or cancellation of the hearing.

B. This Agreement is also subject to termination as follows:

1. Counsel reserves the right to withdraw from this matter if Client fails to honor this Agreement or for any reason as permitted or required under the Code of Professional Responsibility. Notification of withdrawal shall be made in writing to Client.

2. Client reserves the right to terminate the representation at any time by notifying Counsel in writing of such termination.

3. In the event of termination by mutual consent or by action of Client, Client shall reimburse Counsel for all charges incurred.

VIII. Commencement of Representation.

Representation of Client by Counsel in this matter will not commence until Counsel receives a copy of this agreement signed by Client and any advance deposit payable at the outset of this representation is in fact paid by Client.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

Dated: _____ Dated:_____

LIEBERMAN & SMITH, LLP

_____ _____

SUZANNE G. LIEBERMAN
Counsel

CLIENT NAME
Client

* Prepared by Lieberman & Smith, LLP, a Washington law firm.

APPENDIX 11: SAMPLE LIMITED SCOPE LEGAL SERVICES RETAINER AGREEMENT (No. 7)*

This is an agreement between us, the Maryland Volunteer Lawyers Service, and you. It contains the basic terms of our agreement to provide you with limited legal advice and assistance so that you can better represent yourself in your domestic law case.

Scope of Legal Advice: You have asked us to provide legal advice. We will assist you by providing you with information regarding the divorce process. We will provide you with forms to enable you to file for divorce on your own. We have not agreed to represent you by, for example, filing the forms for you, going to a hearing or trial with you, preparing your case for trial or providing any legal help other than the assistance provided in this interview.

Duration of Legal Help: Our agreement to advise you begins immediately and will end at the completion of our interview today. We do not promise to help you after that.

Cooperation: To advise you effectively, we need your cooperation. You agree to answer any questions we ask you.

Attorney's Fees: We will not charge you an attorney's fee for our advice in completing the forms.

Costs: There are costs that are part of a lawsuit. We will not pay any costs in your case. Rather, you will be responsible for all costs.

Declining to Advise: We may decline to give you advice after interviewing you if:

1. We have a conflict of interest - for example we have already advised your spouse or have provided representation to a spouse or partner or family member in the past.
2. Your legal problems are beyond the scope of this project.
3. For any other reason set forth in the Maryland Rules of Professional Conduct.

_____ _____

Your signature Attorney's signature

Date: Date:

*Prepared by the Maryland Volunteer Lawyer Service, and available at http://www.Unbundledlaw.org/retainer_agreements/agreement_limited.htm

APPENDIX 12: SAMPLE COACHING SERVICES AGREEMENT (No. 1)*

IDENTIFICATION OF PARTIES: This agreement, executed in duplicate with each party receiving an executed original, is made between _____, hereafter referred to as "Coach," and _____, hereafter referred to as "Client."
NATURE OF CASE: Client is requesting services from Coach in the following matter: _____
_____
_____

1. CLIENT RESPONSIBILITIES AND CONTROL: Client will remain in control of his/her own case at all times. This means that Client will be responsible for understanding the issues, resolution options and potential consequences of those resolution options. In addition, Client agrees to:

A. Cooperate with Coach or his/her office by complying with all reasonable requests for information in connection with the matter for which Client is requesting services.

B. Decide which parts of the case Client wishes to discuss with Coach.

C. Review and evaluate all information provided by Coach.

D. Keep Coach or his/her office advised of Client's concerns and any information pertinent to Client's case.

E. Provide Coach with copies of all correspondence to and from Client relevant to the case.

F. Notify Coach of any pending negotiations, hearings, contractual deadlines or litigation.

G. Keep all documents related to the case in a file for review by Coach.

H. Sign all relevant papers, agreements or findings relative to the case.

I. Immediately notify Coach of any changes of work or home addresses or telephone numbers of the Client.

J. Immediately notify Coach if the Client receives any new pleading, motion, letter, or other documents from the other party, the other party's lawyer, any expert, appraiser, or evaluator hired by either party or appointed by the Court, or any Special Master, or any documents from the Court, and provide the Coach with a copy of the item received, as well as the date it was received by the Client.

2. SCOPE OF SERVICES: Client requests Coach to perform or NOT TO PERFORM the following services related to the family law issues identified here or below:

_____
_____
_____
__

(Indicate YES or NO)

A. ___ Advice about Client's rights and responsibilities

B. ___ Advice about the law relevant to Client's case.

C. ___ Advice about law and strategy related to an ongoing mediation, negotiation or litigation.

D. ___ Information about document preparation.

E. ___ Assistance with document preparation.

F. ___ Information about fact gathering and discovery.

G. ___ Assistance with drafting discovery requests.

H. ___ Assistance with running computer support programs.

I ___ Guidance and procedural information regarding filing and serving documents

J. ___ Advice about negotiation and the preparation and presentation of evidence.

K. ___ Legal research.

L. ___ Coaching on trial or negotiating techniques.

M. ___ Review and analysis of Client's trial strategy.

N. ___ Advice about an appeal.

O. ___ Procedural assistance with an appeal.

P. ___ Assistance with substantive legal argument in an appeal

3. LIMITATION OF COACH'S RESPONSIBILITIES: Coach shall exercise due professional care and observe strict confidentiality in providing those services identified by the word "YES" in paragraph 2 above. In providing those services, Coach SHALL NOT:

A. Represent, speak for, appear for, or sign papers on Client's behalf.

B. Provide services in paragraph 2 which are identified with the word "NO"

C. Make decisions for Client about any aspect of the case.

D. Determine the assets and obligations of Client's marriage, their character, or their value.

E. Determine an appropriate division of the assets and obligations of Client's marriage.

F. Litigate on Client's behalf.

G. Protect Client's property by means of restraining orders while discovery and/or negotiations are in progress.

The Client may request that Coach provide additional services. If Coach agrees *to* provide additional services, those additional services will be specifically listed in an amendment *to* this Agreement, and initialed and dated by both parties. The date that both the Coach and the Client initial any such list of additional services *to* be provided will be the date on which the Coach becomes responsible for providing those additional services. If the Client decides *to* retain the Coach as the Client's Attorney of record for handling the entire case on the Client's behalf, the Client and the Coach will enter into a new written Agreement setting forth that fact, and the Coach's additional responsibilities in the Client's case.

4. METHOD OF PAYMENT FOR SERVICES:

A. HOURLY FEE: The current hourly fee charged by Coach for services under this agreement is as follows:

Coach: _____

Associate: _____

Paralegal: _____

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.

Coach will charge in increments of one tenth of an hour, rounded off for each particular activity to the nearest one tenth of an hour. The hourly fee shall be payable at the time of the service.

If, while this agreement is in effect, Coach increases the hourly rate(s) being charged to clients generally for Coach's fees, that increase may be applied to fees incurred under this

agreement, but only with respect to services provided thirty days or more after written notice of the increase is mailed to Client. If Client chooses not to consent to the increased rate(s), Client may terminate Coach's services under this agreement by written notice effective when received by Coach.

B. PAYMENT FROM DEPOSIT: For a continuing consulting role, Client will pay to Coach a deposit of $ _____ to be received by Coach on or before _____, and to be applied against Coach's fees and costs incurred by Client. This amount will deposited by Coach in Coach's trust account. Client authorizes Coach to withdraw the principal from the trust account to pay Coach's fees and costs as they are incurred by Client. Any interest earned will be paid, as required by law, to the State Bar of California to fund legal services for indigent persons. The deposit is refundable. If, at the termination of services under this agreement, the total amount incurred by Client for Coach's fees and costs is less than the amount of the deposit, the difference will be refunded to Client.

C. COSTS: Client shall pay Coach's 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's case including filing fees, investigation fees, deposition fees and the like shall be paid directly by Client. Coach shall not advance costs to third parties on Client's behalf.

Client acknowledges that Coach has made no promises about the total amount of Coach's fees to be incurred by Client under this agreement.

5. DISCHARGE OF COACH: Client may discharge Coach at any time by written notice effective when received by Coach. Unless specifically agreed by Coach and Client, Coach will provide no further services and advance no further costs on Client's behalf after receipt of the notice. Notwithstanding the discharge, Client will remain obligated to pay Coach at the agreed rate for all services provided and to reimburse Coach for all costs incurred prior to such discharge.

6. WITHDRAWAL OF COACH. Coach may withdraw at any time as permitted under the Rules of Professional Conduct of the State Bar of California. The circumstances under which the Rules permit such withdrawal include, but are not limited to, the following: A) The client consents, B) the client's conduct renders it unreasonably difficult for the Coach to carry out the employment effectively, and C) the client fails to pay Coach's fees or costs as required by his or her agreement with the Coach. Notwithstanding Coach's withdrawal, Client will remain obligated to pay Coach at the agreed rate for all services provided, and to reimburse Coach for all costs incurred before the withdrawal. At the termination of services under this agreement, Coach will release promptly to Client on request all of Client's papers and property.

7. DISCLAIMER OF GUARANTY. Although Coach may offer an opinion about possible results regarding the subject matter of this agreement, Coach cannot guarantee any particular result. Client acknowledges that Coach has made no promises about the outcome and that any opinion offered by Coach in the future will not constitute a guaranty.

8. ARBITRATION OF FEE DISPUTE. If a dispute arises between Coach and Client regarding Coach's fees or costs under this agreement and Coach files suit in any court other than small claims court, Client will have the right to stay that suit by timely electing to arbitrate the dispute under Business and Professions Code sections 6200-6206, in which event Coach must submit the matter for such arbitration.

A. COACH'S FEES AND COSTS IN ACTION ON AGREEMENT. The prevailing party in any action or proceeding to enforce any provision of this agreement will be awarded reasonable Coach's fees and costs incurred in that action or proceeding or in efforts to negotiate the matter.

B. SEVERABILITY IN EVENT OF PARTIAL INVALIDITY: If any provision of this agreement is held in whole or in part to be unenforceable for any reason, the remainder of that provision and of the entire agreement will be severable and remain in effect.

9. ERRORS AND OMISSIONS INSURANCE:

[Option 1] Per State of California Business & Professions Code §6147(a)(6), Coach maintains errors and omissions insurance coverage applicable to the services to be rendered herein.

[Option 2] Coach does not maintain errors and omissions coverage and has not filed with the State Bar an executed copy of a written agreement, as provided by state law and State Bar rules, guaranteeing payment of all claims established against Coach by his/her clients for errors or omissions arising out of Coach's practice of law. This statement is required by Business and Professions Code section 6148.

10. ENTIRE AGREEMENT: This Agreement is the complete Agreement between the Client and the Coach. If the Client and the Coach decide to change or amend this Agreement in any way, the change must be in writing and attached to this Agreement.

11. EFFECTIVE DATE OF AGREEMENT. The effective date of this agreement will be the date when, having been executed by Client, one copy of the agreement is received by Coach and Coach receives the deposit required by Paragraph 4 of this agreement on or before _____ _____. Once effective, this agreement will, however, apply to services provided by Coach on this matter before its effective date.

The foregoing is agreed to by:

Dated:

_____
Client

Dated:

_____
Coach

*Prepared by M. Sue Talia

APPENDIX 13: SAMPLE COACHING SERVICES AGREEMENT (No. 2)*

Date: _____

Client's Name, Address, and Phone Number: _____

_____

This is our agreement that I will be available from time to time whenever you wish for "coaching."

We have agreed that:

You are making absolutely no commitment to use my services at any time in the future.

I charge $___per hour, and I calculate time in [tenths] [fourths] of an hour. You're welcome to call me on the phone or come to see me in my office by appointment. When you call me on the phone, I'll keep track of the time we spend and ask you periodically to pay me for the time we have spent together.

I am not representing you in any legal matter. This means that unless you and I expressly agree for me to undertake any services for you after we visit, you don't expect me to do anything else, and I don't expect you to pay me anything else. If we do decide for me to do something else for you, we'll sign an engagement letter at that time.

_____ _____

Client Coach

Date: _____

*Lee Borden offers this form agreement with this advice to prospective clients: "This is the text of an agreement you can offer to someone you would like to serve as your coach. It gives the coach comfort that he or she is not taking on additional liability, and it gives you comfort that you're not agreeing to pay anything beyond the time you choose to spend with the coach, that is that you're staying in control. It's phrased as a communication from the coach to you, but you could just as easily flip it and phrase it as a communication from you to the coach."

APPENDIX 14: CHECKLIST FOR INITIAL INTERVIEW: LIMITED SCOPE REPRESENTATION*

I met with _____on _____, 200__
Regarding _____
We discussed the following issues:
Date of Separation_____ Custody _____Visitation _____
Move away _____ Child Support_____ I did/did not run Dissomasters ____
Spousal Support _____ Amount _____ Duration _____
Restraining orders re_____
Division of real property_____ Valuation of real property _____
Characterization of real Property_____
Business Interests _____
Bank Accounts _____
Personal property_____
Employee Benefits _____
Medical Insurance _____
Collection of past due support _____Wage Assignment _____
Stock Options _____
Stocks and bonds _____
Other:_____
_____
We discussed the following coaching options:_____
_____
_____
I gave the client the following materials:
Issues checklist ____ Tasks checklist _____ Coaching agreement # _____
Handout re restraining orders _____*Client's Guide to Limited Legal Services* ____
Handout re personal property division _____ Blank court forms ____
Other: _____
_____
_____

*Prepared by M. Sue Talia

APPENDIX 15: CHECKLIST FOR APPORTIONING TASKS IN LIMITED SCOPE REPRESENTATION*

Use this form to allocate tasks between attorney/coach and client. Then, *make this the basis of a formal fee agreement*. Attach this form to your revised fee agreement if the scope of representation changes.

TASKS	**ATTORNEY TO DO:**	**CLIENT TO DO:**
Draft papers to start divorce		
File and serve papers		
Draft Motions		
Draft affidavits and declarations		
Analyze case and advise of legal rights		
Procedural advice		
Formulate strategy and tactics		
Investigate facts; which issues?		
Obtain documents; which ones?		
Draft correspondence		
Review correspondence and pleadings		
Appear in court		
Run computer support programs		
Prepare subpoenas for documents		
Take depositions		
Review depositions and documents obtained from other sources		

Legal research and analysis

Contact witnesses

Draft or analyze settlement proposals

Select expert witnesses

Draft orders and judgments

Outline testimony

Trial or negotiation preparation

Review orders and judgments that client drafts

Review other documents to be drafted by client

Draft orders

Draft disclosure documents

Advise regarding appeal

Enforce orders

Draft other papers as necessary

Other:

Dated: Dated:

_____ _____

Coach

*Prepared by M. Sue Talia

APPENDIX 16: CHECKLIST FOR APPORTIONING ISSUES IN LIMITED SCOPE REPRESENTATION*

These issues will be handled start to finish by:

ISSUE	ATTORNEY TO DO:	CLIENT TO DO:
Custody Dispute		
Visitation dispute		
Set or modify child support		
Set or modify spousal support		
Collect past due child support		
Collect past due spousal support		
Real property valuation and division		
Personal property division[1]		
Business interests		
Bank accounts		
Investments		
Pension rights[2]		
Stocks and bonds		
Stock Options[3]		

[1] This means furniture and pots and pans. Think twice before you pay someone to do this for you. It rarely justifies the cost of the professional fees.

[2] This is extremely technical. Most attorneys farm this out to specialists because it is so easy to make a mistake.

[3] See comments on pension rights; this is extremely technical and should be handled by a professional.

Value and Divide Employee
benefits

Health Insurance

Life Insurance

Value or divide other assets/debts

Enforce orders

Pursue an appeal

Other Issues:

Dated:

Dated:

_____

_____

Coach

Client

* Prepared by M. Sue Talia

APPENDIX 17: FOLLOW-UP CHECKLIST ON APPORTIONMENT OF TASKS OR ISSUES*

Client:_____
Coach and client consulted on: _____
By _____, client will:
Obtain the following documents:
_____
_____
_____
_____
Contact the following witnesses:
_____
_____
_____
_____
_____
___
Complete the following forms:
_____
_____
_____
_____
Prepare the following information for coach:
_____
_____
_____
_____
Take the following action:
_____
_____
_____
_____
Other:
_____
_____
_____
_____

By _____, coach will:
Draft the following documents:
_____
_____
_____
_____
Prepare the following forms:
_____

_____
__

Contact the following witnesses:

_____
_____
_____
_____

Research the law/procedure on:

_____
_____
_____
_____

Review the following documents_____
_____
___

Other:

_____
_____
_____
_____

Other assignments:

_____
_____
_____
_____

*Prepared by M. Sue Talia

APPENDIX 18: TICKLER CHECKLIST FOR LIMITED SCOPE REPRESENTATION (KEEP ON TOP OF FILE)*

Client: _____ Case opened: _____

Initial Intake Checklist completed and copy given to client on _____

Revised dated _____, _____, _____, _____, _____, _____, _____, _____

Materials given to client on (date):

Unbundling Description _____

Brochure _____
Referral information _____
Directions to court _____ Family Court Services _____ Facilitator _____ DCSS _____
Other: _____

Worksheet re scope of services and services NOT performed _____

Modified and signed by attorney and client (new form for each change in scope)

Dated: _____, _____, _____, _____

Notice of Limited Scope Representation served and filed (if going of record) _____

Documents in hand signed by client:

Document:	Date:	Modified on:
Intake Checklist	_____	_____
Issues to be Apportioned	_____	_____
Tasks to be Apportioned	_____	_____
Retainer Agreement No. _____	_____	_____
Other: _____	_____	_____
Other: _____	_____	_____
Other: _____	_____	_____

Case Conclusion:

Closing letter sent _____

Notice of Completion sent and served _____

Notice of Withdrawal or Substitution of Attorney sent and served _____

Case Closed: _____

Other Comments: _____

*Prepared by M. Sue Talia

APPENDIX 19: NOTICE OF LIMITED APPEARANCE FORM*

SUPERIOR COURT OF WASHINGTON
COUNTY OF KING

In re the Marriage of: , Petitioner, and , Respondent.	**NO.** 02-0-00000-0 SEA LIMITED NOTICE OF APPEARANCE Hearing Date: Hearing Time:

COMES NOW the undersigned attorney and hereby enters a Limited Notice of Appearance for the Respondent _____ in this case, pursuant to Superior Court Civil Rule 70.1.

Counsel's appearance in this matter shall be limited in scope to responding to the Motion for Contempt filed against Respondent, and appearing for Respondent at the hearing noted for November 26, 2002. Counsel's representation of Respondent shall terminate at the conclusion of the hearing noted for that date.

This Notice of Appearance does not authorize the undersigned attorney to accept service of any other pleadings in this matter.

DATED this _____ day of November, 2002.

LIEBERMAN & SMITH, LLP

_____

Suzanne G. Lieberman, WSBA # 26849
Attorneys for Petitioner

* Prepared by Lieberman & Smith, LLP, a Washington law firm.

APPENDIX 20: CALIFORNIA ENTRY OF LIMITED APPEARANCE FORM*

FL-950

ATTORNEY OR PARTY WITHOUT ATTORNEY (*Name, state bar number, and address*)

FOR COURT USE ONLY

TELEPHONE NO. (Optional): FAX NO. (Optional):

E-MAIL ADDRESS (*Optional*): STATE BAR NUMBER:

ATTORNEY FOR (*Name*):
SUPERIOR COURT OF CALIFORNIA, COUNTY OF
STREET ADDRESS:

MAILING ADDRESS:

CITY AND ZIP CODE:

BRANCH NAME:
PETITIONER/PLAINTIFF:

RESPONDENT/DEFENDANT:

OTHER PARENT:

CASE NUMBER:

NOTICE OF LIMITED REPRESENTATION

☐ Amended

Attorney: and party: have agreed that attorney will provide limited

representation to the party

Attorney will represent the party only for the following issues

☐ Establish ☐ Enforce ☐ Modify child support ☐ Governmental (LCSA) ☐ Family

☐ Establish ☐ Enforce ☐ Modify spousal support

☐ Restraining order ☐ Civil ☐ Domestic Violence Protection Act

☐ Custody and Visitation (*describe in detail*):

☐ Division of property

☐ Pension Issues

☐ Contempt

☐ Other (describe in detail):

☐ *For (date(s)):*

☐ The client will substitute him or herself as attorney

☐ Other (*describe in detail*): ☐ at the end of the hearing

The attorney named above is "attorney of record," and available for service of process only for those issues specifically checked above. Service or notice to the attorney for any other issue shall not be deemed service on the party. For all other matters, the party should be served directly. The party's name, address and phone number are listed below for that purpose.

Name:

Address (for the purpose of service):

Phone: Fax:

This accurately sets forth our agreement for limited scope legal representation.

Date:

_____

Date: (TYPE OR PRINT NAME (SIGNATURE PARTY)

_____

Date: (TYPE OR PRINT NAME (SIGNATURE ATTORNEY)

Form Adopted for Mandatory Use

Judicial Council of California

FL-950

* Proposed Form, not yet approved

PETITIONER/PLAINTIFF: CASE NUMBER:

RESPONDENT/DEFENDANT:

OTHER PARENT:

PROOF OF SERVICE BY MAIL ☐ **PERSONAL SERVICE** ☐

1. At the time of service I was at least 18 years of age and not a party to this legal action.
2. I served a copy of the Notice of Limited Representation as follows (check either a or b below):

☐

a. **Personal service.** I personally delivered the *Notice of Limited Representation* as follows:
   (1) Name of person served:
   (2) Address where served:

   (3) Date served:
   (4) Time served:

☐

b. **Mail.** I deposited the *Notice of Limited Representation* in the United States mail, in a sealed envelope with
postage fully prepaid. The envelope was addressed and mailed as follows:

   (1) Name of person served:
   (2) Address:
   (3) Date of mailing:
   (4) Place of mailing (*city and state*)
   (5) I am a resident of or employed in the county where the *Notice* was mailed.

c. My residence or business address is (*specify*):

d. My phone number is (*specify*):

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

_____

(TYPE OR PRINT NAME) (SIGNATURE OF PERSON SERVING NOTICE

* Proposed Form, not yet approved

APPENDIX 21: CALIFORNIA FORM FL-955

FL-955

ATTORNEY OR PARTY WITHOUT ATTORNEY (*Name, state bar number, and address*) *FOR COURT USE ONLY*

TELEPHONE NO. : FAX NO. :

ATTORNEY FOR (*Name*):

SUPERIOR COURT OF CALIFORNIA, COUNTY OF

STREET ADDRESS:

MAILING ADDRESS:

CITY AND ZIP CODE:

BRANCH NAME:

PETITIONER/PLAINTIFF:

RESPONDENT/DEFENDANT:

OTHER PARENT/CLAIMANT:

CASE NUMBER:

APPLICATION TO BE RELIEVED AS COUNSEL
UPON COMPLETION OF LIMITED REPRESENTATION

1. I request an order to be relieved as counsel in this matter.
2. In accordance with the terms of an agreement between (*names*): ☐ petitioner ☐ respondent ☐ other parent/claimant and myself, I agreed to provide limited scope representation.
3. I was retained as attorney of record for the following limited scope services (*describe in detail*):

   ☐ see *Notice of Limited Scope Representation* (form FL-950).
4. I have completed all services within the scope of my representation and have completed all acts ordered by the court.
5. The last known address for the ☐ petitioner ☐ respondent ☐ other parent/claimant is:
6. The last known telephone number for the ☐ petitioner ☐ respondent ☐ other parent/claimant is:

NOTICE TO PARTY/CLIENT: Your attorney has filed this *Application to Be Relieved as Counsel Upon Completion of Limited Scope Representation* with the court stating that he or she no longer represents you in this action because the tasks that you agreed the Attorney would perform for you have been completed.

If you do not agree that these tasks have been completed and you want the attorney to continue to represent you until the Tasks are completed, you must file an *Objection to Application to Be Relieved as Counsel Upon Completion of Limited Scope Representation* (form FL-956) with the court within 15 calendar days of the date that this notice was served on you, asking the Court to require the attorney to remain your attorney in the action until these tasks are completed. You must also serve this *Objection* on your attorney and the other party. If you do not file a form FL-956, the court will grant your attorney's request.

Please refer to the *Proof of Service* on page 2 of this form to determine the date that this notice was served on you (if this form was served by mail, the date of service is 5 days after the date of mailing.

This procedure may be used ONLY if you believe that the attorney has not completed the tasks that he or she agreed to perform for you. It is NOT to be used to resolve other disagreements you may have with the attorney, such as disagreements concerning fees.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

_____ _____
(TYPE OR PRINT NAME) (SIGNATURE)

RESPONDENT/DEFENDANT:

OTHER PARENT:

PROOF OF SERVICE BY ☐ **PERSONAL SERVICE** ☐ **MAIL**

1. At the time of service I was at least 18 years of age and not a party to this legal action.

2. *I served a copy of the Application to Be Relieved as Counsel Upon Completion of Limited Scope Representation* and all attachments as well as a blank *Objection to Application to Bed Relieved as Counsel Upon Completion of Limited Scope Representation* as follows (*check either a. or b. below*).

   a. ☐ **Personal service.** I personally delivered the forms listed above and any attachments as follows:
      (1) Name of person served:
      (2) Address where served:

      (3) Date served:
      (4) Time served:

   b. ☐ **Mail.** I placed copies of the forms listed above in a sealed envelope with postage fully prepaid. The envelope was addressed and mailed as follows:
      (1) Name of person served:
      (2) Address:

      (3) Date of mailing:
      (4) Place of mailing (*city and state*)
      (5) I live in or work in the county where the forms were mailed.

3. Server's information:
   a. Name:
   b. Home or work address:

   c. Telephone number:

I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

Date:

_____ ►_____
(TYPE OR PRINT SERVER'S NAME) (SERVER TO SIGN HERE)

APPENDIX 22: CALIFORNIA FORM FL-956

FL-956

ATTORNEY OR PARTY WITHOUT ATTORNEY (*Name, state bar number, and address*) *FOR COURT USE ONLY*

TELEPHONE NO. : FAX NO. :

ATTORNEY FOR (*Name*):

SUPERIOR COURT OF CALIFORNIA, COUNTY OF

STREET ADDRESS:

MAILING ADDRESS:

CITY AND ZIP CODE:

BRANCH NAME:

PETITIONER/PLAINTIFF:

RESPONDENT/DEFENDANT:

OTHER PARENT/CLAIMANT:

CASE NUMBER:

OBJECTION TO APPLICATION TO BE RELIEVED AS COUNSEL UPON COMPLETION OF LIMITED SCOPE REPRESENTATION

1. I am the ☐ petitioner/plaintiff ☐ respondent/defendant ☐ other parent/claimant in this case.
2. I do not believe that all the services that my attorney agreed to do for me are completed.
3. I request that the court not allow my attorney to withdraw from representation until those services have been completed. The services that were agreed upon that remain to be completed are (*specify*):

The reason that I think these tasks are supposed to be completed is (*specify*):

NOTICE

If you object to your attorney's *Application to Be Relieved as Counsel Upon Completion of Limited Scope Representation* (form FL-955), you must file this notice with the clerk of the court where the *Application* was filed within 20 days of the day that the form was put in the mail to you. If you were personally served, you have to file this form 15 days from the day you were served. That date is on the proof of service on the third page of the *Application* (form FL-955). You must have the attorney and the other party served with this *Objection* form (FL-956) as well. A blank proof of service is on the back of this form.

I declare under penalty of perjury under the laws of the State of California that the above information is true and correct.

Date: ►_____

(SIGNATURE)

Form Approved for Optional Use
Judicial Council of California
FL-956 [New July 1, 2003]

OBJECTION TO APPLICATION TO BE RELIEVED AS COUNSEL UPON COMPLETION OF LIMITED SCOPE REPRESENTATION

Cal. Rules of Court, rule5.171
www.courtinfo.gov

PETITIONER/PLAINTIFF: CASE NUMBER:

RESPONDENT/DEFENDANT:

OTHER PARENT:

PROOF OF SERVICE BY ☐ **PERSONAL SERVICE** ☐ **MAIL**

1. At the time of service I was at least 18 years of age and not a party to this legal action.

2. I served a copy of the completed *Objection to Application to Be Relieved as Counsel Upon Completion of Limited Scope Representation* as follows (*check a. or b.* below):

a. ☐ **Personal service.** I personally delivered the forms listed above and any attachments as follows:
(1) Name of person served:
(2) Address where served:

(3) Date served:
(4) Time served:

b. ☐ **Mail.** I deposited the forms and any attachments in the United States mail, in a sealed envelope with postage fully prepaid. The envelope was addressed and mailed as follows:
(1) Name of person served:
(2) Address:

(3) Date of mailing:
(4) Place of mailing (*city and state*):
(5) I am a resident of or employed in the county where the forms were mailed.

c. My residence or business address is (*specify*):

d. My phone number is (*specify*):

I declare under penalty of perjury under the laws of the State of California that the above information is true and correct.

Date:

_____ ►_____
(TYPE OR PRINT NAME) (SIGNATURE OF PERSON SERVING NOTICE)

APPENDIX 23: CALIFORNIA FORM FL- 958

FL-958

ATTORNEY OR PARTY WITHOUT ATTORNEY (*Name, state bar number, and address*) *FOR COURT USE ONLY*

TELEPHONE NO. : FAX NO. :

ATTORNEY FOR (*Name*):

SUPERIOR COURT OF CALIFORNIA, COUNTY OF

STREET ADDRESS:

MAILING ADDRESS:

CITY AND ZIP CODE:

BRANCH NAME:

PETITIONER/PLAINTIFF:

RESPONDENT/DEFENDANT:

OTHER PARENT/CLAIMANT:

CASE NUMBER:

ORDER ON APPLICATION TO BE RELIEVED AS COUNSEL UPON COMPLETION OF LIMITED SCOPE REPRESENTATION

1. The application of (*name of* attorney):
   to be relieved as counsel of record for (*name of client*):
   a party to this action or proceeding, was filed on (*specify date*):

2. ☐ **UNCONTESTED**
   a. Fifteen calendar days have elapsed since the *Application to Be Relieved as Counsel Upon Completion of Limited Scope Representation* (form FL-955) and any attachments were served on the party.
   b. The client was
      (1) ☐ personally served with the papers.
      (2) ☐ served by mail.
   c. No *Objection to Application to Be Relieved as Counsel Upon Completion of Limited Scope Representation* (form FL-956) has been received from the client.
   d. It appears from the application to be relieved as counsel and any attached documents that the attorney has completed the tasks that the client and attorney agreed that the attorney would perform as well as any acts ordered by the court.

3. ☐ **CONTESTED**
   a. The party filed an *Objection to Application to Be Relieved as Counsel Upon Completion of Limited Scope Representation* (form FL-956) on (*date*):
   b. The proceeding was heard on (*date*): at (*time*): in Dept: Room:
      by Judge (*name*): ☐ Temporary Judge
   c. The following persons were present at the hearing:
      ☐ Petitioner/plaintiff ☐ Attorney for petitioner/plaintiff
      ☐ Respondent/defendant ☐ Attorney for respondent/defendant
      ☐ Other parent/claimant ☐ Attorney for other parent/claimant
   d. ☐ Attorney demonstrated that he or she has completed the service that the party and attorney agreed that the attorney would perform on the *Notice of Limited Scope Representation* (form FL-950) as well as any acts ordered by the court.

Form Approved for Optional Use
Judicial Court of California
FL-958 [New July 1,2003]

ORDER ON APPLICATION TO BE RELIEVED AS COUNSEL UPON COMPLETION OF LIMITED SCOPE REPRESENTATION

Code of Civil Procedure, § 284
Cal. Rules of Court, rule 5.171
www.courtinfo.gov

PETITIONER/PLAINTIFF: CASE NUMBER:

RESPONDENT/DEFENDANT:

OTHER PARENT:

ORDER

4. ☐ Attorney is relieved as attorney of record for client

   a. ☐ effective immediately

   b. ☐ effective upon the filing of the proof of service of this signed order upon the client

   c. ☐ effective on (*specify date*):

   d. **NOTICE TO CLIENT/PARTY**: You now represent yourself in all aspects of your case. You may wish to seek other legal counsel regarding your case.

      The court needs to know how to contact you. It is your responsibility to keep the court informed of your address. If the Address below is wrong, you need to let the court and the other parties of the case know your correct mailing address as soon as possible. You can use form MC-040, *Notice of Change of Address and Telephone Number*, for this notification.

      If you do not let the court and the other parties to the case know where to send you copies of papers, you may not get notices of hearings or orders in your case. Decisions may be made without your participation, and your case could be ended.

   e. Current mailing address for client/party:

5. ☐ The application of counsel to be relieved upon completion of limited scope representation is denied for the following reasons:

6. ☐ The court further orders (*specify*):

NOTICE TO ATTORNEY WHO FILED APPLICATION FOR RELIEF: You must serve copies of the order on the parties and
Opposing counsel. Proof of service must be filed with the court.

Date: ►_____
(JUDGE/JUDICIAL OFFICER)

Appendix 24: California Rules of Court 5.170-5.171

Rule 5.170. 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 fees] If a litigant seeks a court order for attorney fees incurred as a result of document preparation, the litigant must disclose to the court information required for a proper determination of attorney 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.

(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.

Rule 5.171. Application to be relieved as counsel upon completion of limited scope representation

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

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

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

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

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

(f) **[Service of the order]** After the order is signed, a copy of the signed order must be served by the attorney who has filed the *Application to Be Relieved as Counsel Upon Completion of Limited Scope Representation* (form FL-955) on the client and on all parties who have appeared in the case. The court may delay the effective date of the order relieving counsel until proof of service of a copy of the signed order on the client has been filed with the court.

APPENDIX 25: REVISIONS IN RULES OF SUPREME JUDICIAL COURT OF MAINE TO SUPPORT LIMITED REPRESENTATION

A. Supreme Judicial Court Amendments To The Maine Bar Rules (Effective July 1, 2001)

1. Maine Bar Rule 3.4(i) is completely new:

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

Advisory Notes

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

The reasons a writing memorializing the agreement is not required in all contexts include (by way of example) the problem non-profit and court annexed legal services programs face in securing such a writing from their clients, and the time entering into the agreement takes in proportion to the time consumed by the limited representation itself. Nevertheless, to the extent a writing may be obtained, it is a better practice to do so for both the lawyer and the client.

In situations involving limited representation in court of an otherwise unrepresented party, a written memorandum of the scope of representation is required. A lawyer providing limited representation in court proceedings should include in the consultation with the client an explanation of the risks and benefits of the limited representation. The general form of the agreement is attached to the Code of Professional Responsibility.

Limited representation may not be provided by a lawyer who signs a complaint, counterclaim, cross-claim or any amendment thereto, which is filed with the court.

2. Maine Bar Rule 3.5(a)(4) is completely new:

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

Advisory Notes

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

3. Maine Bar Rule 3.6(a)(2) is amended (with new text underlined) as follows:

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

Advisory Notes

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

4. Maine Bar Rule 3.6(f) is amended (with new text underlined) as follows:

(f) Communicating With Adverse Party. During the course of representation of a client, a lawyer shall not communicate or cause another to communicate on the subject of the representation with a party the lawyer knows to be represented by another lawyer in that matter unless the lawyer has the prior consent of the lawyer representing such other party or is authorized by law to do so. An otherwise unrepresented party to whom limited representation is being provided or has been provided in accordance with Rule *3.4(i)* is considered to be unrepresented for purposes of this rule, except to the extent the limited representation attorney provides other counsel written notice of a time period within which other counsel shall communicate only with the limited representation attorney.

Advisory Notes

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

5. Maine Bar Rule 3.4 (j) is completely new:

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

Advisory Notes

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

[2] Because a lawyer who is representing a client in the circumstances addressed by this Rule is not able to check systematically for conflicts of interest, paragraph (j) only requires compliance with Rules 3.4(a)-(e) if the lawyer knows, based on reasonable recollection and information provided by the client in the ordinary course of the consultation, that the representation presents a conflict of interest. A conflict of interest that would otherwise be imputed to a lawyer because of the lawyer association with a firm will not preclude the lawyer from representing a client in a limited services program. Nor will the lawyer participation in such a program preclude the lawyer's firm from undertaking or continuing the representation of clients with interests adverse to a client being represented under the program's auspices.

Note: The new rules provide a "form Limited Representation Agreement", which "shall be inserted after Maine Bar Rule 3.4(c) (i) and before Maine Bar Rule 3.5." The new rules provide: "Used in conjunction with Rule 3.4(i) it shall be sufficient to satisfy the rule. The authorization of this form shall not prevent the use of other forms consistent with this Rule." (This form is Appendix 8 to this book.)

B. Maine Supreme Judicial Court Amendments To The Maine Rules Of Civil Procedure (Effective July 1, 2001).

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

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

Advisory Committee's Note

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

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

2. Rule 11, subdivision (a), of the Maine Rules of Civil Procedure is amended (with new text underlined and deleted text stricken), and a new subdivision (b) is added, as follows:

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

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

attorney. An attorney filing a pleading or motion outside the scope of the limited representation shall be deemed to have entered an appearance for the purposes of the filing.

Advisory Committee's Note

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

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

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

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

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

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

(b) Visiting Attorneys. Any member in good standing of the bar of any other state or of the District of Columbia may at the discretion of the court, on motion by a member of the

bar of this state who is actively associated with the out-of-state attorney in a particular action, be permitted to practice in that action. The court may at any time for good cause revoke such permission without hearing. An attorney so permitted to practice in a particular action shall at all times be associated in such action with a member of the bar of this state, upon whom all process, notices and other papers shall be served and who shall sign all papers filed with the court and whose attendance at any proceeding may be required by the court. Visiting attorneys shall not be permitted to file limited appearances.

Advisory Committee's Note

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

A limited appearance is filed under Rule 11 (b). The last sentence in Rule 89 (b) is added to provide that visiting lawyers may not file limited appearances. Rule 89 (a) is amended to add a new last sentence making the conditions for withdrawal or a motion for leave to withdraw unnecessary for a limited appearance unless the attorney seeks to withdraw from the limited appearance itself. An attorney who has filed and fulfilled a clearly stated limited appearance is presumptively no longer representing the client. Any doubt about the scope of the appearance should be resolved in a manner that promotes the interests of justice and those of the client and opposing party.

If the attorney has signed filings beyond the scope of the limited appearance, Rule 11 (b) applies fully and the attorney is deemed to have entered an appearance for the purposes of the filing. Thus, the attorney may not withdraw from the matter of the filing without complying with Rule 89 (a).

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

APPENDIX 26: REVISIONS IN RULES OF SUPREME COURT OF COLORADO TO SUPPORT LIMITED REPRESENTATION

A. Colorado Supreme Court Revisions to Rules of Civil Procedure (effective July 1, 1999):

1. Section (b) to C.R.C.P.11 ("Signing of Pleadings") is completely new:

> (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 ii(b).
>
> Limited representation of a pro se party under this rule ii(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).

2. A completely new Committee Comment to C.R.C.P. 121, Section 1-1 ("Entry of Appearance and Withdrawal"), states:

> An attorney may provide limited representation to a pro se party in accordance with the requirements of C.R.C.P. 11 (b) or C.R.C.P. 311(b) and Colo. RPC 1.2. Providing limited representation to a pro se party in accordance with C.R.C.P. 11(b) or 311(b) and Colo. RPC 1.2 does not constitute an entry of appearance either under C.R.C.P. 121, Section 1-1, or in the county court. Such limited representation does not require or authorize the service of a pleading or paper upon the attorney pursuant to C.R.C.P. 5(b) or C.R.C.P. 305.

3. Section (b) to C.R.C.P.311 ("Signing of Pleadings"), which governs the county courts, is new and contains identical text to that in new C.R.C.P. 11 (b) with the exceptions of internal citations to the different section numbers.

B. Colorado Supreme Court Revisions to Colorado Rules of Professional Conduct (effective July 1, 1999):

1. Colo. RPC 1.2 was revised (with new text underlined), as follows: Scope and Objectives of Representation

(a) A lawyer shall abide by a client's decisions concerning the scope and objectives of representation, subject to paragraphs (c), (d), and (e), and shall consult with the client as to the means by which they are to be pursued. A lawyer shall abide by a client's decision whether to accept an offer of settlement of a matter. In a criminal case, the lawyer shall abide by the client's decision after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

…

(c) A lawyer may limit the scope or objectives, or both, of the representation if the client consents after consultation. A lawyer may provide limited representation to pro se parties as permitted by C.R.C.P. 11(b) and C.R.C.P. 311(b).

2. The heading of the Comment to RPC 1.2 was revised (with new text underlined), to read: "Scope and Objectives of Representation", **with the following completely new text added to the Comment:**

The scope or objectives, or both, of the lawyer's representation of the client maybe limited if the client consents after consultation with the lawyer.

In litigation matters on behalf of a pro se party, limitation of the scope or objectives of the representation is subject to C.R.C.P. 11(b) or 311 (b) and C.R.C.P. 121, Section 1-1, and, therefore, involves not only the client and the lawyer but also the court. When a lawyer is providing limited representation to a pro se party as permitted by C.R.C.P. 11(b) or 311 (b), the consultation with the client shall include an explanation of the risks and benefits of such limited representation. A lawyer must provide meaningful legal advice consistent with the limited scope of the lawyer's representation, but a lawyer's advice may be based upon the pro se party's representation of the facts and the scope of representation agreed upon by the lawyer and the pro se party. A lawyer remains liable for the consequences of any negligent legal advice. Nothing in this rule is intended to expand or restrict, in any manner, the laws governing civil liability of lawyers.

3. The Comment to Colo. RPC 4.2 ("Communication with Person Represented by Counsel") was revised (with new text underlined), as follows:

This rule also covers any person, whether or not a party to a formal proceeding, who is represented by counsel concerning the matter in question. A pro se party to whom limited representation has been provided in accordance with C.R.C.P. 11 (b), or C.R.C.P. 311(b), and Colo. RPC 1.2 is considered to be unrepresented for purposes of this rule unless the lawyer has knowledge to the contrary.

4. The Comment to Colo. RPC 4.3 ("Dealing with Unrepresented Person")was revised (with new text underlined), as follows:

An unrepresented person, particularly one not experienced in dealing with legal matters, might assume that a lawyer is disinterested in loyalties or is a disinterested authority on the law even when the lawyer represents a client. During the course of a lawyer's representation of a client, the lawyer should not give advice to an unrepresented person other than the advice to obtain counsel. The lawyer must comply with the requirements of this Rule for pro se parties to whom limited representation has been provided, in accordance with C.R.C.P. 11 (b), C.R.C.P. 311(b), Colo. RPC 1.2, and Colo. RPC 4.2. Such parties are considered to be unrepresented for purposes of this rule.

C. The "Notice and Comment Accompanying Colorado Supreme Court's Announcement of Limited Representation Rules for Litigation" stated, in part:

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

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

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

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

The attorney must advise the pro se party that a pleading or paper for which the attorney has provided drafting assistance must include the attorney's name, address, telephone number and registration number. The attorney certification and name disclosure requirements do not apply to attorneys who assist pro se parties in filling out pre-printed and electronically published forms that are issued through the judicial branch for use in

court. This includes forms that are prepared and released through the State Court Administrator's Office and having been derived from the Colorado Judicial Branch are republished by print or electronically by services such as Bradford (marked "JDF" on Bradford forms), West, or Lexis. This also includes forms approved by rule of the Colorado Supreme Court and those available through the Colorado Judicial Branch web page. Forms that are derived from sources other than the Colorado Judicial Branch are considered pleadings or papers whose assistance in drafting must meet the attorney certification and name disclosure requirements of C.R.C.P. 11 (b) and C.R.C.P. 311 (b).

As set forth in C.R.C.P. 121, Section 1-1, providing limited representation in litigation in accordance with Colo. RPC 1.2, C.R.C.P. 11 (b) and C.R.C.P. 311 (b) does not constitute entry of appearance by the attorney in the case and does not require or authorize the service of a pleading or paper upon the attorney pursuant to C.R.C.P. 5(b) or C.R.C.P. 305. However, under rules 11 (a) and 311(a) representation of the pro se party at any proceeding before a judge, magistrate, or other judicial officer on behalf of the pro se party constitutes an entry of appearance.

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

APPENDIX 27: REVISIONS IN RULES OF SUPREME COURT OF WASHINGTON TO SUPPORT LIMITED REPRESENTATION

A. Washington Supreme Court Revisions to Rules of Civil Procedure for Superior Courts (effective ____, 2002) (the same revisions were adopted in the rules governing Washington's other courts):

1. The heading to CR 11 was revised to read: "Signing and drafting of Pleadings, Motions, and Legal Memoranda; Sanctions", and a new Section (b), as follows, was added:

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

2. A new CR 4.2 was added:

(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 for the purposes of CR 5 (b) and does not authorize or require the service or delivery of pleadings, papers, or other documents on 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 provide 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).

3. A new "Notice of Limited Appearance" provision was added as section (b) to CR 70.1

(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).

B. Washington Supreme Court Revisions to Rules of Professional Conduct (effective ____, 2002):

1. Washington adopted the ABA's revision of Model Rule 1.2, with an additional cross-reference provision, amending its Rule of Professional Conduct 1.2 (c) as follows:

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

2. Washington revised Rules 4.2 ("Communication with Person Represented by Counsel"), and 4.3 ("Dealing with Unrepresented person"), by adding the following new subsection (b) to each:

(a) In representing a client, a lawyer shall not communicate about the subject of the representation with a party 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 by law do to so.

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

3. Washington adopted the ABA's new Model Rule 6.5 (a) (1) and (2), and (b), but it added its own additional provision, subsection (3). The entire Rule states:

Nonprofit and Court-Annexed Limited Legal Service Programs

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

(1) is subject to Rules 1.7 and 1.9(a) only if the lawyer knows that the representation of the client involves a conflict of interest except that those rules shall not prohibit a lawyer from providing limited legal services sufficient only to determine eligibility of the client for assistance by the program and to make an appropriate referral of the client to another program; and

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

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

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

C. Comments of Drafters of Rules

1. *The Rules that were revised, and the general purpose of the revisions:* "Rules of Professional Conduct, Superior Court Civil Rules, and Civil Rules for Courts of Limited Jurisdiction", revised "[t]o facilitate limited task representation by lawyers, clarify ethical issues as to nonprofit and court-annexed limited legal service programs and permit limited appearances by lawyers in superior court and in courts of limited jurisdiction.

2. Proponents: Washington Access to Justice Board, Washington State Bar Association.

3. Commentary:

The purpose of the suggested rules is to clarify and facilitate the provision by lawyers of limited task representation/unbundled legal services, to clarify ethical issues for non- profit and court-annexed limited legal service programs, and to permit limited appearances by lawyers in civil matters in Superior Court and in courts of limited jurisdiction.

The American Bar Association Commission on Evaluation of the Rules of Professional Conduct (the "ABA Ethics 2000 Commission") issued its final report in May 2001. Among changes it recommended to the American Bar Association Model Rules of Professional Conduct ("ABA Model RPCs"), on which Washington's Rules of Professional Conduct are closely modeled, are to more clearly allow a lawyer to agree with a client to limit the scope of the lawyer's representation, and to clarify ethical practices for nonprofit and court-annexed limited legal service programs. Limiting the scope of representation is sometimes also called limited task representation, discrete task representation or unbundling of legal services. The principal ABA Model RPCs relevant to these issues are Rule 1.2 and a newly proposed Rule 6.5.

In 1999 the Colorado Supreme Court amended rules 1.2, 4.2 and 4.3 of its Rules of Professional Conduct (which, like Washington's analogous Rules of Professional Conduct, are closely modeled on the ABA Model RPCs), to expressly permit limited task representation. Rule 1.2 relates to the objectives of a lawyer-client representation.

Rule 4.2 relates to a lawyer's ethical duties when dealing with a person who is represented by counsel, while Rule 4.3 relates to a lawyer's ethical duties when dealing with a person who is not represented by counsel but is representing himself or herself. The Maine Supreme Court has also recently adopted court rules to expressly allow limited task representation.

Washington currently does not have a specific court rule expressly permitting a lawyer to represent a client on a limited basis and making it clear that the lawyer will not be obligated to continue the representation beyond the agreed scope of representation. The rules here suggested seek to fill these needs.

The following materials set out suggested revisions to Washington's Rules of Professional Conduct, to the Superior Court Civil Rules, and to the Civil Rules for Courts of Limited Jurisdiction. The changes suggested to the Rules of Professional Conduct are generally based on amendments or concepts proposed by the ABA Ethics 2000 Commission to be made to the ABA Model RPCs or to the official commentary to those model rules.

The rule amendments suggested here were prepared at the request of the Washington Access to Justice Board by the members of its Unbundled Legal Services Committee (comprised of Barrie Althoff, Chair, and King County Superior Court Commissioners Kimberley D. Prochnau and Nancy Bradburn-Johnson). Drafts of the suggested rules were widely circulated from April through December 2001, including being placed on the Internet with the request for comments. The suggested rules here presented incorporate comments received through that process and otherwise, including comments from the Washington Superior Court Judges Association and from the Northwest Justice Project, and informal comments received from the Unbundled Services Subcommittee of the Family Law Section the King County Bar Association. The American Bar Association's Standing Committee on the Delivery of Legal Services also reviewed and support the suggested rule amendments. Two letters, dated November 21, 2001, from that committee in support of the suggested changes are attached to this Cover Sheet.

The suggested rules were approved for submission as rule-change recommendations to the Supreme Court by the Washington Access to Justice Board on October 26, 2001, by the Washington State Bar Association Board of Governors on December 1, 2001, by the Washington District and Municipal Court Judges Association on December 8, 2001, and by the Civil Law Committee of the Washington Superior Court Judges' Association on December 19, 2001.

I. Suggested Amendment of Rule 1.2 of the Rules of Professional Conduct

Clients and lawyers may want to limit the scope of a lawyer's representation for many reasons. Often the reason is simply that the client cannot afford to have the lawyer provide a full representation, or the lawyer cannot afford to provide that full representation for free, or the lawyer cannot provide the full representation because of preexisting commitments to other clients. Sometimes a client simply wants to remain in control of the client's problem and merely wants the lawyer's limited assistance. In any case, limiting the scope of the representation is often in the best interests of both the client and the lawyer and results in the client receiving legal assistance, albeit limited, where otherwise the client would not receive any legal assistance. If the limited representation is one involving litigation, the opposing party and the court usually also

benefit since otherwise each would be dealing with a person acting entirely pro se without the benefit of any legal assistance.

The commentary to the ABA Model RPCs as proposed by the ABA Ethics 2000 Commission explains the appropriateness of permitting limited scope representations. The following explanation of the proponent's suggested amendment to RPC 1.2 is based on (and much of it is verbatim from) the ABA proposed commentary regarding agreements limiting the scope of representation, but is revised to reflect Washington's existing rules.

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 either because the client has limited objectives for the representation, or a limited representation is appropriate under the circumstances and does not impair the client's objectives. 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. An agreement limiting the scope of a representation should consider the applicability of RPC 4.2 to the representation. Practically, this means the lawyer and client should decide whether the lawyer is, or is not, authorized to communicate on behalf of the client with the lawyer for the opposing party or, as permitted under the RPCs, with the opposing party. If the lawyer is not so authorized, the client should so inform the opposing lawyer and, for purposes of RPC 4.2, the client should be deemed unrepresented as to the matter in question and the lawyer should be deemed to have consented to the opposing lawyer communicating with the client.[4]

Although RPC 1.2, amended as suggested, 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 RPC 1.1.

Paragraph (c) of the suggested revised RPC 1.2 does not require that the client's informed consent after consultation to a limited representation be in writing. Where appropriate, such consent may be inferred from the circumstances. It is good practice, however, to document that

[4] This paragraph, which has no counterpart in the ABA Ethics 2000 rules or commentary, is intended to clarify when an opposing lawyer may, without violating RPC 4.2, communicate with a person being represented on a limited basis by a lawyer.

consent and consultation in, for example, the engagement agreement, or, if the lawyer's limited representation is being provided for a fee, in the fee agreement.

All agreements concerning a lawyer's representation of a client must accord with the Rules of Professional Conduct and other law. See, e.g., RPCs 1.1, 1.8 and 5.6. The fee charged for legal services which are limited in scope should be reasonable under the circumstances and should reflect the limited scope of the services.

II. Suggested Amendments of Rules 4.2 and 4.3 of the Rules of Professional Conduct

Where a person is being provided limited representation by a lawyer in accordance with RPC 1.2(c), but is otherwise self-represented, the scope of the lawyer's representation may be unknown or unclear to other lawyers who may thus be uncertain whether their conduct towards that person is governed by RPC 4.2, which relates to communicating with a person represented by counsel, or by RPC 4.3, which relates to dealing with an unrepresented person. Neither existing RPC 4.2 nor existing RPC 4.3 address the situation of a lawyer providing limited representation to a client. The proposed amendments to RPC 4.2 and 4.3, which are identical in text, address this situation.

Existing RPC 4.2 and RPC 4.3 should be amended to clarify that a self-represented person to whom limited representation is being provided in accordance with RPC 1.2 is considered to be unrepresented for purposes of Rule 4.2 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. Such notice would preferably be provided as part of a notice of appearance, if litigation is pending concerning the subject of the representation. Receipt or knowledge of a limited notice of appearance as to pending hearings or discovery imposes a duty on the opposing lawyer to refrain from direct contact with the opposing person during the pendency of such hearings or discovery including the pendency of any time period for presentation of orders related to said hearings. This provision is based on language recently adopted by the Maine Supreme Court, Maine Bar Rule 3.6(f) (effective July 1, 2001).

III. Suggested Addition of New Rule 6.5 of the Rules of Professional Conduct relating to Nonprofit and Court-Annexed Limited Legal Service Programs.

The ABA Ethics 2000 Commission has proposed a rule that would permit lawyers providing short-term legal services under the auspices of nonprofit and court-annexed limited legal service programs to be exempted from certain provisions of the RPCs. The commentary proposed by the ABA Ethics 2000 Commission explains the need to clarify ethical issues arising in connection with nonprofit and court-annexed limited legal service programs. Washington has no equivalent to the rule proposed by the ABA Ethics 2000 Commission, but needs one. Washington also has a highly coordinated and developed system of legal education, advice and referral programs as exemplified by the Northwest Justice Project's CLEAR system. The following explanation of the proponent's suggested adoption of new RPC 6.5 is based on the ABA Ethics 2000 commentary but is revised to reflect Washington's existing rules and programs.

Legal service 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., RPCs 1.7, 1.9 and 1.10.

A lawyer who provides short-term limited legal services pursuant to this rule must secure the client's consent after consultation to the limited scope of the representation. See RPC 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 RPCs, including RPCs 1.6 and 1.9(c), are applicable to the limited representation.

Because a lawyer who is representing a client in the circumstances addressed by this suggested rule ordinarily is not able to check systematically for conflicts of interest, paragraph (a) of the suggested RPC 6.5 requires compliance with RPCs 1.7 or 1.9(a) only if the lawyer knows that the representation presents a conflict of interest for the lawyer, and with RPC 1.10 only if the lawyer knows that another lawyer in the lawyer's firm is disqualified in the matter by RPCs 1.7 or 1.9(a).

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) of suggested RPC 6.5 provides that RPC 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 RPC 1.10 when the lawyer knows that the lawyer's firm is disqualified by RPCs 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.

If, after commencing a short-term limited representation in accordance with this suggested rule a lawyer undertakes to represent the client in the matter on an ongoing basis, RPCs 1.7, 1.9(a) and 1.10 become thereafter applicable.

Suggested RPC 6.5(a)(1) is modified from the proposed ABA Model RPC 6.5 to exempt the lawyer from RPCs 1.7 and 1.9(a) so as to permit a lawyer under the auspices of a program sponsored by a nonprofit organization or court to provide limited legal services only to determine eligibility of the client for assistance by the program and to make an appropriate referral of the client to another program sponsored by a nonprofit organization or court. The intent of the modification is to permit lawyers working with such programs as the Northwest Justice Project's Coordinated Legal Education Advice and Referral System ("CLEAR") to undertake customary intake and referral services even where a conflicting client is also receiving limited legal services from CLEAR. This is consistent with the September 16, 1999 Revised Plan for the Delivery of Civil

Legal Services to Low Income People in Washington State. The exemption from RPCs 1.7 and 1.9(a) is limited, however, to only those services needed for the lawyer to determine eligibility of the client for assistance and to make an appropriate referral to another program.

Suggested RPC 6.5(a)(3) has no counterpart in the ABA Ethics 2000 proposed Model RPC 6.5. It addresses a narrow situation in Washington wherein a client seeks limited legal services from a program sponsored by a nonprofit organization or court, such as the CLEAR program, when another lawyer associated with that program is already representing a conflicting party. While such a program may make an effort to locate another program to refer the second person to, practically there is frequently no other available program for referral and such likely unsuccessful referral efforts consume valuable resources better spent representing, with suitable protections, the second person. Under existing conflicts-of-interest RPCs 1.7, 1.9(a) and/or 1.10, the program would not be able to represent the second client and as a practical matter, due to limited available alternative legal service providers, the second person would likely go unrepresented. The proposed modification would permit the program (but not the same lawyer) to also represent the second client, but only under narrow circumstances intended to assure the individual lawyers' loyalty and maintain the respective clients' confidences and secrets. Clients of such a program, by accepting legal representation from the program, in effect consent to the technical conflict of interest, but are protected from any real conflict by the protective provisions of suggested RPC 6.5(a)(3). That suggested rule would permit such a representation only where (a) the program lawyers representing the opposing clients are screened by effective means from information as to the opposing client's confidences, secrets, trial strategy and work product as to the matter at issue, (b) each client is notified of the conflict and the screening mechanism used to prohibit dissemination of confidential or secret information; and (c) the program is able to demonstrate by convincing evidence that no confidences or secrets that are material were transmitted by the personally disqualified lawyers to the lawyer representing the conflicting client before implementation of the screening mechanism and notice to the opposing client.

IV. Suggested Addition of New Rule 4.2 of the Superior Court Civil Rules, and of New Rule 4.2 of the Rules for Courts of Limited Jurisdiction, relating to Limited Representation

The proponents suggest that the Court adopt a new Rule 4.2 of the Superior Court Civil Rules (CR), and a new Rule 4.2 of the Civil Rules for Courts of Limited Jurisdiction (CRLJ), which would clarify that a lawyer's provision of limited scope legal representation to a client does not of itself constitute an entry of appearance for that client, and clarify that pleadings should still be served on and delivered to the client and not the lawyer. The text of the suggested two rules, one for Superior Court and the other for courts of limited jurisdiction, are identical. For ease of reference, it is suggested that both rules be numbered 4.2 although the Civil Rules for Courts of Limited Jurisdiction have no rule 4.1; that rule number should simply be reserved.

The suggested new rules are loosely based on Section 11 (b), and on a comment on adoption of Section 1-1, of the Colorado Rules of Civil Procedure. They provides that an attorney may provide limited representation to a pro se party in accordance with the

requirements of Colorado's civil rules and Rules of Professional Conduct, that providing limited representation to a pro se party in accordance with Colorado rules does not constitute an entry of appearance, and that such limited representation does not require or authorize the service of a pleading of paper upon the attorney.

Although the suggested rules partially duplicate the suggested new Rule 70.1 of the Superior Court Civil Rules and the suggested new Rule 70.1 of the Civil Rules for Courts of Limited Jurisdiction, both the suggested new CR 4.2/CRLJ 4.2 and the suggested new CR 70.1/CRLJ 70.1 seemed useful to inform the lawyer providing limited scope representation and any opposing lawyers of the procedural consequences of limited scope representation.

V. Suggested Amendment of Existing Rule 11 of the Superior Court Civil Rules, and Existing Rule 11 of the Civil Rules for Courts of Limited Jurisdiction, by Designating Existing CR 11 as CRLJ 11, respectively, as CR 11(a) and CRLJ 11(a), and by Adding New CR 11(b) and New CRLJ 11(b).

Clients often cannot afford to hire a lawyer to represent them fully throughout the course of litigation yet might be able to afford to hire a lawyer to represent them in discrete parts of the litigation. One of the discrete parts of litigation most amenable to limited task representation is the preparation of pleadings, motions or other documents related to the litigation. Such assistance can benefit both parties to the litigation and the court itself by more precisely defining the legal issues and more clearly stating the facts. A lawyer merely providing such drafting assistance in litigation should be given guidance as to the lawyer's responsibilities of inquiry as to the grounds for and purposes of the litigation, yet, in recognition of the lawyer's limited role, should be allowed to rely on the client's representations. To protect against persons seeking to abuse the system, however, where a lawyer has reason to believe the client's representations are false, the lawyer should be obligated to make independent inquiry. Even in such a case, however, the other party and the court would benefit from the likely more professionally drafted documents. The suggested amendments of CR 11 and CRLJ 11 provide the guidance needed by a lawyer providing such drafting assistance. The suggested amendments of CR 11 and of CRLJ 11 are identical in text other than rule cites in the suggested CR 11 amendments refer to the CRs whereas the rule cites in the suggested CRLJ 11 amendments refer to the CRLJs.

The proponents suggest the Court amend existing Rule 11 of the Superior Court Civil Rules, and existing Rule 11 of the Civil Rules for Courts of Limited Jurisdiction, first by inserting in their respective titles "and drafting" to reflect the revised rules provisions also apply to drafting assistance, and, second, by designating the existing CR 11 and CRLJ 11, respectively, as CR 11 (a) and CRLJ 11 (a), without change of text, and by adding new section (b) to each of the rules. The suggested sections (b) are based on Section 11 (b) of Colorado's Rules of Civil Procedure, but are modified to reflect differences in Washington's existing CR 11 and CRLJ 11.

The drafting by a lawyer on a limited representation basis of pleadings, motions or documents which are not signed by the lawyer and on which the lawyer's name as drafter does not appear is sometimes derogatorily referred to as ghost-writing. In preparing this suggested rule change, extensive consideration was given whether a lawyer should be required to sign the pleadings, motions or documents, or whether the

client should be required to disclose assistance (whether from a lawyer or a non-lawyer) on the face of the pleading, motion or document by requiring, for example, a signed certification by the person receiving limited representation as to any assistance the person received in drafting pleadings, motions or other documents. One form of certification considered was loosely based on Oregon's Uniform Trial Court Rule 2.101(7). On reconsideration, however, it was concluded that such certifications as to assistance received by others should not be required through this suggested rule since the benefits of having a pleading, motion or document prepared by a lawyer outweigh the need to know on the face of the document whether lawyer assistance was provided. Practical reasons also negate the need since a lawyer likely has no control over the pleading, motion or document once it is given to the client and nothing prevents a client from thereafter modifying the language of the pleading, motion or document. Further, the perceived need for such a certification varies on whether the pleading, motion or document was a mandatory form or not, on whether the assistance was provided by a lawyer or a nonlawyer, and on the extent of any assistance rendered, thus making any certification unduly complex. Rather, it was concluded that the suggested CR 11 (b) and CRLJ 11 (b) adequately put the lawyer on notice of the lawyer's responsibilities and that information on drafting assistance could still be acquired, if deemed relevant, by, for example, the court simply directly inquiring of the otherwise self-represented person whether any assistance was obtained in drafting the pleadings, motions or other documents.

VI. Suggested Amendment of Superior Court Civil Rules by Addition of New Rule 70.1 to the Superior Court Civil Rules, and New Rule 70.1 to the Civil Rules for Courts of Limited Jurisdiction, Relating to Appearances.

Existing civil rules do not clearly state that a lawyer representing a client may appear for that party by serving a notice of appearance, nor do they specifically permit a lawyer undertaking limited task representation to make a limited appearance in litigation. Rules are needed to so provide. The proponents suggest the Court amend the existing Superior Court Civil Rules by adopting the suggested new CR 70.1, and amend the existing Civil Rules for Courts of Limited Jurisdiction by adopting the suggested new CRLJ 70.1, so as to specifically permit filing a notice of appearance and to authorize a lawyer to make a limited appearance in litigation. The text of the suggested new CR 70.1 and CRLJ 70.1 are identical.

Under existing rules, lawyers are concerned that they may agree with a client to undertake only a limited representation, yet the court under the existing rules may not permit the lawyer to withdraw when the agreed limited representation has been completed. Without some assurance that they will be able to limit their representation to that agreed upon with the client, lawyers are reluctant to undertake limited representations in litigation. Similarly, judges may be reluctant to permit a lawyer to withdraw where they did not know previously that the lawyer's representation was intended to be only very limited.

Some years ago Seattle lawyer Monte Gray informally proposed a rule, on which the current suggested rule is based, and explained the need for the rule:

"This provision is intended to permit a party to engage counsel only in connection with a particular motion or a particular deposition or the like. Fairness requires that a

limited appearance be specifically called to the attention of the opposing party, either on the record in open court or through a separate document clearly stating the matters to which the appearance is limited. The scope of the appearance should be strictly construed so that, for instance, an appearance to defend a deposition does not authorize the attorney to accept service of a motion arising out of the deposition; an appearance for purposes of a motion does not authorize acceptance of service of a motion for reconsideration; etc. Of course, nothing in this rule prevents the attorney from making a separate limited appearance for purposes of related matters of this type if so authorized and directed by the client. Nor does the termination of the appearance deprive the court of power to impose sanctions on the attorney where appropriate; a motion seeking such sanctions must be served on the attorney against whom they [are] directed, but not in his capacity as attorney for the client."

Those expressed needs remain and the suggested CR 70.1 and CRLJ 70.1 are intended to meet them.

APPENDIX 28: PROPOSED REVISIONS IN RULES OF SUPREME COURT OF FLORIDA TO SUPPORT LIMITED REPRESENTATION (PENDING BEFORE FLORIDA SUPREME COURT)

A. Florida Supreme Court Revisions to Florida Rules of Professional Conduct

1. Revisions to Rule 4-1.2, based in part on ABA's revisions of Model Rule 1.2 (with new text underlined and deleted text stricken):

OBJECTIVES AND SCOPE OF REPRESENTATION

…

(c) Limitation of Objectives and Scope of Representation. If otherwise permitted by law or rule, a lawyer and client may agree to limit the objectives or scope of the representation if the limitation is reasonable under the circumstances and the client consents, in writing, after consultation. If the attorney and client agree to limit the scope of the representation, the lawyer shall advise the client regarding applicability of the rule prohibiting communication with a represented person.

2. Revisions in Comments to Rule 4-1.2 (with new text underlined and deleted text stricken):

~~Scope~~ Objectives of Representation

…

The terms upon which representation is undertaken may exclude specific objectives or means. Such limitations may exclude objectives or means that the lawyer regards as repugnant or imprudent, or which the client regards as financially impractical. Although this rule affords the lawyer and client substantial latitude to limit the representation if otherwise permitted b law or rule, 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 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. In addition, a lawyer and client may agree that the representation will be limited to providing assistance out of court, including providing advice on the operation of the court system and drafting pleadings and responses. If the lawyer assists a pro se litigant by drafting any document to be submitted to a court, the lawyer is not obligated to sign the document. However, the lawyer must indicate "Prepared with the assistance of counsel" on the document to avoid misleading the court that otherwise might be under the impression that the person, who appears to be proceeding pro se, has received no assistance from a lawyer. If otherwise permitted by law or rule, a lawyer and client may agree that any representation in court be limited. For example, a lawyer and client may agree that the lawyer will represent the client at a hearing regarding child support and not at the final hearing or in any other hearings.

Regardless of the circumstances, a lawyer providing limited representation forms an attorney-client relationship with the litigant, and owes the client all attendant ethical

obligations and duties imposed by the Rules Regulating The Florida Bar, including, but not limited to, duties of competence, communication, confidentiality and avoidance of conflicts of interest. Although an agreement for limited representation does not exempt a lawyer from the duty to provide competent representation, the limitation is a factor to be considered when determining the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

3. Revisions in Rule 4-4.2 ("Communication With Person Represented By Counsel"), and Rule 4-4.3("Dealing with Unrepresented Person"), by addition of new subsection (b) to each:

(b) An otherwise unrepresented person to whom limited representation is being provided or has been provided in accordance with the rule on objectives and scope of representation 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.

B. Florida Supreme Court Revisions to Florida Family Law Rules of Procedure:

1. Revisions in Rule 12.040 ("Attorneys"), by adding the following new provisions:

(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 paragraph © 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. At the conclusion of such proceeding or matter, the attorney's role terminated 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 Documents.** A party who files a pleading or document of record pro se shall certify whether or not the party has received assistance from an attorney in the preparation of the pleading or document. The name, address and phone number of the party shall appear on all pleadings or documents filed with the court.

(e) **Notice of Limited Appearance.** Any document or notice filed by a limited appearance attorney shall state in bold type on the face of that document or notice: "Attorney for [Petitioner] [Respondent] for the limited purpose of [matter or proceeding]."

(f)**Service.** During the attorney's limited appearance, service of documents related to that matter shall be served upon both the attorney and the party.

APPENDIX 29: ABA Informal Opinion 1414 (June 6, 1978)(Lawyer Who Assists Litigant Appearing Pro Se) (Under Model Code of Professional Responsibility)*

On behalf of the State Bar Association you inquire whether there are ethical restrictions applicable to a lawyer who, without entering an appearance as an attorney of record, counsels and advises a litigant who purports to appear before the Court *pro se* . Specifically you inquire about the propriety of a lawyer's conduct who assisted a *"pro se* " litigant in preparing jury instructions, memoranda of authorities and other documents submitted to the Court. You state that the lawyer involved also "sat in on" the trial and at one point during the trial informed the Court that he was "merely advising the *pro se* litigant on what he considered to be procedural matters."

Although it is not entirely clear from your inquiry, we assume that until the lawyer "sat in on" the trial and there counseled the litigant on "procedural matters" neither the Court nor the (lawyers) for the other party or parties knew of the lawyer's previous participation on behalf of the litigant or the extent of it.

It appears that the litigant was receiving active and extensive assistance from he lawyer in preparation for the trial as well as during the trial itself and, therefore, had not proceeded *pro se* as the Court and counsel for the other party or parties would have believed. In our opinion, the litigant, having received the extent of assistance indicated in your inquiry, has engaged in a misrepresentation (perhaps unwitting) by professing to be without representation, at least until it was otherwise disclosed during the trial when, in truth, he was receiving active and rather extensive assistance of undisclosed counsel. A lawyer who engages in such conduct is, in our view, involved in the litigant's misrepresentation contrary to DR 1-102(A)(4) which provides:

> "A lawyer shall not: ... (4) Engage in conduct involving dishonestly, fraud, deceit, or misrepresentation."

We do not intend to suggest that a lawyer may never give advice to a litigant who is otherwise proceeding *pro se* , or that a lawyer could not, for example, prepare or assist in the preparation of a pleading for a litigant who is otherwise acting *pro se.*

Obviously, the determination of the propriety of such a lawyer's actions will depend upon the particular facts involved and the extent of a lawyer's participation on behalf of a litigant who appears to the Court and other counsel as being without professional representation. Extensive undisclosed participation by a lawyer, however, that permits the litigant falsely to appear as being without substantial professional assistance is improper for the reasons noted above.

As you observed in your inquiry, the practice has been condemned in *Klein* v. *R.N. Whitney, Goadby & Co* ., 341 F. Supp. 699 (S.D.N. Y. 1971) and in the related case of *Klein* v. *Spear, Leeds & Kellogg,* 309 F. Supp. 341 (S.D.N. Y. 1970).

* This formatting may be different from that in the actual opinion, and citations, text or footnotes may be deleted where indicated by ellipses.

APPENDIX 30: Los Angeles County Bar Association Professional Responsibility And Ethics Committee, Ethics Opinion 483 (March 20, 1995) (On Limiting Representation)*

Summary of Opinion: Limited Representation of In Pro Per Litigants.

An attorney may limit the attorney's services by agreement with a pro per litigant to consultation on procedures and preparation of pleadings to be filed by the pro per. A litigant may be either self-represented or represented by counsel, but not both at once, unless approved by the court; therefore, in order for the attorney to specially appear on behalf of the litigant before the court for a limited purpose, the attorney should comply with all applicable court rules and procedures of the particular tribunal.

…

Facts And Issues Presented:

An attorney is engaged by individuals representing themselves in litigation in propria persona to give legal advice about various steps in the case. The attorney's written engagement agreement with the in pro per client provides that the attorney will not be the attorney of record in the case, that court appearances, calendaring, filing of papers, meeting of deadlines, and all other responsibilities that counsel of record normally would do, are the client's responsibility. The attorney's engagement is limited to that of a law consultant who will advise the client on matters only as the client requests and to assist in or draft papers that the client will sign and file. The attorney also may keep track of the case and its deadlines. All documents are prepared with the client appearing as a party in pro per. Is the providing of the foregoing limited legal services to the in pro per client improper or unethical, assuming that the client requests it, the limited scope of the attorney's representation is fully explained in writing, and the client agrees thereto?

The attorney additionally desires to make special appearances on motions the in pro per client has filed or responded to, which mayor may not have been drafted in whole or in part by the attorney. May the attorney ethically do this?

May the attorney, at the request of the client (i) appear at the status conference as "associate counsel" at which the attorney who will actually try the case must appear, and then (ii) actually try the case, again on an "associated in" basis?

Discussion:

I. Provision of consulting advice and preparation of pleadings.

Except where an attorney is assigned by the court, the attorney-client relationship is created by a contract, express or implied, between the attorney and the person who engages him or her…. An attorney's authority is limited to the subject matter for which the attorney is retained by the client….

There is nothing per se unethical in an attorney limiting the professional engagement to the consulting, counseling, and guiding of self-representing lay persons in litigation matters, provided that the client is fully informed and expressly consents to the limited scope of the representation. In Los Angeles County Bar Association Formal Opinion No. 432, this committee opined that the preparation of an answer for an in pro per litigant constituted the providing of professional services and the attendant creation of an attorney-client relationship. The American Bar Association, Model Rules of Professional Conduct, which are not binding on California lawyers but which sometimes provide useful guidance on matters not specifically addressed by the California Rules of Professional Responsibility…, provide at Rule 1.2(c) that "[a] lawyer may limit the objectives of the representation if the client consents after consultation. "

In Los Angeles County Bar Association Formal Opinion No. 449, this committee opined that there is no ethical proscription with respect to providing legal advice over the telephone in response to a stated set of facts, where charges would be based on the time spent on the telephone and where the attorney would not be otherwise involved in the case to which the alleged facts pertain. The committee is of the opinion that, assuming the attorney's engagement agreement with the client clearly delineates the limited scope of the attorney's services, the attorney may provide consultation and prepare pleadings for filing on behalf of the client.

The performance of such legal services does create an attorney-client relationship and, as the committee pointed out in Los Angeles County Bar Association Formal Opinion No. 449, the attorney would have a duty of confidentiality toward each person using the attorney's services under Business and Professions Code §6068(e). The attorney would also be under a duty to avoid the representation of adverse and conflicting interests prohibited by Rules of Professional Conduct, Rule 3-310, and that this might well involve extensive record keeping. To meet the competency requirements of Rules of Professional Conduct, Rule 3-110, the attorney should take care to elicit sufficient information from the client to enable the attorney to render appropriate advice….

The provision of limited services to a client from time to time raises potential issues of client abandonment under Rules of Professional Conduct, Rule 3- 700(A)(2), prohibiting abandonment of clients. Reasonable steps to avoid reasonably foreseeable prejudice, due notice, and opportunity for replacement counsel's engagement and providing client's files are still required.

II. Special appearances on behalf *of* the client.

A party may appear in his own person or *by* an attorney, but cannot do both, unless approved *by* the court….The attorney in the circumstance proposed in the inquiry of limited representation to argue motions, whether or not prepared *by* the attorney, should comply with all applicable court rules and procedures of the particular tribunal. As long as the limited nature of the representation is disclosed to the court and approved *by* the court, the committee is of the opinion that there is no ethical impropriety.

The appearance at the status conference, where trial counsel must appear, where counsel did not intend to become counsel of record, may constitute a violation of Business and Professions Code §6068(d), as misleading the court as to the true status of the attorney and that the attorney is not controlling the case. Appearance at the status conference requiring trial lawyers may be a tacit representation to the court and opposing counsel that prior to the time of trial there will be an appropriate substitution of the attorney for the in pro per client and the attorney is ready, willing, and able to proceed to trial. In such circumstances it is most likely that the court would find that the client has ratified the attorney becoming counsel of record and fully responsible for the case….Thus, it would be advisable for the attorney to make clear to the court the scope of the attorney's representation.

This opinion is advisory only. The committee acts on specific questions submitted ex parte and its opinions are based only on such facts as are set forth in the questions submitted.

*This formatting may be different from that in the actual opinion, and citations, text or footnotes may be deleted where indicated by ellipses.

APPENDIX 31: Los Angeles County Bar Association Professional Responsibility And Ethics Committee, Ethics Opinion 502 (November 4, 1999) (Lawyers' Duties When Preparing Pleadings Or Negotiating Settlement For In Pro Per Litigant)*

Summary of Opinion:

An attorney may limit the scope of representation of a litigation client to consultation, preparation of pleadings to be filed by the client in pro per, and participation in settlement negotiations so long as the limited scope of representation is fully explained and the client consents to it. The attorney has a duty to alert the client to legal problems which are reasonably apparent, even though they fall outside the scope of retention, and to inform the client that the limitations on the representation create the possible need to obtain additional advice, including advice on issues collateral to the representation. These principles apply whether the attorney . is representing the client on an hourly, contingency, fixed or no fee basis.

Generally, where the client chooses to appear in propria persona and where there is no court rule to the contrary, the attorney has no obligation to disclose the limited scope of representation to the court in which the matter is pending.

If an attorney, who is not "of record" in litigation, is authorized by his client to participate in settlement negotiations, opposing counsel may reasonably request confirmation of the attorney's authority before negotiating with the attorney.

Normally, an attorney has authority to determine procedural and tactical matters while the client alone has authority to decide matters that affect the client's substantive rights An attorney does not, without specific authorization, possess the authority to bind his client to a compromise or settlement of a claim.

…

Facts and issues Presented:

Client has appeared *in propria persona* in litigation and has engaged Attorney to give legal advice about the litigation and to participate in settlement negotiations. Client has filed a Superior Court complaint which attorney drafted for her on an hourly fee basis. Attorney's written engagement agreement with Client provides that Attorney will not be the attorney of record in the case and that court appearances, calendaring, filing of papers, meeting of deadlines in the case and all other usual

responsibilities of counsel of record are Client's responsibility. Attorney's engagement is limited to that of a law consultant who advises Client on matters only as Client requests, assists in or drafts papers that Client will sign and file and attempts to negotiate a settlement with defendants' counsel.

This inquiry raises the following questions:

1. Is this limited legal representation unethical?

2. May opposing counsel properly refuse to negotiate with Attorney on the grounds that he is not the attorney of record in the pending case and, therefore has no authority to bind his client regarding settlement negotiations pursuant to Code of Civ. Proc. §283?

3. If Client has retained Attorney for purposes of settlement negotiations, is Client bound by any agreement Attorney makes on her behalf?

4. Does Attorney have any obligation to disclose to the court in which the matter is pending the limited scope of Attorney's representation of Client?

Discussion:

A. Limited Scope of Representation

Attorney-client relationships can be created by the parties' express or implied oral or written agreement or by assignment of an attorney by the court….

We previously opined in Formal Opinion 483: "There is nothing per se unethical in an attorney limiting the professional engagement to the consulting, counseling, and guiding self-representing lay persons in litigation matters, providing that the client is fully informed and expressly consents to the limited scope of the representation."…Any limitations on work to be performed should be stated explicitly and completely.

Limiting the scope of legal services is not an impermissible prospective limitation on an attorney's liabilities….

If the fee agreement is required to be in writing pursuant to Business and Professions Code section 6148, the scope of the legal services as well as the clients' responsibilities should be in writing. (Bus. & Prof. Code, §6148 (a)(2)-(3).) Prof. Code §§6147, 6147.5.)

B. Ethical Obligations Resulting from Limiting the Scope of Representation

An attorney who is requested to significantly limit the scope of representation of a client must make the limitations clear. Some of the ethical constraints limiting representation include an attorney's duty of care to advise a client about his or her rights, the alternatives available under the circumstances, the consequences of each, their cost and the likelihood of their success. (Nichols v. Keller (1993) 15 Cal.App.4th 1672,1684-1687, 19 Cal.Rptr.2d 601.) Thus an attorney should advise the prospective client of the consequences of the attorney providing only "behind the scenes" legal counsel and advice and "ghostwriting" of pleading services to the client including the difficulties which the client may encounter in appearing in court on his or her own behalf or at depositions.

As was held in the Nichols opinion:

> "... if counsel elects to limit or proscribe his representation of the client, i.e., to a workers' compensation claim only without reference or regard to any third party or collateral claims which the client might pursue if adequately advised, then counsel must make such limitations in representation very clear to his client."
>
> "However, even when a retention is expressly limited, the attorney may still have a duty to alert the client to legal problems which are reasonably apparent, even though they fall outside the scope of retention. The rationale is that, as between the lay client and the attorney, the latter is more qualified to recognize and analyze the client's legal needs. The attorney need not represent the client on such matters. Nevertheless, the attorney should inform the client of the limitations of the attorney's representation and of the possible need for other counsel." 15 Cal.App.4th at 1684.

Failure to advise the client about relevant issues collateral to the subject of representation may constitute a breach of the standard of care. See also rule 3-110(A), Rules of Professional Conduct (Failure to perform competently).

Although an attorney may provide limited services, the legal services nonetheless must be competently provided (see, rule 3-110(A), Rules of Professional Conduct) and the attorney would have the duty to exercise such skill, prudence and diligence as attorneys of ordinary skill and capacity commonly possess respecting the limited scope of services….

C. Professional Responsibilities Regarding the Limited Scope of Representation

Even though an attorney may limit the scope of legal services, the attorney is required to discharge professional responsibilities relating to legal services within the scope of representation. For example, Attorney would owe Client a duty of undivided loyalty and would

therefore be unable to accept employment adverse to Client from other prospective clients even in unrelated matters.

Where it is contemplated that the attorney will have ongoing responsibilities throughout the case, abandonment or improper withdrawal from even limited representation may constitute a violation of rule 3-700(A)(2), Rules of Professional Conduct. The attorney must take reasonable steps to avoid reasonably foreseeable prejudice to the limited-representation client. Thus there may be a need to explain the consequences of the attorney's withdrawal in terms of the limited representation, for example where there is pending discovery which will require greater client effort to follow-up without the attorneys' assistance. The attorney must also give notice to the client, time for employment of other counsel and returning of client files, property and unearned fees, as applicable. (L.A. Co. Bar Assn. Form. Ops. 476 and 483 (1995).)

The provision of limited legal services to Client does not eliminate the potential for conflicts of interests, whether the limited representation is concurrent with or sequential to an attorney's possible conflicting representation or relationships. Attorney should carefully comply with the requirements of Rule of Professional Conduct 3-310 and should be cognizant particularly of maintaining client confidentiality. (Bus. & Prof. Code §6068(e); Rule of Professional Conduct 3-310(E).)

Moreover, an attorney is prohibited from making an agreement with the client to prospectively limit his or her professional liability to the client.(Rule 3-400(A), Rules of Professional Conduct.) Even if the scope of legal representation is limited to specific tasks, that limitation does not, standing alone, violate the rule against an attorney's obtaining prospective limitation on liability for malpractice. Similarly, any limitation upon the scope of representation does not constitute a limitation on the right of the client to file a disciplinary complaint or cooperate with the investigation or
prosecution of a disciplinary complaint. (Bus. & Prof. Code §6090.5.)

These principles apply whether the attorney is representing the client on an hourly, contingency, fixed or no fee basis

D. May Opposing Counsel Refuse to Negotiate with Attorney on the Grounds That Attorney Is Not Counsel of Record in the Pending Case?

Subdivision 1 of section 283 of the Code of Civil Procedure provides that an attorney has the authority to bind the client in any of the steps of an action or proceeding by his agreement filed with the clerk or entered in the minutes of the Court and not otherwise.

The authority conferred by section 283 does not include the authority to agree to a settlement of the case or to dismiss the action. Generally, the attorney has apparent authority as to procedural or tactical matters but it is the client who decides matters that affect her substantive rights, including the settlement of her claim….Outside the scope of section 283, an attorney, like any other agent, can be given authority by his principal. If granted by Client, Attorney has the authority to act for Client in conducting settlement negotiations.

While opposing counsel may refuse to engage in any settlement discussions whatsoever, the fact that Attorney is not counsel of record and does not possess the authority conferred by section 283, is irrelevant to opposing counsel's decision whether or not to engage in settlement negotiations. Opposing counsel might well request a confirmation of Attorney's authority to act for Client in the absence of the authority that is apparent from being attorney of record in the pending litigation.4 However, we have found no authority requiring Attorney, when not the "attorney of record" to have the specific authority conferred by section 283 in order to participate in out of court settlement negotiations.

If Attorney desires to appear at a court sponsored settlement conference, Attorney must obtain the permission of the court. As the Committee opined in Formal Opinion No. 483:

> "A party may appear in his own person or by an attorney, but cannot do both, unless approved by the court. [Citations omitted.] The attorney in the circumstance proposed in the inquiry of limited representation to argue motions, whether or not prepared by the attorney, should comply with all applicable court rules and procedures of the particular tribunal. As long as the limited nature of the representation is disclosed to the court and approved by the court, the Committee is of the opinion that there is no ethical impropriety."

E. Can Ex Parte Communications Between Client and Opposing Counsel Continue During Attorney's Representation *of* Client Respecting Settlement and If *So,* What Is the Scope *of* Such Communications? Yes.

Rule 2-100(A) provides:

> "While representing a client, a member shall not communicate directly or indirectly about the subject of the representation with a party the member knows to be represented by another lawyer in the matter, unless the member has the consent of the other lawyer."

Since Attorney is not counsel of record for Client in the litigation, rule 2- 100(A) does not preclude the opposing counsel from communicating directly with Client concerning all aspects of the litigation in the civil litigation context….Because Client is representing himself/herself in the representation and has undertaken the role of counsel for all aspects of the case, the opposing attorney is entitled to address Client directly concerning all matters relating to the litigation, including settlement of the matter….The protections afforded by rule 2-100 extend only to clients who are not representing themselves in a case or matter. If and when Client formally substitutes Attorney as counsel of record, rule 2-100 (A) will then attach….

If opposing counsel communicates directly with Client, the opposing counsel should not render legal advice to Client. (L.A. Formal Opinions 334 and 350.)

If Client and Attorney nevertheless assert that some or all communications must go through Attorney based upon Attorney's representation of Client respecting settlement negotiations, based upon rule 2-100, the opposing counsel may properly communicate with Client or may seek court clarification of a process for communication with Client based upon Attorney's assertions.

F. Disclosure *to* the Court *of* the Attorney's Role in Preparation *of* Pleadings *for* the Client's Filing in Court

This Committee has concluded that there is no specific statute or rule which prohibits Attorney from assisting Client in the preparation of pleadings or other documents to be filed with the court, without disclosing to the court the attorney's role. (Ricotta v. State of California, 4 F. Supp.2d 961, 987-988 (S.D. Cal. 1998); L.A. County Bar Assn. Form. Op. 483, March 20, 1995. *See also,* Maine Ethics Commission No. 89, August 31, 1988; Alaska Bar Assn. No. 93-1, March 19, 1993.) Moreover, the Committee had found no published court decisions in California state or federal courts which have required an attorney's disclosure to the court regarding his or her

involvement in preparing pleadings or documents to be filed by a litigant appearing *in propria persona.?* (Ricotta v. State of California, 4 F. Supp.2d 961,987-988 (S.D. Cal. 1998).) The Committee has found no published California state case or ethics opinion holding that an attorney's preparation of a pleading or document for the signature of a party appearing *in propria persona* without disclosure to the court of the authorship of the pleading or document inherently involves deception or misleading of a court within the meaning Business and Professions Code section 6068(d) or rule 5-200, Rules of Professional Conduct.

There is a nationwide debate concerning the ethical propriety of attorney's "ghostwriting" pleadings and documents for a *pro per* litigant to file with a court 8, including whether an attorney has a duty to disclose to the court the identity and extent of an attorney's involvement in the preparation thereof.

The filing of "ghost drafted" pleadings or documents does not deprive a judge of the ability to control the proceedings before the court or to hold a party responsible for frivolous, misleading or deceit in those pleadings. The *pro per* litigant, not an attorney, makes representations to the court by filing a pleading or document. California Code of Civil Procedure, § 128.7 requires that every pleading, petition, written notice of motion or other similar paper must be signed by one attorney of record or by the pro per party and that by presenting a document to the court, the attorney **or the party** is certifying that conditions in subdivision (b) are met.

Even though Client may be responsible for certification that the conditions of CCP §128.7(b) are met, Attorney may still be responsible for harm to Client or the administration of justice resulting from Attorney's preparation of pleadings. There are a number of statutes and rules that require fair and honest conduct from Attorney even if he or she is not the attorney of record for Client. These include at least the following: Business and Professions Code section 6068(a) requires an attorney to support the laws of the State of California, including section 128.7. Business and Professions Code section 6068(c) provides that it is the duty of an attorney to counsel such actions, proceedings or defenses only as appear legal or just, except the defense of a person charged with a public offense. Rule 3-200 prohibits an attorney from accepting or continuing employment, if the member knows that the objective employment is to bring an action or assert a position in litigating without probable cause and for the purpose of harassing or maliciously injuring any person or to present a claim or defense in litigation that is not warranted under existing law unless supported by a good faith argument for extension, modification or reversal of such law. Rule 3-210 prohibits an attorney from advising the violation of any law rule or ruling of a tribunal unless the member believes in good faith that the law, rule or ruling is invalid. Business and Professions Codes section 6106 prohibits an attorney from engaging in any act of dishonesty, corruption or moral turpitude. The attorney who prepares pleadings to be signed and filed by a *pro per* litigant still must comply with the professional obligations of 5-200; Business and Professions Code sections 6068(b)-(d) and 6106; and other applicable court rules as to the documents' content and form. (Bus. & Prof. Code § 6068(a).)

An attorney who prepares documents to be filed by a pro per litigant that do not comply with section 128.7(b) may violate one or more of the ethical duties set forth above. The attorney also has a duty to the client to explain the importance of compliance with section128.7 as well as the consequences to the client for its violation….

In the event of a court determination of a violation of section 128.7(b), the court may sanction the *pro per* litigant for its presentation…and may lodge a complaint with the State Bar about the attorney's participation in the preparation of the document.

Some non-California federal court decisions have held that by providing anonymous assistance with *pro per* pleadings, the attorney wrongly avoids the ethical and substantive purposes underlying Rule 11 of the Federal Rules of Civil Procedure or state policies that may be analogous to Rule 11…. The purpose of Rule 11 is to promote fairness and efficiency, by obliging the signer to conduct reasonable inquiry to determine that the pleading is well grounded in fact; is not presented for an improper purpose; and takes a non-frivolous legal position. (Ibid.) Rule 11 also has remedial and deterrent purposes, as it authorizes sanctions against a signer who violates those obligations. (Fed. R. Civ. Proc. 11.)

California practitioners who desire to prepare pleadings or documents for presentation in a California federal court by a *pro per* litigant must comply with that court's rulings on "ghostwriting" and if disclosure is required, comply with such rulings. (Bus. & Prof.§6068(a).)

This opinion is advisory only. The Committee acts on specific questions and its opinions are based on such facts as are set forth in the inquiry submitted to it.

…[footnotes omitted.]

*This formatting may be different from that in the actual opinion, and citations, text or footnotes may be deleted where indicated by ellipses.

APPENDIX 32: Colorado Bar Association Ethics Committee Formal Opinion 101 (January 17, 1998) (On Unbundled Legal Services)*

Introduction and Scope

For many years, courts have experienced increasing numbers of *pro se* litigants. While by definition attorneys do not enter appearances for *pro se* litigants, attorneys are often asked by *pro se* litigants to explain legal procedures, principles, and strategies. A lawyer who provides a client with some, but not all, of the work normally involved in litigation is said to be providing "unbundled" legal services…. By this unbundling, a person who cannot afford full representation can receive at least some legal assistance. In certain circumstances, it may be preferable for a layperson to have limited legal services rather than no services at all.

The Need for Unbundled Legal Services

Recent years have witnessed greater numbers of *pro se* litigants. A seminal American Bar Association study in Maricopa County (Phoenix), Arizona found that in 1980, at least one lawyer appeared in 76 percent of all divorce filings. By 1990, that number had dropped to 48 percent. In only 12 percent of the 1990 filings were both parties represented by counsel….It has been estimated that in California, between 45 percent and 55 percent of the divorces are entirely *pro se*…. The Denver District Court has responded to the increasing number of *pro se* divorce litigants by establishing an "Information and Referral Office." The office is staffed, in part, by lawyers who provide limited legal assistance, but who do not enter their appearance for the client. The office also maintains a referral list of attorneys who provide unbundled legal services….

The need for unbundled assistance is not limited to divorce cases. The U.S. District Court for the District of Colorado reported that 36 percent of the civil filings between January and May 1995, were filed *pro se.*…While many of these were filed by incarcerated persons, non-prisoner filings involved such disparate topics as copyright infringement, trademark disputes, product liability, bankruptcy appeals, and "torts to land." A recent newsletter from the Boulder County (Colorado) Bar Association reported that 37 percent of all cases filed in the Colorado state judicial system involve at least one *pro se* party.

Outside the courtroom, unbundled legal services are both commonplace and traditional. For example, clients often negotiate their own agreements, but before the negotiation ask a lawyer for advice on issues that are expected to arise. Sometimes, a lawyer's only role is to draft a document reflecting an arrangement reached entirely without the lawyer's involvement. Clients involved in administrative hearings (such as zoning or licensing matters) may ask their lawyer to help the client to prepare for the hearing, but not to appear at the hearing. In each of these situations, the lawyer is asked to provide discrete legal services, rather than handle all aspects of the total project.

Although unbundling is commonplace in many areas of the law, the concept is receiving the most attention in connection with *pro se* litigation. As a way of coping with the enormous number of *pro se* litigants, legal services organizations such as the Colorado State Public Defender and the Metro Volunteer Lawyers Program (formerly known as the "Thursday Night Bar") conduct self-help seminars to assist persons in representing themselves in eviction and divorce proceedings, as well as in criminal proceedings where incarceration is not threatened. These organizations then provide attorneys only for those aspects of the case in which the skilled help of a lawyer is required. Other tasks are left to the client.

Many individuals who do not qualify for public or private legal assistance programs, but who cannot afford the full service of a lawyer, recognize that their chances of success in the legal arena can be enhanced by advice from lawyers who supplement case management without dominating it. In such circumstances, the lawyer is retained to diagnose legal problems, but not to appear as counsel of record.

New York State has approved of the unbundling of legal services, noting: "We firmly believe that the creation of barriers to the procurement of legal advice by those in need and who are unable to pay in the name of legal ethics ill serves the profession." New York State Opinion 613 (9/24/90).

Different circumstances may create the need for unbundled legal services. Perhaps the most common is when a client cannot afford full representation. Others include where time constraints prevent full representation from being provided or the client requests only limited representation.

Ethical Issues

Rule 1.2 of the Colorado Rules of Professional Conduct allows a lawyer and client to limit the scope of the lawyer's representation. Rule 1.2(a) considers the issue from the client's perspective in providing that "[a] lawyer shall abide by a client's decisions concerning the objectives of the representation. . . ."

Rule 1.2(c) addresses the lawyer's point of view in providing that" [a] lawyer may limit the objectives of the representation if the client consents after consultation." The Comment to Rule 1.2 further emphasizes that a lawyer's representation need not include the full bundle of services in every instance:

> The objectives or scope of services 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.

The unbundling of legal services is not limited to situations where an attorney is entirely absent from the courtroom. The Comment to Rule 1.2 suggests that an appearance in court for only some of a client's claims is not unethical. For example, where an insurance contract provides a defense for certain lawsuit claims, but not others, the Comment states that, "the representation may be limited to matters related to the insurance coverage."…

The ABA Ethics Committee concluded under the prior Code of Professional Responsibility that there was no *per se* prohibition against unbundled legal services:

> We do not intend to suggest that a lawyer may never give advice to a litigant who is otherwise proceeding *pro se,* or that a lawyer could not, for example, prepare or assist in the preparation of a pleading for a litigant who is otherwise acting *pro se.*

ABA Informal Ethics Opinion 1414, *Conduct of Lawyer Who Assists Litigant Appearing* Pro Se (1978).

However, in the unusual situation where the lawyer provided every legal service except sitting at counsel table during trial and examining witnesses, ABA Opinion 1414 concluded that the lawyer was participating in a misrepresentation that the client was conducting the litigation *pro se.* In that circumstance, ABA Opinion 1414 concluded that the lawyer's conduct constituted fraud, deceit or misrepresentation in violation of Disciplinary Rule 1-102(A)(4)….

A lawyer who limits the scope of the representation must consult with the client about the limited representation and obtain the client's consent to the limitation. Colo. RPC 1.2(c). As

noted in the Terminology section of the Colorado Rules of Professional Conduct, "consult or consultation denotes communication of information reasonably sufficient to permit the client to appreciate the significance of the matter in question." A lawyer engaged in unbundled legal services must clearly explain the limitations of the representation, including the types of services which are not being provided and the probable effect of limited representation on the client's rights and interests. Where it is "foreseeable that more extensive services probably will be required" the lawyer may not accept the engagement unless "the situation is adequately explained to the client." Comment, Colo. RPC 1.5.

The lawyer's disclosure to the *pro se* litigant ought to include a warning that the litigant may be confronted with matters that he or she will not understand. That, however, is the trade-off which is inherent in unbundled legal services. As noted in Alaska Ethics Opinion 93-1, in providing unbundled legal services

> . . . the client then proceeds without legal representation into the courtroom for the hearing. The client may then be confronted by more complex matters, such as evidentiary arguments. . . to which he is ill-prepared to respond. The client essentially elects to purchase only limited services from the attorney and to pay less in fees. In exchange, he assumes the inevitable risks entailed in not being fully represented in court. In the Committee's view, it is not inappropriate to permit such limitations on the scope of an attorney's assistance.

Examples of the "inevitable risks entailed in not being fully represented in court" include the *pro se* litigant's inability to introduce facts into evidence due to a lack of understanding of the requirements of the rules of evidence; the *pro se* litigant's failure to understand and present the elements of the substantive legal claims or defenses; and the *pro se* litigant's inability to appreciate the ramifications of court rulings entered or stipulations offered during the proceedings. Since many of these issues will not arise until the court proceeding begins, it will be impossible to advise the client of each and every problem which might later arise. However, the lawyer should counsel the client about those risks and problems which are typical in cases of the type presented by the client.

Generally, the duty of competence of Rule 1.1 is circumscribed by the scope of representation agreed to pursuant to Rule 1.2. However, a lawyer may not so limit the scope of the lawyer's representation as to avoid the obligation to provide meaningful legal advice, nor the responsibility for the consequences of negligent action. As noted in the Comment to Rule 1.1, "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." Thoroughness and preparation requires the lawyer to make the factual inquiry necessary to understand the client's legal situation and provide competent advice.

The nature of the required "thoroughness and preparation" is not the same in every matter. As noted in the Comment to Rule 1.1, "the required attention and preparation are determined in part by what is at stake; major litigation and complex transactions ordinarily require more elaborate treatment than matters of lesser consequence."

Conclusion

The Colorado Rules of Professional Conduct, and especially Rule 1.2, allow unbundled legal services in both litigation and non-litigation matters. A lawyer who provides limited representation must nonetheless make a sufficient "inquiry into and analysis of the factual and legal elements of the problem" to provide the competent representation required by Rule 1.1.

…[footnotes omitted.]

* This formatting may be different from that in the actual opinion, and citations, text or footnotes may be deleted where indicated by ellipses.

APPENDIX 33: Delaware State Bar Association Committee On Professional Ethics Opinion 1994-2 (May 6, 1994) (On lawyers' Preparation of Legal Documents for Pro Se Litigants)*

Statement of Facts

The inquiring attorney is the Executive Director of a legal services organization. Because of staffing limitations and other reasons, lawyers of the organization sometimes agree to provide services on a limited basis. Apart from the provision of such limited services, the litigants are expected to proceed pro se. Some litigants are simply advised how to represent themselves. Often, litigants have cases in Family Court or Justice of the Peace Court, which use forms for most pleadings. In such cases, litigants are sometimes given instructions on how to complete the forms; and sometimes the forms are completed by staff attorneys and signed by the litigants, who then proceed on a pro se basis.

If the litigant's case is in the Court of Common Pleas or is an appeal to Superior Court, as in unemployment compensation cases, the litigant may be advised as to how to answer the complaint or file an appeal, or the staff attorneys may prepare the answer or appeal for the litigant's signature. The litigants are also advised how to file and serve the completed documents.

In all instances, the litigant signs a limited retainer describing the extent of the services that will be provided. If a decision is made to provide full representation, a new retainer is signed.

In cases where full representation is not provided, the staff attorneys who have prepared or aided in the preparation of the pleadings do not sign the pleadings or give any other indication that the litigant has received the aid of an attorney.

The inquiring attorney has requested an opinion as to (1) whether the legal services organization can limit its involvement to advice, and, in some instances, to the preparation of documents; and (2) whether the organization must disclose on pleadings or other documents prepared by its attorneys the fact that the documents were prepared by them and that the litigant is otherwise proceeding pro se.

Conclusion

The legal services organization may properly limit its involvement to advice and preparation of documents. However, if the organization provides significant assistance to a litigant, this fact must be disclosed. Accordingly, if the organization prepares pleadings or other documents (other than assisting the litigant in the preparation of an initial pleading) on behalf of a litigant who will subsequently be proceeding pro se, or if the organization provides legal advice and assistance to the litigant on an on-going basis during the course of the litigation, the extent of the organization's participation in the matter should be disclosed by means of a letter to opposing counsel and the court.

…

Providing Limited Assistance to Pro Se Litigants

Rule 1.2 permits a lawyer to provide limited representation to a client, if the client consents after consultation. Delaware Lawyers' Rules of Professional Conduct (hereinafter, "Rules"), Rule 1.2(c). Several jurisdictions have issued ethics opinions addressing the questions presented by the inquiring attorney. The opinions generally agree that it is permissible *for* an attorney to limit his or her representation of a litigant to advice and the preparation of documents. For example, in Maine Opinion No. 89 (8/31/88), an attorney was requested to

represent a plaintiff in an employment discrimination suit. The discrimination claim had been denied by the state human rights commission, but the attorney believed that the claim was not frivolous. Nevertheless, he declined the representation because he felt that the claim would be difficult to prove and that the plaintiff was an individual with whom it would be difficult to work. After the claimant was unable to find other representation, the attorney, in order to protect the claimant's rights from being barred by the statute of limitations, agreed to draft a complaint that the claimant could sign and file herself. The ethics opinion stated that the attorney had not acted unethically in so limiting his representation. The opinion did not specifically address the issue of disclosure, although it did conclude that the attorney was not required to sign the complaint or enter his appearance in court. However, the attorney was still required to ensure that the complaint was adequate and that it did not violate Rule 11.

In Utah Opinion 74 (2/13/81), the Ethics Committee decided that it was acceptable for an attorney to prepare an answer to a complaint for a litigant, and to allow the litigant to sign the complaint and proceed prose, where the litigant had indicated that he was not in a financial position to pay for full representation and wished only to have an answer filed to protect his position.

In Virginia Opinion 1127 (11/21/88), the Ethics Committee indicated that it was permissible for an attorney to limit his representation of a ~ litigant to providing general legal advice, recommendations of courses of action to take in discovery, legal research, and redrafting of pleadings initially prepared by the litigant. The committee opined that the lawyer-client relationship was established by such a course of conduct, and that accordingly, the ethical requirements relating to limitation of liability for malpractice and the acceptance and termination of employment would be applicable. The committee also cautioned the attorney that the client must not be advised to disregard any rules of or rulings by a tribunal.

New York City Formal Opinion 1987-2 involved a fact pattern similar to that in the Virginia Opinion. The opinion stated:

> We begin by noting that there is no ethical impediment to the client representing himself. If he does not wish, or cannot afford, full legal representation, he is free to proceed without it. EC 3-7. Nor is it improper for the lawyer to make available to the client such legal services as the client can comfortably afford. On the contrary, in doing so, the lawyer is taking action consistent with the duty of the legal profession to meet the needs of the public for legal services. EC 2-25.

Slip op. at 1.

The New York State Bar Association Committee on Professional Ethics concluded that limited representation was permissible in a situation factually similar to the one presented here. In Ethics Opinion 613, the inquirer was the managing attorney of a legal services office, which had been unable to obtain enough attorneys to provide representation to indigent persons who were sued for divorce. The inquirer proposed in such cases to prepare responsive pleadings and a demand for financial disclosure, leaving the litigant to proceed pro se from that point forward. The opinion stated:

> We see nothing ethically improper in the provision of advice and counsel, including the preparation of pleadings, to pro se litigants if the Code of Professional Responsibility is otherwise complied with. Full and adequate disclosures of the intended scope and consequences of the lawyer-client relationship must be made to the litigant. The prohibition against limiting liability for malpractice is fully applicable. Finally, and

most important, no pleading should be prepared for a pro se litigant unless it is adequately investigated and can be prepared in good faith.

Slip op. at 5.

The Committee further stated, "We firmly believe that the creation of barriers to the procurement of legal advice by those in need and who are unable to pay in the name of legal ethics ill serves the profession." Id.

In another case involving a legal aid agency, the Kentucky Ethics Committee opined that it was permissible to limit representation of a pro se litigant to preparation of the initial pleadings, and also that the agency could prepare a handbook containing forms of pleadings and practice information for use by pro se litigants. Kentucky Ethics Opinion E-343 (1/91).

We also agree that attorneys do not violate the Rules of Professional Responsibility by agreeing to provide services on a limited basis as long as the clients are fully informed of the limited scope of the representation and agree to receive services on this basis.

Disclosure of Assistance to Pro Se Litigants

While there is general agreement that there is no ethical reason precluding an attorney from providing limited representation to a client who agrees to accept services on that basis, the issue of disclosure of the representation to the courts or other tribunals and to opposing parties is more difficult and has produced a broader range of responses from ethics committees and courts. Rule 8.4(c) provides: "It is professional misconduct for a lawyer to: . . . (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation. . . ." Rule 8.4(c) is essentially the same as DR 1-IO2(A)(4), which states, "A lawyer shall not: . . . (4) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation." The problem created by the provision of undisclosed, albeit limited, services to a litigant who is otherwise proceeding pro se is, of course, that the tribunal and the opposing party may be erroneously led to believe that the litigant has received no professional legal help at all. A litigant may receive some advantage, in the form of more lenient treatment concerning procedural matters, for example, if the tribunal perceives the litigant to be unrepresented. The seriousness of the ethical problem increases in proportion to the extent to which services are provided.

The New York City Bar Opinion explained that pro se litigants are afforded special treatment by the courts to compensate for their lack of sophistication in legal matters. Pro se litigants are generally held to less stringent standards than parties represented by counsel, which may both disadvantage their opponents and put the court to additional trouble. If the purportedly pro se litigant is in fact receiving behind-the-scenes help and advice from an attorney, nondisclosure of this fact "may amount to conduct involving dishonesty, fraud, deceit or misrepresentation."

On the other hand, there does not seem to be a bright-line rule regarding when disclosure is necessary, although there is general agreement that substantial and extensive involvement by an attorney must be disclosed to opposing counsel and the court. ABA Informal Opinion 1414 (1978) indicates that whether disclosure is required would depend on the facts of the case, but that "extensive undisclosed participation" would be unethical. The opinion states that it was improper for an attorney to have given advice and counsel and drafted court papers and memoranda without disclosure, but also cautions: "We do not intend to suggest that a lawyer may never give advice to a litigant who is otherwise proceeding~, or that a lawyer could not, for example, prepare or assist in the preparation of a pleading for a litigant who is otherwise acting ~." The Virginia opinion states only that "under certain circumstances" where the assistance is

"active and substantial," disclosure is required. The Utah opinion is somewhat more specific, and seems to say that an attorney need not disclose that he or she gave initial advice and prepared or assisted in the preparation of initial pleadings, but that if the assistance continues and becomes more extensive, then disclosure to the court and opposing counsel is required. The Maine opinion states that the inquiring attorney, who had done no more than prepare the complaint, was not required to sign the complaint or enter his appearance in court as plaintiffs counsel.

The New York City opinion is more restrictive, stating that drafting any pleading, except for assisting a litigant in filling out a form designed for use by pro se litigants or making available manuals and pleading forms, is "active and substantial legal assistance" that requires disclosure to opposing counsel and the court. At a minimum, where pleadings are prepared, the New York City opinion would require disclosure when the pleading or other attorney-prepared document is filed, or when the litigant otherwise makes use of the attorney's assistance, that the litigant has received assistance from an attorney. However, the litigant would not be required to disclose the attorney's identity. If the client will not agree to make the disclosure, or if he agrees to make the disclosure but does not, then the attorney must discontinue assistance to the client.

The New York State opinion is in basic agreement with the New York City opinion, although it requires, in addition, disclosure of the identity of the lawyer who is providing assistance to the pro se litigant. The opinion approves the practice, suggested by the inquiring legal aid office, of mailing the papers that it prepares to the office of opposing counsel with a cover letter to counsel and the court explaining the extent of the legal aid office's participation in the preparation of the pleadings, and indicating that the client would be proceeding pro se apart from that assistance.

The Kentucky opinion concurs that where an attorney prepares a pleading for an otherwise pro se litigant, the attorney's name should be disclosed, although the attorney providing such limited assistance should not be compelled to enter an appearance on behalf of the litigant, since such a requirement "would place a higher value on tactical maneuvering than on the obligation to provide assistance to indigent litigants."

…

We do not recommend that an attorney sign pleadings, motions or other papers where the attorney and client have agreed that the attorney will not be representing the client in litigation. The attorney's signature in such a case would misleadingly indicate that the attorney would be representing the client in the litigation.

On the other hand, we agree that it is improper for an attorney to fail to disclose the fact that he or she has provided significant assistance to a litigant, particularly if the assistance is on-going. By "significant assistance," we mean representation that goes further than merely helping a litigant to fill out an initial pleading, and/or providing initial general advice and information. If an attorney drafts court papers (other than an initial pleading) on the client's behalf, we agree with the New York State Bar Association ethics committee in concluding that disclosure of this assistance by means of a letter to the court and opposing counsel, indicating the limited extent of the representation, is required. In addition, if the attorney provides advice on an on-going basis to an otherwise pro se litigant, this fact must be disclosed. Failure to disclose the fact of on-going advice or preparation of court papers (other than the initial pleading) misleads the court and opposing counsel in violation of Rule 8.4(c).

We caution the inquiring attorney that regardless of whether the pleadings are signed by a pro se litigant or by a staff attorney, the attorney should not participate in the preparation of pleadings without satisfying himself or herself that the pleading is not frivolous or interposed for

an improper purpose. If time does not permit a sufficient inquiry into the merits to permit such a determination before the pleading must be filed, the representation should be declined….[footnote omitted.]

* This formatting may be different from that in the actual opinion, and citations, text or footnotes may be deleted where indicated by ellipses.

APPENDIX 34: Practical Ethics Article on Unbundled Services - Assisting the Pro Se Litigant, by the New Hampshire Bar Association Ethics Committee (May 12, 1999) (Presented to the Board of Governors May 20, 1999).*

Most lawyers have drafted documents such as letters and contracts for a client knowing that the client intended to send these documents to another person. Ordinarily, such actions would not seem to present an ethical issue. A question has arisen, however, whether a lawyer may draft pleadings for a client who wants to represent herself *pro se.* The issue arises primarily where the Court is unaware that the litigant is receiving assistance.

This issue may have broad implications for people who do not have the economic resources to hire an attorney to represent them in court. Many low and moderate-income individuals may want limited assistance, because that is all they can afford. In addition, organizations who provide legal assistance to these individuals may want to try to stretch limited resources further by providing unbundled services to the many rather than full services to the few. Accordingly, the legal profession may well want to support and encourage these practices.

The propriety of the lawyer's actions will probably depend upon the particular facts involved. Informal Opinion 1414 (ABA 1978). For purposes of this article, we will look at several hypothetical situations and then discuss more general principals.

Hypothetical 1

Facts. A new client walks in and asks the lawyer to draft a complaint for the Federal District Court. The lawyer takes all the client's representations at face value and drafts a complaint.

Discussion. Rule 11 (a) of the Federal Rules of Civil Procedure requires in part that every pleading shall be signed by an attorney of record or, if the party is not represented by an attorney, by the party. Under Rule 11 (b), this signature amounts to certification that the pleading is not presented for an improper purpose, that the claims are warranted, and that the allegations have evidentiary support.

Courts will take into account a party's *pro se* status when it determines whether a filing is reasonable under Rule 11….is relaxed standard has caused at least one federal court to condemn the ghostwriting of pleadings for a *pro se* litigant.

…

[Where *pro se* litigant, with help of lawyer, filed over 30 lawsuits, many of them frivolous, over five or six year period, lawyer violated ethical rules.] Clearly, a lawyer should not assist a client to engage in any action that the lawyer could not do. For example, Rule 3.1 prohibits a lawyer from bringing a proceeding unless there is a basis for doing so that is not frivolous. Rule 8.4 prohibits a lawyer from violating the Rules of Professional Conduct through the acts of another.

Conclusion. Accordingly, in considering the first hypothetical, the Committee concludes that the lawyer should not assist the client if the lawyer knows or suspects that the client will misuse the assistance.

Hypothetical 2

Facts. A long-time client asks the lawyer to draft a complaint for a collection action in small claims court. Based on the lawyer's familiarity with both the client and the client's business dealings, the lawyer reasonably believes there is a substantial basis for the claim.

Discussion. In this hypothetical, the lawyer has a reasonable basis to believe that she is not assisting a client to engage in improper behavior. In addition, the lawyer is assisting the client in preparing something that is designed for non- lawyers but which may be confusing or

intimidating for some. Several jurisdictions have concluded that a lawyer may assist a client in preparing forms that are designed for *pro se* litigants. Formal Opinion 1987-2 (N.Y.C. 1987); Ethics Opinion 93-1 (Alaska 1993).

Conclusion. The Committee concurs that limited assistance in the circumstances of the second hypothetical would not violate the Rules of Professional Conduct. These two hypotheticals, however, leave a large area in the middle.

General Discussion

Most jurisdictions that have considered the general question have concluded that the lawyer has a duty to notify the court and opposing counsel of any significant assistance afforded the *pro se* litigant. Ethics Opinion 93-1 (Alaska) ("The lawyer's assistance to the client must be disclosed to the court and to opposing counsel unless the lawyer merely helped the client fill out forms designed for pro se litigants."); Formal Opinion 1987-2 (N.Y.C.) ("A lawyer may not prepare pleadings or documents for a *pro se* litigant, or must withdraw from assisting such litigant, if the litigant fails to disclose the lawyer's assistance to opposing counsel and the court."); Legal Ethics Opinion 1127 (Virginia 1988) ("under certain circumstances, failure to disclose that the attorney proved active or substantial assistance, including the drafting of pleadings, may be a misrepresentation to the court and to opposing counsel").

Several opinions have raised concerns whether ghostwriting may under some circumstances violate Rule 3.3 (requiring candor toward the tribunal) and Rule 4.1 (requiring truthfulness in statements to others.) Informal Opinion 1414 (ABA); Opinion 98-1, __*Massachusetts L. Rev.* 85 (Mass. 1998). These opinions fear that the *pro se* litigant is attempting to gain an unfair tactical advantage, since *pro se* pleadings have been held to "less stringent standards." *Haines* v. *Kerner,* 404 U.S. 519, 520 (1972) (allegations in *pro se* complaint held to "less stringent standards than formal pleadings drafted by lawyers" for purposes of motion to dismiss.)

As with the other opinions discussed above, the extent of the lawyer's assistance seems to be the one of the primary factors that bear on whether the conduct violates ethical rules. In Informal Opinion 1414 (ABA), it appeared "the litigant was receiving active and extensive assistance from the lawyer." In condemning the lawyer's actions, that opinion concluded that "the determination of the propriety of such a lawyer's actions will depend upon the particular facts involved and the extent of a lawyer's participation on behalf of a litigant who appears to the Court and other counsel as being without professional representation."

A recent opinion from Massachusetts reached a similar conclusion.

> The committee believes that limited scope arrangements between attorney and client may offer real benefits to the poor and disadvantaged, but it has concerns about substantial and undisclosed involvement by attorneys in cases where the client is *acting pro se.*
>
> Opinion 98-1 (Mass.)

The opinion went on to agree with, and quote, the conclusion from Informal Opinion 1414 (ABA).

This Committee concurs. Although the Rules expressly prohibit a lawyer from silently assisting a *pro se* litigant from abusing the court system, the Rules do not directly prohibit all limited assistance. The Committee believes that substantial assistance must be disclosed to the court and the opposing party. Limited assistance to clients of modest means for economical rather than tactical reasons probably need not be disclosed under most circumstances.

Put another way, whenever the client does make disclosure, the provision of unbundled services should not create an ethical problem. A cautious lawyer would require the client to disclose the assistance to the court and opposing counsel in nearly every case. Indeed, a lawyer should wonder about the motives of a client who was reluctant to make such disclosure. Such client may be trying to gain a tactical advantage from concealing the assistance.

The disclosure need not be elaborate. The following notation on a pleading should suffice: "This pleading was prepared with the assistance of a New Hampshire attorney."

The First Circuit apparently requires disclosure not only of the assistance, but also the name of the attorney. "If a brief is prepared in any substantial part by a member of the bar, it must be signed by him." *Ellis v. State of Maine,* 448 F.2d 1325, 1328 (1st Cir. 1971) (emphasis added). The Committee is not aware of any similar requirement before the New Hampshire Supreme Court. The Committee suspects, however, that under most circumstances writing a brief would constitute "active and extensive assistance" within the meaning of Informal Opinion 1414 (ABA).

Written Agreement

There are good reasons in most situations for lawyers to have written agreements concerning their services and fees. The reasons for such written agreements may be even more compelling in cases where the client wants to limit the scope of services.

First, an attorney considering this type of limited arrangement should be careful to make sure both the attorney and the client understand the exact scope of representation. Rule 1.2(c) allows the lawyer to limit the objectives of the representation if the client consents after consultation. Without a written agreement limiting the scope of representation, however, the lawyer runs the risk that the client may later claim that the scope extended beyond the limited services.

Second, an attorney providing limited legal services should be very careful at the outset to make sure the client understands that the attorney's participation may have to be disclosed to the Court. If that understanding is not established in the written agreement as a condition of employment, the attorney may find himself or herself in an ethical bind between the duty to disclose and the obligation of confidentiality under Rule 1.6.

* This formatting may be different from that in the actual opinion, and citations, text or footnotes may be deleted where indicated by ellipses.

APPENDIX 35: Opinion of Appellate Division, Superior Court of New Jersey, in Lerner v. Laufer, 819 A.2d 471, 484 (N.J. Super. Ct. Ch. Div. 2003) (Malpractice Case involving Limited representation)

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2079-01T2

LYNNE C. LERNER,
Plaintiff-Appellant,
v.
WILLIAM F. LAUFER, ESQ.
AND COURTER, KOBERT, LAUFER,
PURCELL & COHEN, P.C.,
Defendants-Respondents.

Argued January 13, 2003 - Decided April 8, 2003

Before Judges A. A. Rodríguez, Wells and Payne.

On appeal from Superior Court of New Jersey, Law Division, Morris County, Docket No. L- 2879-99.

Andrew Rubin argued the cause for appellant (Andrew Rubin, attorneys; Mr. Rubin and Hilton L. Stein, on the brief).

Marianne Espinosa Murphy argued the cause for respondents (Tompkins, McGuire, Wachenfeld & Barry, attorneys; Ms. Murphy, on the brief).

Hanan M. Isaacs argued the cause for amicus curiae New Jersey Association of Professional Mediators (Hanan M. Isaacs, attorney; Mr. Isaacs, Suzanne M. McSorley, Robert E. Margulies, Douglas K. Schoenberg and Gale Wachs, on the brief).

The opinion of the court was delivered by

WELLS, J.A.D.

We address in this appeal from a judgment dismissing a legal malpractice action, the issue of whether and to what extent, if any, an attorney may limit the scope of his representation of a matrimonial client in reviewing a mediated property settlement agreement (PSA).

The circumstances out of which the appeal arises are undisputed. The plaintiff, Lynne C. Lerner, was married to Michael H. Lerner in November 1969 and had been married to him 24 years when he filed an action for divorce in 1994. The couple had two children, a son and a daughter, born in 1974 and 1976. Michael contacted a New York lawyer, Brett Meyer, who represented him and his company in New York, but who also was a friend of the family and trusted by Lynne, to mediate a PSA. The couple had amassed a considerable fortune.

Meyer mediated over several sessions as the result of which a comprehensive, written PSA emerged. He then gave Lynne a list of New Jersey attorneys to consult prior to signing the agreement. That list, in turn, had been given to Meyer by James Andrews, a New Jersey attorney

who would represent Michael in the divorce proceedings. While the record does not disclose whether Andrews alerted everyone on the list, he did alert the defendant, William Laufer, that Lynne might call, and on January 26, 1994, sent him a draft of the mediated PSA. Lynne selected Laufer of the firm of Courter, Kobert, Laufer, Purcell & Cohen, P.C. (CKLP&C) from the list. Laufer was an experienced matrimonial attorney and held himself out as a specialist in the field.

On January 28, 1994, Lynne and Laufer spoke by telephone. On February 2, 1994, the first time that Lynne and Laufer met in person, Laufer produced a two-page letter, dated that day, for Lynne to consider. While the letter is of some length, its importance to this case is such that we reproduce it in full: See footnote 1[1]

Dear Mrs. Lerner:

This letter will confirm that you have retained my law firm for the purpose of reviewing a Property Settlement Agreement that was the product of divorce mediation conducted by Mr. Brett J. Meyer, an Attorney at Law of the State of New York.

This letter will further confirm that I have not conducted any discovery in this matter on your behalf. I have not reviewed income tax returns or other financial documentation to confirm or verify your husband's income for the past several years. I have no information concerning the gross and net values of the properties in Summit, Belmar, Teluride, Colorado or Short Hills, New Jersey. I have seen no information concerning the value of the stock in Marisa Christina, Inc. or the other corporations referred to on Page 10 of the Property Settlement Agreement. In addition, I have not had the opportunity to review any documentation concerning the respective incomes, assets, liabilities or other financial information in your case.

Based upon the fact that I have not had an opportunity to conduct full and complete discovery in this matter, including but not limited to appraisals of real estate and business interests, depositions and interrogatories, I am not in a position to advise you as to whether or not the Agreement is fair and equitable and whether or not you should execute the Agreement as prepared. Accordingly, it is difficult for me to make a recommendation as to whether you should accept the sum of $500,000.00 and 15% of the stock that the two of you have acquired during the marriage in consideration for waiving your right to 85% of the stock that was acquired during the marriage.

In sum, I am not in a position to make a recommendation or determination that the Property Settlement Agreement as prepared represents a fair and reasonable compromise of the issues concerning equitable distribution or whether the amount of alimony and/or child support that you will receive under the terms of the Agreement is an amount that would be awarded to you if, in fact, this matter proceeded to trial.

This letter will confirm that I have reviewed and suggested various modifications to the Property Settlement Agreement to the mediator. I have discussed the contents of the Agreement with you, and in your opinion you are satisfied that the Agreement represents a fair and reasonable compromise of all issues arising from the marital relationship. You have indicated to me that you are entering into the Agreement freely and voluntarily and that you have been satisfied with the services of the mediator in this matter. You have further indicated to me that the Agreement will be providing you with a substantial amount of assets in excess of Three Million Dollars, and that you will be receiving alimony payments as specifically set forth in

Paragraph 5 of the Property Settlement Agreement.

After reviewing the Agreement with you and Mr. Meyer, I am satisfied that you understand the terms and conditions of the Agreement; that you feel that you are receiving a fair and equitable amount of the assets that were acquired during the marriage; and that the amount of support that is provided in the Agreement will, in fact, provide you with an income that will allow you to maintain a respectable lifestyle.

This letter will also confirm that you are accepting my services based upon the representations specifically set forth above and that under no circumstances will you now or in the future be asserting any claims against me or my firm arising from the negotiation or execution of your Property Settlement Agreement.

Thank you for the opportunity to be of service to you in this matter, and if I can be of any future assistance, please do not hesitate to contact me.

Lynne read and signed the letter. She and Laufer then conferenced for about an hour, during which time each term of the mediated PSA was read and discussed. In addition, they discussed the value of the couple's interest in Marisa Christina, a very valuable company doing business in New York. Thereupon, a four-way conference ensued between Lynne, Laufer, Michael and Andrews, and the PSA was executed.

Five days later, on February 7, 1994, a standard retainer agreement issued from Laufer's office to Lynne, which she signed and returned. It provided in part:

The legal services which I anticipate will be rendered to you will involve legal research and factual investigation as to (i) assets which you owned at the time you were married, assets which were acquired over the course of the marriage; (ii) income and your ability/need for support; (iii) grounds for divorce; (iv) custody and visitation, and (v) payment of counsel fees and costs.

The retainer agreement also provided that the plaintiff:

will have the benefit of my [defendants'] advice and my prediction of the likely results if the matter were not settled, and were instead submitted for judicial resolution.

On April 11, 1994, an uncontested divorce proceeding took place before Judge Glickman. Lynne was represented by William Laufer and Michael by James Andrews. The cause of action proved was sexual desertion. Regarding the PSA, the following colloquy occurred between Lynne and Laufer on her direct examination:

Q. Now isn't it a fact that this agreement that is quite extensive and deals with the substantial amount of assets and provides you with substantial amount of alimony was the product of a mediation process that took place with Mr. [Brett] Meyer, an attorney in New York; is that correct?

A. Yes.

Q. And Mr. Meyer was an attorney, basically, that you and your husband had contacted and worked with before you even contacted me or, I believe before you [sic] husband even contacted Mr. Andrews; isn't that correct?

A. Yes.

Q. And this matter was submitted to us in the -- pretty much in the form of an agreement;

isn't that correct?

A. Yes.

Q. Now, after you met with me there were several modifications to that agreement; isn't that true?

A. Yes.

Q. But the basis of the agreement was - was the result of a mediation with Mr. Meyer; isn't that correct?

A. Yes.

Q. And in fact, I had you execute a letter back in February of 1994 pretty much explaining my participation in this case; more specifically, that I had not been involved in any major discovery proceedings; isn't that correct?

A. Yes.

Q. In other words, when you came to see me and you signed the letter that I gave to you, basically there was a waiver of appraisals on houses, appraisal on the business in New York, and really the review of tax returns, et cetera, of your husband; isn't that correct?

A. Yes.

Q. You relied upon the - the representations that were made by your husband to Mr. Meyer, and you relied upon Mr. Meyer; isn't that true?

A. Yes, I did.

Q. Okay. Now you understand my participa- tion and role in this matter.

A. Yes, I do.

Q. And you agree with that.

A. Yes.

. . . .

Q. And have you been satisfied with the services that I've rendered to you in this matter?

A. Yes.

The divorce was granted, and the PSA was incorporated into the final judgment dated May 6, 1994. We note that during the course of his representation of Lynne between January 28, 1994 and April 11, 1994, the date of the divorce hearing, Laufer suggested changes in the mediated PSA either to Meyer or to Andrews. Some of the changes were adopted and some were not. Later during his deposition, Laufer stated in this respect:

Q. What did you say to Lynne Lerner with respect to these revisions, not substantively as you just testified to, but rather as to what you envisioned your role to be in reviewing the property settlement agreement that had been presented to you?

A. My role, which was very clear to me, and which was so clear to me I felt it was important to put into writing, was not to negotiate a new agreement for her, not to create litigation, not to go into valuation of assets, which would have been fine with me, by the way, but to simply make sure that these - this agreement was clear and concise, and if there was any interpretation problems, that I should take care of those for her, basically to revise the agreement only when necessary to make sure that things were clarified.

It is unnecessary for purpose of this opinion to detail the terms of the PSA. But because one subject covered by it became the springboard for what later happened, we recite, in part, one of its clauses. It dealt with the Lerners' interests in Marisa Christina, a women's clothing company

headquartered in New York. The clause stated:

The Husband and the Wife have both worked at Marisa [Christina] and both recognize that the value of Marisa may be significant. The Wife knows that Marisa has contemplated an Initial Public Offering ("I.P.O.") and that an I.P.O. could cause the Husband's ownership of Marisa to substantially increase in value and such potential value has been discussed between the Husband and the Wife and same is understood by both parties. Moreover, it is also understood that the value which could be placed on the Marisa stock in the event of an I.P.O. could be approximately eight to fifteen times projected earnings.

Lynne asserts that during the course of Meyer's mediation, representations were made to her that a decision had been made not to take Marisa public. Notwithstanding, she claims that within two months of the entry of the divorce, she discovered that Marisa Christina was about to proceed with an initial public offering. Lynne became outraged. She engaged Bruce Nagel and moved to set aside the Judgment of Divorce as fraudulent. She also instituted a suit against Meyer. Judge Glickman, finding that both parties had lied about the cause of action, vacated the judgment of divorce and dismissed the complaint. The judge, however, "took no position" with respect to the validity or enforceability of the PSA.

Following that action, the parties engaged once again in a round of mediation before Paul Rowe, Esquire. A second amended PSA was agreed upon, a divorce action was re-filed, and the parties appeared for a second uncontested divorce proceeding on April 12, 1999. Lynne testified at the hearing with respect to the revised PSA:

BY MR. NAGEL:

Q. I made it clear to you that Judge Glickman was prepared to try this case this month, in fact, within a - a couple weeks of today's date.

A. Yes.

Q. And I made it clear to you that if you did not want to accept the settlement terms for any reason, they could be good, bad, or indifferent, you had the right to have Judge Glickman decide this case. I made that clear to you.

A. Yes.

Q, And I, also, outlined for you what I thought the litigation budget would be to try the case.

A. Yes.

Q. And I, also, gave you my opinions as to the likelihood of success and the risks involved in trial.

A. Yes.

In September 1999, Lynne commenced the present malpractice action against Laufer through the office of Hilton Stein. The central allegations of the complaint were that Laufer engaged in negotiations on her behalf and drafted contractual language detrimental to her interests and that as a consequence of his advice, she entered into a PSA that was inequitable and unconscionable and represented a small portion of the equitable distribution to which she was entitled.
She further alleged that:

32. The Defendants CKLP&C, Laufer and Does, were negligent in their representation of the Plaintiff's interests in the matrimonial litigation, including, but not limited to, negligence in failing to conduct appropriate discovery concerning the assets subject to equitable distribution, the failure to retain experts to value the assets available for equitable distribution, negligence in

the negotiation and preparation of the Property Settlement Agreement ultimately executed by the parties; and failure to evaluate and determine the appropriate amount of alimony, and equitable distribution Plaintiff would be entitled to under the law.

. . . .

39. Defendant Laufer breached his duty to Plaintiff by his failure to exercise the knowledge, skill, ability and devotion ordinarily possessed and employed by members of the legal profession similarly situated in connection with the discharge of his responsibilities to Plaintiff and breached his duty to utilize reasonable care and prudence in connection with those responsibilities.

She sought compensatory, special and consequential damages. An affidavit of merit, executed by Judith Q. Bielan, Esquire was served.

Discovery ensued during which the parties' depositions were taken. Lynne produced an expert's report from Bielan who was also deposed. Laufer moved for summary judgment in the fall of 2001 and argument was heard on November 16, 2001. The judge considered all the discovery, including depositions taken in 1997 in the context of the second divorce action, and Bielan's report and deposition. That report rested upon certain factual assertions, which Bielan derived from her extensive review of the depositions, answers to interrogatories, key court documents and other documentary evidence provided to her. She considered the following, among other, salient facts:

7. Mr. Laufer conducted no discovery in this matter and reviewed no financial information during this case. However, he stated that, prior to 2/2/94, he was aware that Mr. Lerner was considering an IPO for Marisa Christina, his company, although he did not know the status of any plans. He made no requests for financial information from either his client or his adversary. He never reviewed a single tax return from either party.

8. Mr. Laufer never asked Mrs. Lerner for either general information or details of the mediation sessions run by Mr. Meyer. He did not know how many sessions were held or whether they were joint or individual sessions. He had no idea whether Mr. Meyer had any financial information about the parties during these sessions or whether either had completed a CIS. Mr. Laufer made no independent determination of the fairness of the agreement reached through mediation.

9. He never asked Mrs. Lerner to prepare a CIS or a budget to reflect what she needed to live on as he stated he "would do with a client [he] was representing from scratch." He made no assessment of the interest income she could expect to earn from the assets she was to get in equitable distribution according to the PSA. He made no analysis of the total income, including alimony and interest income, on which she would be expected to live. No ballpark figure was ever estimated as to her earnings.

. . . .

14. Mr. Laufer stated in both his March 12, 1997 and April 25, 2001 depositions that as of 1993 he was a certified arbitrator of matrimonial proceedings, and as of 1995 he was a certified mediator, and that even though he was not certified at the time, as of 1994 he had mediated approximately twenty matrimonial matters. He also stated that he did not ask Mrs. Lerner

anything about the mediation process in which she had engaged with her husband and Brett Meyer, except to inquire as to whether she was satisfied with it.

Citing McCullough v. Sullivan, 104 N.J.L. 381 (E. & A. 1926), Bielan opined on the standard of care for attorneys, stating:

An attorney owes his or her client the duties of diligence, competence, faithfulness and good judgment in pursuit of the client's objectives. The State of New Jersey has adopted a two-part standard of care which prohibits both (a) gross negligence in any one particular matter and (b) a "pattern of negligence" or neglect in handling legal matters generally.

The individual elements of the duty of care are addressed individually in the Rules of Professional Conduct. RPC 1.1 governs the duty of competence, RPC 1.3 outlines the duty of diligence and Rules 1.7, 1.8 and 1.9 deal with the duty of faithfulness. The Court has also defined the "quality" of an attorney's representation as being comprised of his or her knowledge, skill and effort.

In addition to these affirmative duties, RPC 1.2(c) prohibits an attorney from limiting the scope of his or her representation absent the consent of the client after consultation. In light of the prohibition in RPC 1.8(h) against prospectively limiting malpractice liability, it is doubtful as to whether and under what circumstances any such arrangement would be enforceable.

Furthermore, Laufer held himself out to be a specialist in matrimonial law.

. . . .

Case law indicates then that when an attorney holds himself out to have an expertise in a certain area, he should be held to a higher standard in malpractice cases. See Procanik v. Cillo, 226 N.J. Super. 132 (App. Div. 1988); See also Cellucci v. Bronstein, 277 N.J. Super. 506 (App. Div. 1994).

Bielan then rendered her opinion as to how Laufer breached his duty. We excerpt from her report a series of passages:

Laufer breached his duties of competence, faithfulness and good judgment in failing to discuss the current state of the law with his client and in failing to advocate on her behalf for a truly "equitable distribution" of the marital assets. A review of the original PSA would raise a red flag for the ordinary attorney representing someone in a marriage of over twenty years. Simply, there are a myriad of questions a reasonable general practitioner would ask with a factual scenario such as the one in this case.

. . . .

Is the client entering into this out of guilt? Does the client understand what she is giving up, that she would be entitled to a fifty/fifty, or close to fifty/fifty split of all assets based on the duration of the marriage and other relevant facts of the case? What are the details of the mediator's role here? What are the details of the Mediator's knowledge regarding the IPO?

Furthermore, the manner in which Mrs. Lerner becomes Mr. Laufer's client and the way her

case is initially handled by Laufer meet with a number of irregularities.

. . . .

The first contact Mr. Laufer had with Mrs. Lerner was on January 28th, 1994, the Property PSA was signed on February 2nd, 1994, and the retainer agreement was signed on February 7th, 1994. The entire process took less than a week. The first contact he had with Lynne Lerner was January 28th, and the PSA was executed on February 2nd. At no time did Mr. Laufer make an independent evaluation as to whether or not the agreement was fair and equitable on behalf of Lynne Lerner, nor did he make a determination of conscionability. In my opinion, he had a duty to do so and he breached said duty.

At no time did Laufer review or discuss the statutory alimony criteria with Lerner or anyone else for that matter.

. . . .

He never asked to review any of her joint tax returns, nor asked for any financial information regarding Marisa Christina Company or any other asset of the marriage. In my opinion, he had a duty to do so and he breached said duty.

Laufer indicated that he did not believe it was his obligation or duty to investigate the Mediator in this case. Considering the manner in which this case started and the rush and quickness with which it was concluded, even more so Mr. Laufer should have asked extensive questions as to Mr. Meyer's relationship and involvement with the parties, especially since Mr. Meyer was not a New Jersey attorney or a specialist in either family law or mediation. In my opinion, he had a duty to do so, and breached said duty.

. . . .

He clearly never explained to her that she was entitled to fifty/fifty or close to a fifty/fifty split of the assets and debts as it pertains to equitable distribution. His advice to her was "well basically, you know, in equitable distribution, it's divided in an equitable fashion and certain assets are divided in different ways." This advice was not enough. In my opinion he had a duty to discuss the facts of her case and how they fit squarely into a fifty/fifty scenario, and by omitting to do so, he breached said duty.

Mr. Laufer was aware that Mrs. Lerner told Mr. Lerner during the Christmas holiday season in 1993 that she was having an affair. Mr. Laufer indicated this fact played no role in his advice to Lynne Lerner. Any family law attorney knows that when one party is having an affair, most times the party feels guilty and as a result, he or she may be willing to give up a considerable amount in assets and support to which she would ordinarily be entitled if the divorce went to trial. This happens often enough that any attorney who practices in the matrimonial field with any regularity, as Mr. Laufer did, should be familiar with such situations. Clearly, the rush of signing this PSA coupled with the strong possibility that Mrs. Lerner was feeling guilty, and therefore, a vulnerable spouse in a divorce matter, would make any reasonable attorney stop, sit the client down and, at the very least, delay the process until he can evaluate with a fair degree of certainty the value of each asset and the lifestyle of the parties and then explain in detail to the

client what she could expect in terms of the equitable distribution and alimony, despite the adultery, if the case went to trial. The fact that this evaluation and discussion did not take place, in my opinion, was a serious omission by Mr. Laufer, who did in fact deviate from the duty of care that any reasonable attorney would have exercised under the same or similar circumstances, and therefore, by way of his omission, he breached said duty.

Bielan also found that Laufer's asserted breaches were a proximate cause of damages to Lynne. On that subject she stated:

In this matter, Laufer's breach of his duty to do even minimal discovery into the parties' assets, to inquire as to the mediator and the mediation process, to discuss in detail case law as it pertains to alimony and equitable distribution, to question the urgency with which the matter was being handled, to make a determination of fairness and conscionability, or to discuss the likely outcome in the event of trial caused Mrs. Lerner to enter into an unconscionable and unfair settlement in her divorce and caused her to incur subsequent attorney's fees in re-litigating and negotiating the final settlement, which still did not put her in the position she would have been in had the PSA been negotiated properly the first time or had she pursued the divorce action in the ordinary course of litigation.

As to Lynne's damages, Bielan opined:

As a result of Laufer's breach of his professional duty of care to his client, Mrs. Lerner agreed to and received an unfair and inequitable distribution of marital assets. As a result of Laufer's poor representations, Lynne Lerner was damaged to the extent of the difference between what an equal fifty/fifty split would have been of the assets in 1994, and what she received.

. . . .

Clearly, a simple review of the 1993 joint tax return of the parties by Mr. Laufer would have revealed that, based on Mr. Lerner's earnings from the Marisa Christina Company, the company had a value that would far exceed any offset contemplated in the PSA that would allow Mrs. Lerner to accept only 15% of this asset. This is especially true, in my opinion, because Mrs. Lerner would have been entitled to 50% or close to 50% of that asset, due to the length of the marriage and especially with the fact that she had been an active participant in the said company.

With respect to alimony, a simple review of either the 1992 and 1993 tax returns by Mr. Laufer (showing income in excess of three million dollars) would have indicated that the alimony of $140,000-$160,000 per year was patently unfair on its face.

Laufer moved for summary judgment, and oral argument was heard on November 16, 2001.

Following an extended colloquy, the judge granted Laufer's motion for summary judgment dismissing the complaint. The judge reasoned:

I cannot believe that the law is now that she can turn around and sue the attorney who has this limitation and -- and collect the difference between what she got on that negotiated settlement which she said she was satisfied with and a 50/50 split. I -- I just can't imagine that that could be the law in -- in the State of New Jersey.

In addition to that, I don't see anything in the expert's report and nothing has been shown to me here to indicate what standard is supposed to be applied when an attorney is faced with a

mediation agreement. I don't care who the mediator is. It could be the defendant -- the -- the husband himself, the mediator.

If the agreement is I'm satisfied with that mediation, I'm satisfied with the agreement. I just want you to put it though. And then the attorney then writes and says all the limitations and she signs the letter so that she got it and, essentially, understands it. She testified under oath before a judge in this court, I guess it was, the first one, that she understood the limitations of the representation by Mr. Laufer.

And -- and all of a sudden we have an expert who now says well, you can't have a limitation. Well, what is there -- where is there any law that says you can't have a limitation? I don't understand. There must be in the mediation -- in the matrimonial field there must be a recognition that an attorney who is just there to put through the agreement that a mediator has resolved is entitled to have some kind of a limitation put on his representation as long as he tells the client what it is and the client agrees with it.

That's what the RPC says. You can do it if you consult with a client and the client agrees. And -- and there isn't a word in the expert's report about what the standard of care is under those circumstances. And there's nothing in the expert's report that says if you negotiate anything about the agreement, such as increase in the alimony, that you now undertake an obligation to review any -- everything.

. . . .

For -- for all those reasons I -- I think the expert report is -- is, as Mr. Stein is arguing, that there's all kinds of obligations being thrown out here for attorneys, but there's nothing specific. You've got to have a specific standard so an attorney sitting in his office knows what he should do or she should do if somebody comes in with this type of an agreement. And there's no standard that I can set forth in -- Ms. Beeland's [sic] report or -- or in anything else.

I -- you can't just point to RPC's and say -- competence, diligence and faithfulness and say that requires an attorney to recognize that somebody is doing something out of feelings of guilt and should say don't do it.

I

Lynne argues that the judge ignored Bielan's report and, in effect, permitted Laufer to assume the role of a "potted plant" in representing her contrary to the general duty of a lawyer to act with reasonable knowledge, skill and diligence. See Ziegleheim v. Apollo, 128 N.J. 250, 260 (1992). She urges that Laufer had a duty to perform those duties reasonably and usually expected of a lawyer engaged by a matrimonial client, anything short of which constituted malpractice. She claims that the letter of February 2, 1994 does not constitute either a limitation on the scope of Laufer's representation or a waiver of her right to full representation.

Citing Ziegleheim, Lynne asserts that it makes no difference that she described the second amended PSA as fair and equitable in the 1999 divorce proceeding because had Laufer competently represented her at the outset, she would not have been burdened by the baggage of the mediated PSA. In the latter respect, she contends that because the judge did not vacate the mediated agreement along with the divorce, she was presented with the prospect that were she to go to trial in the second proceeding, the mediated agreement would be re-approved by the judge.

Laufer argues that Lynne ignores RPC 1.2(c), which permits an attorney to limit the scope of his representation "if the client consents after consultation." He urges that the letter of February 2, 1994 disclosed the limited purpose of his representation, the details of those services he would not perform, and that he "was not in a position to advise . . . as to whether or not the agreement is fair or equitable and whether or not [Lynne] should execute the Agreement as prepared." He urges that the letter is an effective consent to limit his representation under the RPC and constitutes a waiver of full representation.

Laufer also claims that Lynne is estopped to claim in this case that the PSA was unfair because she stated under oath in the 1999 divorce proceeding that she understood that she had a right to go to trial as to all issues raised in the second divorce proceeding.

II

At the heart of this case lies a clash over two significant values to the legal community. The first is the value more recently discerned and encouraged in resolving disputes by mediation. The second is the older, more established value perceived in the resolution of conflict in adversarial proceedings by parties represented by fully independent and empowered attorneys. In the former process, it is the clients, assisted by a mediator, who arrange the disposition of their own dispute. It is largely a self-help process only tangentially informed by what the law would allow or dictate. In the latter process, it is lawyers who seek to reach ends sought by their clients under laws and rules often little understood by those clients. It is a process whereby established rights and duties are sought to be vindicated.

Mediation is now an accepted process in the resolution of family disputes except where an order has been entered under the Prevention of Domestic Violence Act, N.J.S.A. 2C:25-17 to -33. Rule 1:40-5(a) requires mediation in the case of genuine and substantial disputes over custody or parenting time issues. Furthermore, the Supreme Court has promulgated guidelines for pilot programs of mediation for economic aspects of family actions. See Pressler, Current N.J. Rules, Appendix XIX (2003).

When a PSA reached through the mediation process must be formally incorporated in a judgment of divorce, the participation of attorneys governed by the adversarial process gives rise to a question as to the nature and extent of the duty of care imposed upon the attorneys. A mediated divorce settlement may well look substantially different on the same facts than would such a settlement hammered out in adversarial proceedings. As we understand the gist of Bielan's opinion, it is that the standard of care forbids an attorney to review a mediated agreement or to participate in the proceedings leading to its incorporation in a judgment of divorce without performing many of the usual services ordinarily expected of an attorney in a fully contested divorce.

Yet the law has never foreclosed the right of competent, informed citizens to resolve their own disputes in whatever way may suit them. "Clients have the right to make the final decision as to whether, when, and how to settle their cases and as to economic and other positions to be taken with respect to issues in the case." Pressler, Current N.J. Court Rules, Appendix XVIII (2003). The voluntary settlement of disputes is a central policy dictate of the judiciary and is expressly encouraged. See Harrington v. Harrington, 281 N.J. Super. 39, 46 (App. Div.), certif. denied, 142 N.J. 455 (1995); Pascarella v. Bruck, 190 N.J. Super. 118, 125 (App. Div.), certif. denied, 94 N.J. 600 (1983). The courts approve hundreds of such settlements in all kinds of cases without once looking into their wisdom or the adequacy of the consideration that supports them. In divorce proceedings, the court daily approves settlements upon the express finding that it does

not pass upon the fairness or merits of the agreement, see Pascarella, supra, 190 N.J. Super. at 125, so long as the parties acknowledge that the agreement was reached voluntarily and is for them, at least, fair and equitable.

RPC 1.2(c) expressly permits an attorney with the consent of the client after consultation to limit the scope of representation. In Ziegleheim, supra, the Court stated "'what constitutes a reasonable degree of care is not to be considered in a vacuum but with reference to the type of service the attorney undertakes to perform.'" 128 N.J. at 260 (quoting St. Pius X House of Retreats v. Diocese of Camden, 88 N.J. 571, 588 (1982)). To us that means if the service is limited by consent, then the degree of care is framed by the agreed service. We agree with the motion judge that Bielan's report fails to establish an authoritative or recognized standard of care that rises above RPC 1.2(c) and requires an attorney to advise against a mediated PSA or to discourage a client from entering into one even where there has been little or no discovery, property or business appraisals, accountings for or proof of family income or expenses or other uncovering of facts bearing upon the terms of the agreement. In a mediated agreement, all of those things are self-determined. We, therefore, see no just reason in law or policy to deny attorneys practicing matrimonial law the right to assert as a defense to claims of malpractice that they were engaged under a precisely drafted consent limiting the scope of representation.

We hold it is not a breach of the standard of care for an attorney under a signed precisely drafted consent agreement to limit the scope of representation to not perform such services in the course of representing a matrimonial client that he or she might otherwise perform absent such a consent. Except as we hereinafter note, we are satisfied that Laufer, with Lynne's consent after consultation, properly limited the scope of his representation of her under RPC 1.2(c), to a review of the terms of the mediated agreement without going outside its four corners. We acknowledge that the letter of February 2, 1994 does not quote or cite RPC 1.2(c) nor does it expressly describe itself as a "limit to the scope of representation." It, indeed, could have been more precise in those respects. Nevertheless, we reject the argument that the content failings of the letter deprive it of its intended efficacy to limit the scope of Laufer's duties as an attorney. We are satisfied that the letter is unmistakable in its import that Laufer did not and would not perform the named services, could not render an opinion on the fairness of the agreement, and could not advise Lynne whether or not to execute it.

Armed as he was with the letter of February 2, 1994, Laufer did not, therefore, breach a proved standard of care by performing no discovery or related investigatory services necessary to evaluate the merits in fact of the mediated PSA.

Furthermore, we reject the argument that by his conduct in suggesting modifications to the PSA, some of which were adopted, Laufer stepped from under the protection of his limited scope of representation and became fully liable as if no such limitation existed. First, we harken to Laufer's own testimony, supra, p. 8, that his role was to see to it that the agreement was "clear and concise," to resolve interpretation problems in the text, and to clarify the agreement. Second, we discern no evidence that in performing his role Laufer's conduct actually altered Lynne's expectations of Laufer's duty or changed her demands for the kind of service she wished.

We necessarily confine our ruling to the facts of this case. No genuine issues of material fact raised a dispute relating to Lynne's competence, her general knowledge of the family's financial and personal affairs, or the voluntariness of her actions in submitting to mediation, in approving the mediator, or in seeking the approval of the PSA by the court. Lynne expressly denied that she had been subjected to any domestic violence. There is no contention that any term of the PSA

violated any law, any expression of public policy endemic to family disputes generally, failed to protect the best interests of the children, or fostered non-disclosure of the family's affairs to appropriate taxing authorities. Under these circumstances, we discern no standard of attorney care that was breached.

Bielan opined that because Lynne was laden with guilt, Laufer had the obligation to discuss her feelings and to delay the process of signing the PSA to give Lynne more time to unburden that guilt. As in the case of other parts of Bielan's report, that obligation appears to be personal to Bielan. She offered no authority for it, and we cannot conclude that it forms a basis upon which a jury could determine that Laufer committed malpractice.

There are several aspects of what Laufer did, of which we expressly disapprove. We mention them in answer to Lynne's contentions that they have a bearing on the issue of Laufer's alleged malpractice. Our conclusion is that while these actions were improper, they do not alter our opinion that Laufer's overall representation of Lynne did not fall below any standard of care established by Lynne's proofs.

Laufer should not have included in his letter of February 2, 1994, an undertaking not to sue him. Such a limitation violated the express terms of RPC 1.8(h). Such a provision should not be included in a consent to limit the scope of representation presented to a client for consideration or signature. We note that in the course of these proceedings Laufer did not rely on that part of his letter as a defense. He acknowledged that the limitation was unenforceable.

Laufer should not have presented Lynne with a separate, standard form of retainer agreement. Whether or not the retainer was "boilerplate" as the motion judge thought, the point is that it conflicted with the letter of February 2, 1994. It is undisputed that that letter, not the standard retainer agreement, formed the basis of Laufer's representation. Lynne does not argue nor are there facts to support any contention that she reasonably believed the retainer supplanted the terms of the February 2 letter or that she expected from Laufer unlimited representation under the retainer. Consent to limit the scope of representation under RPC 1.2(c) should be included in a single, specifically tailored form of retainer agreement.See footnote 2[2]

III

We now address Lynne's further claim that Laufer's representation of her caused her damage. Bielan's report asserts that Lynne "agreed to and received an unfair and inequitable distribution of marital assets." It stated, she was "damaged to the extent of the difference between what an equal fifty/fifty split would have been of the assets in 1994, and what she received." We are mindful that Ziegleheim, supra, 128 N.J. at 265, holds:

> that a party received a settlement that was "fair and equitable" does not mean necessarily that the party's attorney was competent or that the party would not have received a more favorable settlement had the party's incompetent attorney been competent.

Where a plaintiff alleges substandard performance in a litigated matter, the client must demonstrate that he or she would have prevailed, or would have won materially more, in the "case within the case" but for the alleged substandard performance. See Frazier v. New Jersey Mfrs. Ins. Co., 142 N.J. 590, 601 (1995); Albee Assocs. v. Orloff, Lowenbach, Stifelman and Siegel, P.A., 317 N.J. Super. 211, 222-23 (App. Div.), certif. denied, 161 N.J. 147 (1999); Guatam v. DeLuca, 215 N.J. Super. 388, 396-98 (App. Div.), certif. denied, 109 N.J. 39 (1987). Generally, the litigated matter complained of is over by way of a final judgment or settlement and relevant time frames for post-judgment proceedings have expired or such proceedings have concluded. Here, however, Lynne was successful in vacating the 1994 divorce that incorporated

the PSA reviewed by Laufer. Ziegleheim is, therefore, in our opinion distinguishable.

We acknowledge that the judge did not expressly vacate the 1994 PSA. Lynne was asked, however, during her examination in the 1999 proceeding, whether she understood that the judge was prepared to litigate all issues raised in the 1999 proceeding, including the property settlement and its terms, and she expressed her understanding of the judge's willingness to do so. Our review of the record convinces us that Lynne was correct about the posture of the case. The five-year-old 1994 mediated PSA was moribund. Any contested trial in 1999 would have started from scratch and would not have dealt with the fairness or viability of either the 1994 or the proposed 1999 PSAs. The judge was prepared to try the case and decide all the unresolved issues. While Lynne urges that the judge may well have simply re-approved the 1994 PSA, we conclude that possibility is so lacking in factual foundation, given the history of the case, as to not raise a jury question.

For those reasons, we conclude that Lynne is unable to demonstrate as a matter of law that proximate cause exists between any malpractice on Laufer's part in the 1994 proceeding resulting in damages to her. Lynne won a second chance to vindicate all of her rights in the 1999 proceeding. She is thus unable to demonstrate now that the first PSA caused her damage.

Affirmed.

Footnote: 1 [1]While we approve the letter in material part as a defense to this malpractice claim, our approval should not be construed as a conclusion that the letter is the only or even the best in form or content that such a consent to limit the scope of representation might manifest.

Footnote: 2 [2] Without intending to tread upon the jurisdiction of the Supreme Court in making and promulgating the Court Rules or in the governance of the practice of law, we would further suggest that for the protection of both attorneys and the public, when incorporation of a mediated PSA into a judgment of divorce is sought, any party's consent to limit the attorney's scope of representation under RPC 1.2(c) should be fully disclosed to the court and, if the court requests it, the executed retainer agreement should be offered to the court for review.*

* This opinion can be found at http://lawlibrary.rutgers.edu/courts/appellate/a2079-01.opn.html.