

**COMMITTEE ON ACCESS TO FAMILY COURTS MEETING  
MAY 22, 2008 AT 9:30 a.m. – ALAMEDA B  
OFFICE OF STATE COURTS ADMINISTRATOR**

MORNING:

- I. Welcome & Introduction - Levine/Smith
- II. Background of Committee - Levine/Smith
- III. Review & Revision of Limited Scope Representation Rules (Recommendation #6) - Levine
  - Exhibit A - Current Rules (4-1.2(c), 4-1.16(c), 43.01(b) & 55.03)
  - Exhibit B - Proposed Revisions to 4-1.2(c) & 55.03(a)
  - Exhibit C - Other Proposed Revisions
  - Exhibit D - Other States
- IV. Review of Rule 88.09 - Levine
  - Exhibit E - Rule 88.09 (Litigant Education / Forms)
    - A. Litigant Awareness Program (Recommendation #1) - Levine/Karen Brown
      1. Objectives
      2. Delivery Methods
        - (a) Live instruction by attorney
        - (b) DVD/Video
        - (c) Website
        - (d) Booklets
      3. Proof of Completion
    - B. Forms (Recommendation #8) - Smith
      1. Dissemination
      2. Development
      3. Approval Process

V. Internet Website (Recommendation #4) - Kathleen Bird / Gary Waint

- A. Status
- B. Goals

VI. Judicial Education (Recommendation #3) - J.D. Williamson

- A. Status of Program Preparation/Content
- B. Schedule
- C. Presenters
- D. Conference of Chief Justices / State Court Administrators - Baltimore (September 8-10, 2008) (follow-up to 2007 Harvard Conference) (Exhibit F) - Levine

VII. Other Subcommittees & Appointments

Exhibit G

- A. Court Staff Education (Recommendation #2) - Kathleen Bird
- B. Alliance with State & Local Bar Associations / Pro Bono Initiatives (Recommendation #6 & #7) - Allan Stewart
- C. Communications - Fred Cruse
- D. Funding - Gary Waint

AFTERNOON:

VIII. Lunch Break / Subcommittee Meetings

Litigant Education / Brochure  
Judicial Education  
Internet / Website  
Forms

IX. Reports of Subcommittees (listed above)

X. Next Meeting Date

XI. Adjourn

## **Recommendation #1 & #5**

### **Recommendation #1**

Pro se litigants in specific types of cases should be required to participate in an education program that describes the risks and responsibilities of proceeding without representation.

### **Recommendation #5**

A pamphlet or brochure should be developed and made available for distribution in each circuit court describing the resources available to educate and inform the pro se litigant of the risks and responsibilities of proceeding without professional legal representation.

### **Recommendation #2**

Guidelines should be developed for court staff that clearly defines what information is and is not considered legal advice. The guidelines should be made available to each circuit court with the option of also distributing the guidelines to pro se litigants. A curriculum and training program for court staff and advocates who interact or assist pro se litigants should be developed.

### **Recommendation #3**

The Judicial Education Committee should develop a curriculum and training program for the judiciary on effective court management techniques in cases involving pro se litigants. The curriculum should include education concerning ethical dilemmas created by pro se litigation and should consider the development of standard protocol for handling hearings involving pro se litigants.

### **Recommendation #4**

An internet based centralized clearinghouse should be developed and maintained to serve as a repository for information concerning all pro se services and programs available statewide.

### **Recommendation #6**

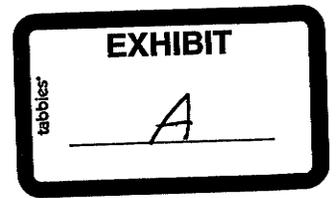
The Circuit and Family Courts should strengthen alliances with state and local bar associations throughout Missouri to encourage, promote, and support lawyer referral programs that will link those in need of legal representation to lawyers who are available to provide some services in family law cases at reasonable or reduced fees.

### **Recommendation #7**

The court system and organized bar should proactively encourage lawyers within the state to offer pro bono services annually and encourage initiatives to provide more sources of pro bono legal assistance.

### **Recommendation #8**

The Supreme Court of Missouri should develop and approve plain language, standardized forms and instructions that are accepted in all state courts and made available to pro se litigants.



**SUPREME COURT OF MISSOURI**  
**en banc**

December 21, 2007  
Effective July 1, 2008

In re:

(1) Repeal of subdivision (c) of subdivision 4-1.2, entitled "Scope of Representation," the Comment to subdivision 4-1.2, and subdivision (c) of subdivision 4-1.16, entitled "Declining or Terminating Representation," of Rule 4, entitled "Rules of Professional Conduct," and in lieu thereof adoption of a new subdivision (c) of subdivision 4-1.2, entitled "Scope of Representation," a new Comment to subdivision 4-1.2, including a "Notice and Consent to Limited Representation," and a new subdivision (c) of subdivision 4-1.16, entitled "Declining or Terminating Representation."

(2) Repeal of subdivision 43.01(b), entitled "Service on Attorney," of Rule 43, entitled "Service of Pleadings and Other Papers," and in lieu thereof adoption of a new subdivision 43.01(b), entitled "Service on Attorney."

(3) Repeal of subdivision 55.03, entitled "Signing of Pleadings, Motions and Other Papers; Representations to Court; Sanctions," of Rule 55, entitled "Pleadings and Motions," and in lieu thereof adoption of a new subdivision 55.03, entitled "Signing of Pleadings, Motions and Other Papers; Appearance and Withdrawal of Counsel; Representations to Court; Sanctions."

(4) Adoption of a new subdivision 88.09, entitled "Parties not Represented by Counsel," of Rule 88, entitled "Dissolution, Legal Separation and Child Support."

ORDER

1. It is ordered that effective July 1, 2008, subdivision 4-1.2(c), the Comment to subdivision 4-1.2, and subdivision 4-1.16(c) of Rule 4 be and the same are hereby repealed and a new subdivision 4-1.2(c), a new Comment to subdivision 4-1.2, including a "Notice and Consent to Limited Representation," and a new subdivision 4-1.16(c) adopted in lieu thereof to read as follows:

4-1.2 SCOPE OF REPRESENTATION

\* \* \*

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

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

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

An otherwise unrepresented party to whom limited representation is being provided or has been provided is considered to be unrepresented for

purposes of communication under Rule 4-4.2 and Rule 4-4.3 except to the extent the lawyer acting within the scope of limited representation provides other counsel with a written notice of a time period within which other counsel shall communicate only with the lawyer of the party who is otherwise self-represented.

\* \* \*

## **COMMENT**

### **Scope of Representation**

[1] Both lawyer and client have authority and responsibility in the objectives and means of representation. The client has ultimate authority to determine the purposes to be served by legal representation, within the limits imposed by law and the lawyer's professional obligations. Within those limits, a client also has a right to consult with the lawyer about the means to be used in pursuing those objectives. At the same time, a lawyer is not required to pursue objectives or employ means simply because a client may wish that the lawyer do so. A clear distinction between objectives and means sometimes cannot be drawn, and in many cases the client-lawyer relationship partakes of a joint undertaking. In questions of means, the lawyer should assume responsibility for technical and legal tactical issues, but should defer to the client regarding such questions as the expense to be incurred and concern for third persons who might be

adversely affected. Law defining the lawyer's scope of authority in litigation varies among jurisdictions.

[2] A lawyer may assist a self-represented litigant on a limited basis without undertaking the full representation of the client on all issues related to the legal matter for which the lawyer is engaged. Any doubt about the scope of representation should be resolved in a manner that promotes the interests of justice and those of the client and opposing party. Use of a written agreement for limited representation is required. The lawyer shall explain to the client the risks and benefits of limited representation during consultation on limiting the scope of representation. An agreement for limited representation does not exempt a lawyer from the duty to provide competent representation; however, the limitation of the scope of representation is a factor to be considered when determining the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation as required in Rule 4-1.1.

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

#### **Notice and Consent to Limited Representation**

To help you with your legal matters, you, the client, and \_\_\_\_\_, the lawyer, agree that the lawyer will limit the representation to helping you with a certain legal matter for a short time or for a particular purpose.

The lawyer must act in your best interest and give you competent help. When a lawyer and you agree that the lawyer will provide limited help:

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

While performing the limited legal services, the lawyer:

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

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

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

[INSTRUCTIONS: Check every item either Yes or No - do not leave any item blank. Delete all text that does not apply.]:

Y N

- a)         Give legal advice through office visits, telephone calls, facsimile (fax), mail or e-mail
- b)         Advise about alternate means of resolving the matter including mediation and arbitration
- c)         Evaluate the client's self-diagnosis of the case and advise about legal rights and responsibilities
- d)         Review pleadings and other documents prepared by you, the client
- e)         Provide guidance and procedural information regarding filing and serving documents
- f)         Suggest documents to be prepared
- g)         Draft pleadings, motions and other documents

- h)   Perform factual investigation including contacting witnesses, public record searches, in-depth interview of you, the client
- i)   Perform legal research and analysis
- j)   Evaluate settlement options
- k)   Perform discovery by interrogatories, deposition and requests for admissions
- l)   Plan for negotiations
- m)   Plan for court appearances
- n)   Provide standby telephone assistance during negotiations or settlement conferences
- o)   Refer you, the client, to expert witnesses, special masters or other attorneys
- p)   Provide procedural assistance with an appeal
- q)   Provide substantive legal arguments in an appeal
- r)   Appear in court for the limited purpose of \_\_\_\_\_  
\_\_\_\_\_
- s)   Other: \_\_\_\_\_

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

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

\_\_\_\_\_  
[Type Lawyer's name) Date: \_\_\_\_\_

**CLIENT'S CONSENT**

I have read this Notice and Consent form and I understand it. I agree that the legal services listed above are the ONLY legal services to be provided by the lawyer. I understand and agree that the lawyer who is helping me with these services is not my lawyer for any other purpose and does not have to give me more legal help. If the lawyer is giving me advice or is helping me with legal or other documents, I understand the lawyer will stop helping me when the services listed above have been completed. The address I give below is my permanent address where I can be reached. I understand that it is important that the court handling my case and other parties to the case be able to reach me at the address after the lawyer ends the limited representation. I therefore agree that I will inform the Court and other parties of any change in my permanent address.

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

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

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

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

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

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

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

[3] In a case in which the client appears to be suffering a mental disability, the lawyer's duty to abide by the client's decisions is to be guided by reference to Rule 4-1.14.

**Independence From Client's Views or Activities**

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

### **Services Limited in Objectives or Means**

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

[6] An agreement concerning the scope of representation must accord with the Rules of Professional Conduct and other law. Thus, the client may not be asked to agree to representation so limited in scope as to violate Rule 4-1.1 or to surrender the right to terminate the lawyer's services or the right to settle litigation that the lawyer might wish to continue.

### **Criminal, Fraudulent and Prohibited Transactions**

[7] A lawyer is required to give an honest opinion about the actual consequences that appear likely to result from a client's conduct. The fact

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

[8] When the client's course of action has already begun and is continuing, the lawyer's responsibility is especially delicate. The lawyer is not permitted to reveal the client's wrongdoing, except where permitted by Rule 4-1.6. However, the lawyer is required to avoid furthering the purpose, for example, by suggesting how it might be concealed. A lawyer may not continue assisting a client in conduct that the lawyer originally supposes is legally proper but then discovers is criminal or fraudulent. Withdrawal from the representation, therefore, may be required.

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

[10] Rule 4-1.2(d) applies whether or not the defrauded party is a party to the transaction. Hence, a lawyer should not participate in a sham transaction; for example, a transaction to effectuate criminal or fraudulent escape of tax liability. Rule 4-1.2(d) does not preclude undertaking a criminal defense incident to a general retainer for legal services to a lawful enterprise. The last clause of Rule 4-1.2(d) recognizes that determining the

validity or interpretation of a statute or regulation may require a course of action involving disobedience of the statute or regulation or of the interpretation placed upon it by governmental authorities.

#### 4-1.16 DECLINING OR TERMINATING REPRESENTATION

\* \* \*

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

\* \* \*

2. It is ordered that effective July 1, 2008, subdivision 43.01(b) of Rule 43 be and the same is hereby repealed and a new subdivision 43.01(b) adopted in lieu thereof to read as follows:

#### 43.01 SERVICE OF PLEADINGS AND OTHER PAPERS

\* \* \*

(b) Service on Attorney. Whenever under these rules or any of the statutes of this state service is required or permitted to be made upon a party represented by an attorney of record, the service shall be made upon the

attorney unless service upon the party is ordered by the court. When a party is represented by more than one attorney, service may be made upon any such attorney. If an attorney has filed a notice of limited appearance for an otherwise self-represented person, service of papers shall be made on the self-represented person and not on the attorney unless the attorney acting within the scope of limited representation serves the other party or the other party's attorney with a copy of the notice of limited appearance setting forth a time period within which service of papers shall be upon the attorney for the otherwise self-represented party.

\* \* \*

3. It is ordered that effective July 1, 2008, subdivision 55.03 of Rule 55 be and the same is hereby repealed and a new subdivision 55.03 adopted in lieu thereof to read as follows:

**55.03 SIGNING OF PLEADINGS, MOTIONS AND OTHER PAPERS;  
APPEARANCE AND WITHDRAWAL OF COUNSEL;  
REPRESENTATIONS TO COURT; SANCTIONS**

(a) Signature Required. Every pleading, motion and other filing shall be signed by at least one attorney of record in the attorney's individual name or, if the party is not represented by an attorney, shall be signed by the party. Every filing made electronically must add a certificate verifying that the original was signed by the attorney or party shown as the filer. The original

signed filing must be maintained by the filer for a period of not less than the maximum allowable time to complete the appellate process.

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

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

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

An attorney appears in a case by:

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

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

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

by filing a notice of limited appearance.

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

(c) Representation to the Court. By presenting and maintaining a claim, defense, request, demand, objection, contention, or argument in a pleading, motion, or other paper filed with or submitted to the court, an attorney or party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, that:

(1) The claim, defense, request, demand, objection, contention, or argument is not presented or maintained for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(2) The claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(3) The allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery. An attorney providing drafting assistance may rely on the

otherwise self-represented person's representation of facts, unless the attorney knows that such representations are false; and

(4) The denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

(d) Sanctions. If after notice and a reasonable opportunity to respond the court finds that Rule 55.03(c) has been violated, the court, subject to the conditions below, may impose an appropriate sanction upon the lawyers, law firms, or parties that have committed or are responsible for the violation.

(1) *How Initiated.*

(A) By Motion. A motion for sanctions under this Rule 55.03 shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate Rule 55.03(c). The motion shall be served as provided in Rule 43.01. The motion shall not be filed with or presented to the court unless, within 30 days after service of the motion, the challenged claim, defense, request, demand, objection, contention, or argument is not withdrawn or appropriately corrected. If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in representing or opposing the motion. Absent exceptional circumstances a law firm shall be held jointly responsible for violations committed by its partners, associates, or employees.

(B) On Court's Initiative. On its own initiative the court

may enter an order describing the specific conduct that appears to violate Rule 55.03(c) and directing a lawyer, law firm or party to withdraw or correct the questioned claim, defense, request, demand, objection, contention or argument or to show cause why it has not violated the rule with respect thereto.

(2) *Nature of Sanction - Limitations.* A sanction imposed for violation of this Rule 55.03 shall be limited to that which is sufficient to deter repetition of the conduct or comparable conduct by others similarly situated. Subject to the limitations in Rule 55.03(d)(1), the sanction may consist of or include directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorney's fees and other expenses incurred as a direct result of the violation.

(A) Monetary sanctions shall not be awarded against a represented party for a violation of Rule 55.03(c)(2).

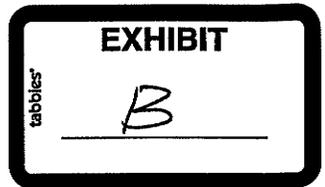
(B) Monetary sanctions shall not be awarded on the court's initiative unless the court issues its order to show cause before a voluntary dismissal or settlement of the claims made by or against the party that is, or whose lawyers are, to be sanctioned.

(3) *Order.* When imposing sanctions, the court shall describe the conduct determined to constitute a violation of this Rule 55.03 and

explain the basis for the sanction imposed.

(e) Inapplicability to Discovery. This Rule 55.03 does not apply to disclosures and discovery requests, responses, objections, and motions that are subject to the provisions of Rules 56 to 61.

(f) Sanctions for Conduct in Prior Action. If conduct constituting a violation of Rule 55.03(c) occurs but the civil action is dismissed and if a civil action based upon or including the same claim against the same party is thereafter filed, the court on its own motion or on motion of a party to the first action may impose an appropriate sanction in the second action for the violation of Rule 55.03(c). The sanction shall be imposed in the manner provided by Rule 55.03(d). In determining the sanction to impose, the court shall consider the costs and expenses incurred in the action previously dismissed, including the reasonable attorney's fees incurred in the first action.



**4-1.2(c)** A lawyer may limit the scope of representation if the client gives informed consent in a writing signed by the client to the essential terms of the representation and the lawyer's limited role. The requirement of a writing signed by the client does not apply to an initial consultation or to services provided by a nonprofit organization or a court-annexed program. The lawyer shall document the initial consultation or services in writing. Use of a written notice and consent form substantially similar to that contained in the comment to this Rule 4-1.2 creates the presumptions: . . . .

### Comments

[2] A lawyer may assist a self-represented litigant on a limited basis without undertaking the full representation of the client on all issues related to the legal matter for which the lawyer is engaged. Any doubt about the scope of representation should be resolved in a manner that promotes the interests of justice and those of the client and opposing party. Use of a written agreement for limited representation is required, except as provided in the rule. The initial consultation ends when the lawyer and the client agree that the lawyer will undertake the representation. A lawyer may provide legal advice during an initial consultation. The lawyer shall explain to the client the risks and benefits of limited representation during consultation on limiting the scope of representation. An agreement for limited representation does not exempt a lawyer from the duty to provide competent representation; however, the limitation of the scope of representation is a factor to be considered when determining the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation as required in Rule 4-1.1.

xxxxx

**55.03(a)** Signature Required. Every pleading, motion and other filing shall be signed by at least one attorney of record in the attorney's individual name or, if the party is not represented by an attorney, shall be signed by the party. An attorney who assists in the preparation of a pleading for an otherwise self-represented person shall not be required to sign the filing. . . .

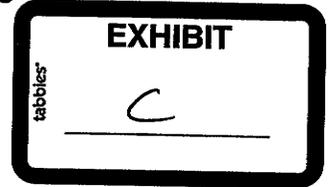
That all -- rich or poor -- may experience the system of Justice as a place of fair play and of peace making.

1310 E. McCarty Box 1687, Jefferson City MO 65102

Telephone: (573)634-7776 FAX (573)761-4856 Email: legalcare@MidMoSamaritan.org

Website: <http://www.midmosamaritan.org/legalcare>

*LSR - Proposed Amendment*



TO:

FROM: Lou DeFeo, Volunteer Coordinator

DATE:

RE: Legal Care

Below is an attempt to deal with the requirement of a written LSR agreement. Below my proposal are the approved rule, a PSC recommendation and Rittman's proposal.

=====;

4-1.2 (c) A lawyer may limit the scope of representation if the client gives informed consent in a writing signed by the client as to the essential terms of the representation and the lawyer's limited role.

(1) The requirement of a writing signed by the client shall not apply to an initial consultation or to oral advice. The lawyer shall document the initial consultation or oral advice in a writing. The requirement of a written consent shall apply to legal services involving the preparation of a pleading, motion or other written document.

(2) Use of a written notice and consent form substantially similar to that contained in the comment to this Rule 4-1.2 creates the presumption that:

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

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

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

=====

MSC Approved Rule: 4-1.2 SCOPE OF REPRESENTATION

\* \* \*

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=====

PSC Proposed Revision of MO.RPC Rule 4-1.2(c) ... limited representation

A lawyer may limit the scope of [the] representation if the client gives written consent. Use of the

written Notice and Consent form, or a form substantially similar to the approved form, shall create

the presumptions that (a) the representation is limited to the lawyer and the services described in

the form and (b) the lawyer does not represent the client generally or in any matters other than

those identified in the form.

Sara Rittman

#### 4-1.2 SCOPE OF REPRESENTATION

\* \* \*

(c) A lawyer may limit the scope of representation if the client gives informed consent in a writing signed by the client to the essential terms of the representation and the lawyer's limited role. The requirement of a writing signed by the client does not apply to an initial consultation or to services provided by a nonprofit organization. The lawyer or nonprofit organization shall document the initial consultation or services in writing. Use of a written notice and consent form substantially similar to that contained in the comment to this Rule 4-1.2 creates the presumptions:

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\* \* \*

#### COMMENT

##### Scope of Representation

[1] Both lawyer and client have authority and responsibility in the objectives and means of representation. The client has ultimate authority to determine the purposes to be served by legal representation, within the limits imposed by law and the lawyer's professional obligations. Within those limits, a client also has a right to consult with the lawyer about the means to be used in pursuing those objectives. At the same time, a lawyer is not required to pursue objectives or employ means simply because a client may wish that the lawyer do so. A clear distinction between objectives and means sometimes cannot be drawn, and in many cases the client-lawyer relationship partakes of a joint undertaking. In questions of means, the lawyer should assume responsibility for technical and legal tactical issues, but should defer to the client regarding such questions as the expense to be incurred and concern for third persons who might be adversely affected. Law defining the lawyer's scope of authority in litigation varies among jurisdictions.

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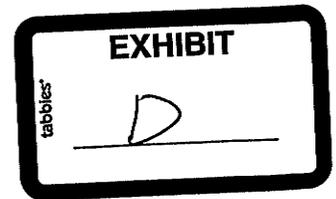
The lawyer must act in your best interest and give you competent help. When a lawyer and you agree that the lawyer will provide limited help:

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

While performing the limited legal services, the lawyer:

- Is not promising any particular outcome; and

Memorandum to Joint Pro Se Implementation Commission  
Prepared by Kathleen Bird, JD  
February 20, 2008



Question: How have various jurisdictions handled the issue of whether a lawyer providing services pro bono or as an employee of a legal aid program must have a written agreement in order to limit the scope of representation.

### Discussion

The Report of the ABA Modest Means Task Force on Limited Scope Legal Assistance addressed this issue by first asking whether single-contact services such as "hotline" consultations establish the lawyer client relationship.

*"Some lawyers who work in these high-volume programs argue that they do not need to enter into written or oral retainer agreements because they provide only legal "information" (which does not create an attorney-client relationship), rather than legal "advice" (which does).<sup>38</sup> Without addressing the sometimes elusive distinctions between these two categories, we reiterate that the limited scope assistance we discuss in this handbook is within the second category. It creates, and is provided within an attorney-client relationship. (citing Op. 17 N.J. Sup.Ct. Comm. on Attorney Adver., 1994 WL 163257(Apr. 25, 1994) ...*

In its opinion the New Jersey Supreme Court Committee stated that "consumers will not call if they do not have specific problems for which they need advice— advice upon which they intend to rely." By holding themselves out as a source of legal advice, no matter how qualified that advice might be, and by providing that advice, the hotline lawyers would create attorney-client relationships with callers whether or not they intended to. The "conduct of the parties" can create this relationship, the Committee said, and it is created when hotline lawyers provide even general answers to questions from callers about their individual problems." ABA HANDBOOK ON LIMITED SCOPE REPRESENTATION, Section of Litigation Report of the Modest Means Task Force, 16-18 (2003).

The ABA Task Force determined that "the initial 'diagnostic interview is critical' perhaps the most fundamental legal skill of a lawyer in that it consists of determining what kind of legal problems a situation may involve, a skill that necessarily transcends any particular specialized knowledge." *Id.* at 65-66. They recommended the use of a standardized interview form or questionnaire and provided sample forms in the appendix of their report for written agreements for limited scope representation. Sample agreement number 7 is a retainer agreement used by the Maryland Volunteer Lawyer Service (see form attached).

Some states have not required written agreements for limited scope representation. For example, Washington's Rules of Professional Conduct make no mention of a written agreement. Wash. RPC 4-1.2(c). The Joint Report of the Joint Iowa Judges Association and the Iowa State bar task Force on Pro Se Litigation recommended "more relaxed standards for pro bono attorneys providing unbundled legal services in the specific areas of document certificates and whether written agreements are required." Iowa Report, 10 (May 2005). The rules adopted, however, make no mention of the need for a written agreement. California's rules of professional conduct do not follow the ABA Model Code and do not require a written agreement. The Limited Representation Committee of the California Commission on Access to Justice recommends an agreement in writing regardless of the situation. See form for "single Consultation Agreement" from Draft Risk Management Materials (Jan. 2004) attached hereto.

Other states require a written engagement agreement for limited scope representation. Florida recently amended its rules of professional conduct to more clearly state that limited scope representation requires "consent in writing after consultation." See Fla. RPC 4-1.2(c)(rev. 2006). No exceptions to the requirement of a written agreement are given and the comment for rule 4-1.2 is silent regarding pro bono representation or legal aid services.

Wyoming's rules of professional conduct requires that if the lawyer and client enter a written agreement for limited scope representation and that use of the written agreement form provided in their rule creates the presumption of limited scope representation. (The Wyoming form served as one of the models used in developing an agreement form for Missouri). There is an exception when "the representation of the client consists solely of telephone consultation." Wy. Rules of Professional Conduct Rule 1.2(c) (3). The comment for Wyoming's rule states "subsection c is intended to facilitate the provision of unbundled legal services especially to low-income clients .... The agreement need not be in writing if the representation consists solely of telephone consultation between the lawyer and the client. In such circumstances, the lawyer should maintain a written summary of the conversation(s), including the nature of the requested legal assistance and advice given."

Maine's Bar Rules (as amended Jan 2006) are the most generous regarding exceptions to requirement of a written agreement. Rule 3.4(j) states "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.”  
The comment to Maine’s rule explains

*“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...”*

\* Conclusion: Some states require a written engagement agreement for limited scope representation in all cases. Some states do not require a writing at all. Other states require a written agreement with some exception for very limited representation that do not involve court appearances.

## **Agreement for Limited Legal Advice**

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.

\_\_\_\_\_  
Attorney Signature                      Your signature

\_\_\_\_\_  
Date                                              Date

(form available at  
[www.unbundledlaw.org/retainer\\_agreements/agreement\\_limited.htm](http://www.unbundledlaw.org/retainer_agreements/agreement_limited.htm))

## Maine Bar Rules 3.4

**(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.

**(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.

[The 2001 Advisory Note provides significant explanation of the rule changes to accomplish limited representation. They are included at this point to clarify application of the rule. The Advisory Notes are not part of the rule.]

### Advisory Notes—2001

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.

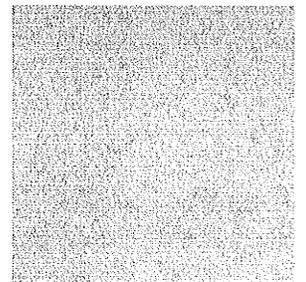
The reasons a writing memorializing the agreement is not required in all contexts include (by way of example) the problem non-profit and court annexed legal services programs face in securing such a writing from their clients, and the time entering into the agreement takes in proportion to the time consumed 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.

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.

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.



## Wyoming Rules of Professional Conduct

### Rule 1.2 Scope of representation

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

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

(2) the client consents thereto.

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

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

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

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

#### Comment

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

*Subsection (c) is intended to facilitate the provision of unbundled legal services, especially to low-income clients. "Unbundled" means that a lawyer may agree to perform a limited task for a client without incurring the responsibility to investigate or consider other aspects of the client's matter. Accordingly, a lawyer and a client may agree, in writing, that the lawyer will perform discrete, specified services. The agreement need not be in writing if the representation consists solely of telephone consultation between the lawyer and the client. In such circumstances, the lawyer should maintain a written summary of the conversation(s), including the nature of the requested legal assistance and the advice given. Pursuant to paragraph (c), therefore, a lawyer and a client may agree that the lawyer will: (1) provide advice and counsel on a particular issue or issues; (2) assist in drafting or reviewing pleadings or*

*other documents; or (3) make a limited court appearance. If a lawyer assists in drafting a pleading, the document shall include a statement that the document was prepared with the assistance of counsel and shall include the name and address of the lawyer who provided the assistance. Such a statement does not constitute an entry of appearance or otherwise mean that the lawyer represents the client in the matter beyond assisting in the preparation of the document(s). Further, any limited court appearance must be in writing pursuant to Rule 102 of the Uniform Rules for the District Courts of Wyoming, and must describe the extent of the lawyer's involvement. See also, Rule 6.5, Non-profit Limited Legal Services Programs.*

*To further facilitate the provision of unbundled services, the Board of Judicial Policy and Administration has approved a notice and consent form which may be used to comply with this rule. As paragraph (c)(4) indicates, using such a form will create the presumption that the lawyer has complied with this rule, as well as the presumption that the lawyer owes no additional duties to the client. The approved notice and consent form is attached as an appendix to these rules.*

## **Rule 6.5 Non-profit Limited Legal Services Programs**

(a) A lawyer may, under the auspices of a program sponsored by a nonprofit organization, the state or county bar association, or a court, provide 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 if the lawyer informs the client of the scope of the representation at the time legal services are provided and the lawyer obtains the client's informed consent to the limited scope. In such circumstances, the lawyer:

(b) Unless the representation of the client consists solely of telephone consultations(s), the disclosure and consent required by subsection (a) shall be in writing.

### **Comment**

*Various nonprofit organizations, bar associations, and courts have established or may establish programs through which lawyers provide short-term limited legal services – such as advice or 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 short-term, limited client-lawyer relationship is established, but there is no expectation that the lawyer's representation of the client will continue beyond the limited consultation. Such programs are normally operated under circumstances in which it is not feasible for a lawyer to systematically screen for conflicts of interest as is generally required before undertaking a representation. See, e.g., Rules 1.7, 1.9 and 1.10.*

A lawyer who provides in-person, short-term limited legal services pursuant to this Rule must provide written notice to the client of the limited scope of the representation and secure the client's written, informed decision to the limited scope of the representation. *The disclosure and agreement need not be in writing if the representation consists solely of telephone consultation between*

*the lawyer and the client. In such circumstances, if a lawyer gives legal advice, the lawyer should maintain a written summary of the conversation. See also, Rule 1.2(c). If a short-term limited representation would not be reasonable under the circumstances, the lawyer may offer advice to the client but must also advise the client of the need for further assistance of counsel. Except as provided in this Rule, the Rules of Professional Conduct, including Rules 1.6 and 1.9(c), are applicable to the limited representation.*

*(Added January 9, 2002, effective April 1, 2002; amended April 11, 2006, effective July 1, 2006.)*

## **New Hampshire Rules of Professional Conduct**

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

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

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

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

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

(g) **Sample form.**

#### CONSENT TO LIMITED REPRESENTATION

##### Limited Representation

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

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

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

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

If you and a lawyer have agreed to limited representation in connection with litigation,

you should complete this form and sign your name at the bottom. Your lawyer will also sign to show that he or she agrees. If you and the lawyer both sign, the lawyer agrees to help you by performing the following limited services:

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

\_\_\_\_\_

\_\_\_\_\_

which advice shall be provided as:

\_\_\_ consultation at a one-time meeting, or

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

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

\_\_\_\_\_ by:  
[Case name]

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

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

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

\_\_\_ Temporary hearing

\_\_\_ final hearing

\_\_\_\_ trial

\_\_\_\_ other:

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

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### Consent

I have read this Consent to Limited Representation Form and I understand what it says. As the lawyer's client, I agree that the legal services specified above are the only legal help this lawyer will give me. I understand and agree that:

- the lawyer who is helping me with these services is not my lawyer for any other purpose and does not have to give me any more legal help;
- the lawyer is not promising any particular outcome;
- because of the limited services to be provided, the lawyer has limited his or her investigation of the facts to that necessary to carry out the identified tasks with competence and in compliance with court rules;
- if the lawyer goes to court with me, the lawyer does not have to help me afterwards, unless we both agree in writing.

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

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

---

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

_____	
_____	
[sign your name]	[print or type City, State and Zip Code]
_____	
_____	
Date	[print or type your Phone Number]
_____	
_____	
[print or type your name] Lawyer's Name	[print or type name of law firm]
_____	
_____	
[sign your name]	[print or type Street, City, State and Zip Code]
_____	
_____	
Date	[print or type your Phone Number]

*Comment 3. The second sentence of Rule 1.2(c) confirms that lawyers providing limited representation are bound by all professional responsibility rules. The Rule also recognizes that these ethical obligations will need to be interpreted, or analyzed, within the context of the limited representation. One example of such an obligation could be the duty, under Rule 1.1(c)(3), to "develop a strategy, in collaboration with the client, for solving the legal problems of the client." A client who retains an attorney for limited purposes may simply want the lawyer to research and provide the applicable law in a specific area, thereby making Rule 1.1(c)(3) inapplicable. Conversely, the lawyer's duty pursuant to Rule 4.1(a) not to make false statements to third persons is the type of fundamental obligation that would remain applicable regardless of the limits placed on the scope of representation.*

*5. A new section (f) is added to apply specific rules for the limited representation of a client in a litigation setting, which would require full disclosure and informed consent. A recommended written Consent to Limited Representation form for compliance with this provision, while not mandated, is provided in section (g). Subsection (f)(2) requires the lawyer to advise the client to comply with whatever applicable court rules may apply, with respect to any "ghost written" pleadings prepared by that lawyer who is not actually involved, by appearance, in the particular litigation.*

## **Alaska Rules of Professional Conduct**

### **Rule 1.2. Scope of Representation.**

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

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

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

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

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

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

(SCO 1123 effective July 15, 1993; amended by SCO 1544, effective October 15, 2004)

*COMMENT - Scope of Representation - Services Limited in Objectives or Means*

The objectives or scope of services provided by a lawyer may be limited by agreement or by the terms under which the lawyer's services are made available to the client. For example, a retainer may be for a specifically defined purpose. Representation provided through a legal aid agency may be subject to limitations on the types of cases the agency handles. When a lawyer has been retained by an insurer to represent an insured, the representation may be limited to matters related to the insurance coverage. 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.

An agreement concerning the scope of representation must accord with the rules of professional conduct and other law. Thus, the client may not be asked to agree to representation so limited in scope as to violate Rule 1.1, or to surrender the right to terminate the lawyer's services or the right to settle litigation that the lawyer might wish to continue.

### **Rule 1.5 Fees**

(b) The basis or rate of a fee exceeding \$500 shall be communicated to the client in a written fee agreement before or within a reasonable time after commencing

the representation. This written fee agreement shall include the disclosure required under Rule 1.4(c). In a case involving litigation, the lawyer shall notify the client in the written fee agreement of any costs, fees or expenses for which the client may be liable if the client is not the prevailing party.

## FLORIDA RULES OF PROFESSIONAL CONDUCT

### RULE 4-1.2 OBJECTIVES AND SCOPE OF REPRESENTATION

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

*Comment - Allocation of authority between client and lawyer  
Agreements limiting scope of representation*

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

*Although this rule affords the lawyer and client substantial latitude to limit the representation if not prohibited by 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 which otherwise might be under the impression that the person, who appears to be proceeding pro se, has received no assistance from a lawyer. If not prohibited by law or rule, a lawyer and client may agree that any in-court representation in a family law proceeding be limited as provided for in Family Law Rule of Procedure 12.040. 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*

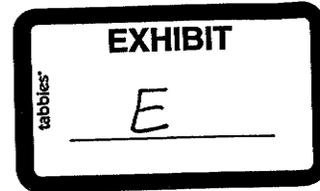
*other hearings. For limited in-court representation in family law proceedings, the attorney shall communicate to the client the specific boundaries and limitations of the representation so that the client is able to give informed consent to the representation.*

*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. See rule 4-1.1.*

*An agreement concerning the scope of representation must accord with the Rules of Professional Conduct and law. For example, the client may not be asked to agree to representation so limited in scope as to violate rule 4-1.1 or to surrender the right to terminate the lawyer's services or the right to settle litigation that the lawyer might wish to continue.*

*[Updated: 05-22-2006 ]*

88.09 PARTIES NOT REPRESENTED BY COUNSEL



Every party not represented by counsel who participates in a proceeding for dissolution of marriage, legal separation, parentage or the modification of a judgment in any such proceeding shall:

(a) Complete a litigant awareness program that includes an explanation of the risks and responsibilities of self-representation, unless waived by the circuit court. The awareness program shall be prepared by a committee designated by this Court, but each circuit may determine the manner and means by which the training shall be provided and the proof of compliance; and

(b) As approved by this Court, use the pleadings, forms, and proposed judgment prepared by a committee designated by this Court. These forms shall be accepted by the courts of this state, until disapproved or superseded by this Court.

5. It is ordered that notice of this order be published in the Journal of The Missouri Bar.

6. It is ordered that this order be published in the South Western Reporter.

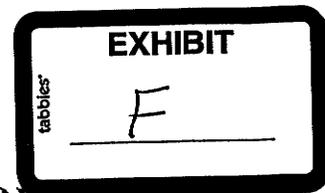
Day – to – Day

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MARY R. RUSSELL  
Acting Chief Justice

# Conference of Chief Justices Conference of State Court Administrators

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Dear Colleagues:

We write to you as the Co-Chairs of the Committee on Public Trust and Confidence in the Judiciary of the Conference of Chief Justices and the Conference of State Court Administrators.

We write to alert you to a very important program we believe is worthy of your state's involvement. A special track is being offered at this year's Court Solutions Conference to be held in Baltimore, Maryland on September 8-10, 2008. Leadership teams and individuals from participating states will gather to launch *Court Leadership and Self Represented Litigation: Solutions for Access, Effectiveness and Efficiency*, a multi-media resource pack for leadership and education on self-represented litigation issues, developed by the Self-Represented Litigation Network.

The conference will build on the success of the 2007 Harvard Judicial Conference on Self-Represented Litigation, sponsored by the Network, and use the same approach, but will go significantly beyond the courtroom and the judiciary to focus on a wide range of leadership roles and a broad range of managerial innovations in this area throughout the courts. The conference and the educational pack will give attendees the tools that they can take back to the states to share the vision, the models, and the practical management steps to improve services for self-represented litigants. It will focus on innovations that both assist the public and increase effectiveness and efficiency of the courts.

Attendees will leave the conference with an educational package customizable for use as in their state, and with experience in using that package. The package will include a variety of solutions modules with tools and resources. Each solution module will include a PowerPoint with presentation notes, and resource and activity materials useful in introducing, planning, and deploying the innovation. Examples of currently planned solution modules range from starting a self-help center to encouraging the bar to expand services to low and moderate income litigants, and from integrating caseload management to deploying plain language forms and instructions. A more complete list appears in the attached program description. Time will be set aside, and support provided, for state-level leadership planning in the use of these materials.

This will be a very interactive conference and participants will have the opportunity to practice use of the elements with their peers and share ideas on how to implement proposed solutions.

Early registration priority is being given to the team members from a state who have been formally nominated by Chiefs and State Court Administrators. (Later publicity will open the Conference more broadly, assuming slots are still open.) While there is no minimum team size, we urge you to consider, as you put together a team, including a

variety of state judicial and administrative leaders, court executives and administrators, and appropriate partners such as access to justice commission members, clerk, bar, law library and legal aid leaders, and who will be able to come back with a sense of collective responsibility, and the credibility and positions to make use of the educational package to spread the word and move the adoption of specific solutions locally and statewide. The registration fee is \$550 before July 27<sup>th</sup> and \$650 thereafter.

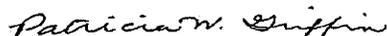
We hope that you will join in this unique opportunity for states to gather the resources and ideas to establish or enhance their efforts to serve self-represented litigants and improve court effectiveness and efficiency. We very much hope you will want to send a team. State Team registration instructions from the National Center for State Courts are as follows:

- Please make sure that an e-mail is sent to Conference Services at the National Center for State Courts ([conferences@ncsc.org](mailto:conferences@ncsc.org)) to indicate that your state is sending a team, and include the names of team members.
- Each individual member of the team must register online at [www.courtsolutions.org](http://www.courtsolutions.org).
- When registering, each individual should choose the Self-Represented Litigation track as their track preference.
- Make sure your state team registration and e-mail are sent prior to May 19 to be guaranteed slots in this track.

Thanks for your consideration and your participation.



Karla Gray  
Chief Justice, Supreme Court of Montana  
CCJ Chair of the Committee on Public Trust and Confidence in the Judiciary



Patricia Griffin  
State Court Administrator for Delaware  
COSCA Chair of the Committee on Public Trust and Confidence in the Judiciary

Ann Distler

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**From:** richard@zorza.net  
**Sent:** Tuesday, May 13, 2008 2:06 PM  
**To:** Judicial Leadership & Self Representation Mailing List  
**Subject:** [Judicial Leadership & Self Representation Mailing List] Self-Represented Litigation Network Package and Launch Gathering -- Court Leadership and Self-Represented Litigation Solutions for Access, Effectiveness, and Efficiency,

This e-mail is being sent to all who attended the ~~Harvard Judicial Conference~~ on the Self-Represented last November. I hope you are all well.

As many of you will recall from the Harvard Judicial Conference on the Self-Represented, the Self-Represented Litigation Network has been planning a similar ~~follow-up conference~~ aimed more generally at ~~court leadership~~ and planned to ~~focus on a~~ broader range of ~~innovations beyond the courtroom~~.

We will indeed be launching our leadership package entitled: ~~Court Leadership and Self-Represented Litigation Solutions~~ for Access, Effectiveness, and Efficiency, at the ~~Court Solutions Conference~~ sponsored by the National Center for State Courts, held in ~~Baltimore on September 8-10~~.

Just as the Harvard Conference did for courtroom innovations, this gathering will provide an opportunity for groups of ~~leaders to come together and learn about~~, and practice the use leadership tools for ~~a broad range of court and community innovations~~ for the self-represented.

As with the Harvard Conference, attendees will leave the Launch Gathering with a leadership and educational ~~package customizable for training throughout their state~~ or in their courts, and with experience in using that package. The Package will include the customizable tools and resources for self-assessing courts, and for supporting the multi-disciplinary teams that can then implement the specific innovations that will improve access for the self-represented.

Attendees will be expected to prepare ?learning by doing? activities, in which they will practice with their peers the use of elements of the ~~package to foster leadership~~ and the implementation of specific solutions. It is the philosophy of the project that ~~attention to the specifics of solutions~~ in the context of an overall vision, will provide the most effective and convincing tools and leadership for innovation.

The Conference is ~~open to the court and access to justice communities~~. State court ~~Chief Justices~~ and State ~~Court Administrators~~ have already been invited to send ~~teams~~, but attendance is not limited to these groups.

This gathering provides an ideal opportunity for state and court leaders to hone their

vision, focus their strategy, and obtain and become skilled in the use of leadership materials for implementation.

The modules to be presented and launched are:

Court Self-Diagnosis and ~~Strategies for Getting a Court Moving (Including Funding Issues)~~

Establishing and Operating ~~Self-Help Centers~~

Designing and Modifying ~~Physical Space for Access~~

~~Establishing Justice Corps and Volunteer Programs~~

~~Training and Supporting Clerks for Access~~

~~Developing and Deploying Forms and Instructions~~

~~Deploying Automated Forms for Access~~

Setting Up ~~Case Management~~ for the Self-Represented

~~Working with Judicial Leadership~~

~~Courtroom Staffing and Services for Access~~

The ~~Court Role~~ in ~~Establishing and Supporting Discrete Task Representation~~

Supporting and Integrating ~~Law Library Services~~

Distance Service ~~Technology~~

The ~~Limited-English Proficiency Challenge~~

Developing ~~Systems to Facilitate and Ensure Compliance with Court Orders~~

For additional information, a general description and one page flyer have been posted on <<http://www.selfhelpsupport.org/>>www.selfhelpsupport.org at <[http://www.selfhelpsupport.org/library/folder.194209-2008\\_Court\\_Leadership\\_Package\\_Launch](http://www.selfhelpsupport.org/library/folder.194209-2008_Court_Leadership_Package_Launch)>  
[http://www.selfhelpsupport.org/library/folder.194209-2008\\_Court\\_Leadership\\_Package\\_Launch](http://www.selfhelpsupport.org/library/folder.194209-2008_Court_Leadership_Package_Launch).

For answers to specific questions, contact Richard Zorza, <<mailto:richard@zorza.net>>  
richard@zorza.net, 202-549-1128.

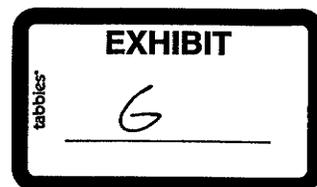
To register, go to <<http://www.courtsolutions.org/>>www.courtsolutions.org

I very much hope this will provide more tools and an additional opportunity for you to continue and broaden your work in your state.

Thanks for all that you have done and are doing in the cause of access and justice.

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COMMITTEE ON ACCESS TO FAMILY COURTS  
SUBCOMMITTEES AS OF MAY 22, 2008

**Recommendation #1 & #5 -- Litigant Education Program/Brochure\***

Lori Levine, Chair  
Kathleen Bird  
Karen Brown  
Fred Cruse  
Richard Halliburton  
Charles Hutson  
Mary Ann McClure  
Leslie Schneider  
Allan Stewart

**Recommendation #2 -- Court Staff Education**

Kathleen Bird, Chair  
Karen Brown  
Charles Hutson  
Mary Ann McClure

**Recommendation #3 -- Judicial Education\***

J.D. Williamson, Chair  
Charles Atwell  
Bennett Burkemper  
Anne Marie Clarke  
Leslie Schneider  
Miles Sweeney

**Recommendation #4 -- Internet/Website\***

Kathleen Bird, Chair  
Lou DeFeo  
Beth Dessem  
Richard Holtmeyer  
Kelly Martinez  
Terri Norris  
Gary Waint

**Recommendation # 6 & #7 -- Alliances with State and Local Bar Associations / Pro Bono Initiatives**

Allan Stewart, Chair  
Charles At well  
Fred Cruse  
Lou DeFeo  
Richard Haliburton  
Richard Holtmeyer  
Leslie Schneider  
Miles Sweeney

**Recommendation #8 -- Forms\***

Dennis Smith, Chair  
Anne Marie Clarke  
Kelly Martinez  
Patricia Scaglia  
Deanna Scott

**NEW SUBCOMMITTEES**

**Communications/Networking**

Fred Cruse, Chair  
Bennett Burkemper  
Lou DeFeo  
Beth Dessem  
Allan Stewart  
J.D. Williamson  
Gary Waint

**Funding**

Richard Halliburton, Chair  
Mary Ann McClure  
Patricia Scaglia  
Deanna Scott  
Gary Waint

\* Subcommittees meeting on May 22, 2008