

LIMITED SCOPE REPRESENTATION

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Section .1 What is Limit Scope Representation

Limited Scope Representation or “LSR” (sometimes called “unbundled services”) is an agreement between a lawyer and client to perform discrete legal tasks. Examples of discrete legal tasks include, but are not limited to, legal advice or coaching, legal research, drafting legal documents or pleadings, and representing a client at a court hearing or mediation. This concept has frequently been utilized in legal services provided in business transactions but has not been commonly allowed in litigation. Traditionally, lawyers who enter their appearance for clients in a litigation matter were obligated to represent their client until the litigation was complete. The adoption of LSR rules by states across the country has changed this principle.

In 2002, the American Bar Association (“ABA”) adopted amendments to the Model Rules of Professional Conduct to allow lawyers to perform discrete legal services for clients in litigation matters. In Missouri, LSR has been permitted by Rule 4-1.2 since about 1986. In 2007, the Missouri Supreme Court amended the Missouri Rules of Professional Conduct and the Rules of Civil Procedure to clarify and encourage this practice. Since 2002, approximately 40 states and the District

of Columbia have adopted some form of the ABA amendments and allow some form of LSR.

Section .2 Scope of Representation – Rule 4-1.2(c)

A lawyer may limit the scope of representation if the client gives written consent signed by the client. Rule 4-1.2(c). The written and signed consent must set forth the essential terms of the representation and the lawyer’s limited role. Rule 4-1.2(c). The Comment to Rule 4-1.2 provides a sample written notice and consent form. The written consent requirement does not apply to an initial legal consultation with a lawyer or *pro bono* services provided by a nonprofit organization, court-annexed program, bar association, or an accredited law school. Rule 4-1.2(d).

Any doubts about the scope of representation agreed to between a lawyer and client should be resolved in a manner that promotes the interest of justice and those of the client and opposing party. Rule 4-1.2, Cmt [2]. An agreement to provide LSR does not exempt a lawyer from the duty to provide competent representation; however, the limitation of the scope of representation may be considered when determining the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation required under the Missouri Rules of Professional Conduct.

Section .3 Communication – Rule 4-1.2(e)

A litigant to whom LSR is being provide or has been provided is considered unrepresented, so opposing counsel may speak to the litigant under the Missouri Rules of Professional Conduct. Rule 4-1.2(e) However, if the lawyer engaged in LSR services provides opposing counsel written notice of the time period within which opposing counsel shall communicate only with the lawyer, opposing counsel must oblige. Rule 4-1.2(e).

Section .4 Appearance and Withdrawal of Counsel – Rule 55.03

A. Appearance

A lawyer who “appears” for a client in a lawsuit is considered to be representing the client for all purposes in that case. Rule 55.03(b). A lawyer “appears” in a lawsuit by:

1. Participating in any court proceeding as counsel for any party;
2. Signing the lawyer's name on any pleading, motion, or other court filing;
3. Filing a written entry of appearance. However, a written entry of appearance may be limited by its terms to a particular proceeding or matter.

Rule 55.03(b)(1-3).

B. Withdrawal – Entry of Limited Appearance

If a lawyer “appears” in a lawsuit, the lawyer may only withdraw when the matter is completed or with leave of court. Rule 55.03(b) and Rule 4-1.16(c). However, a lawyer who “appears” in a lawsuit and has filed an entry of limited appearance may withdraw before the matter is completed and without obtaining leave of court. Rule 55.03(b) and Rule 4-1.16(c).

An entry of limited appearance must be a written document filed with the court titled “Entry of Limited Appearance.” Rule 55.03(b). The Entry of Limited Appearance must state the physical and mailing addresses, telephone and facsimile number, and email address, if any, of each person for whom the lawyer is making a limited appearance. Rule 55.03(b). The Entry of Limited Appearance should also set forth the particular proceeding or matter that the representation is being limited to.

A lawyer who has filed a proper entry of limited appearance withdraws from the lawsuit when the lawyer has fulfilled the duties set forth in the entry of limited appearance and has filed a withdrawal memorandum titled “Termination of Limited Appearance.” The Termination of Limited Appearance must affirm that the lawyer has fulfilled the duties set forth in the entry of limited appearance. Rule 55.03(b). If a lawyer follows these procedures correctly, the court cannot prevent the lawyer from withdrawing from the case, and the lawyer is under no ethical obligation to remain in the case even if ordered to do so by the court. Rule 55.03(b) and Rule 4-1.16(c).

C. Signature on Court Documents - Appearance

Every pleading, motion, and other filing must be signed by a lawyer of record or by the self-represented party. Rule 55.03(a). A lawyer who signs a document filed with the court is considered to be representing the parties for whom

the document was filed. Rule 55.03(b)(2). However, a lawyer who assists in the preparation of a pleading, motion, or other filing is not required to sign the document, so lawyers providing LSR do not have to sign the documents filed with the court. Rule 55.03(a). Furthermore, if a lawyer does not sign but is identified in a pleading, motion, or other filing as having assisted in the preparation of the document, the lawyer has not entered an appearance in the matter. Rule 55.03(b)(2). The Missouri Bar is encouraging lawyers who provide LSR legal services to advise the courts when they assist in drafting documents.

Section .5 Duty to Investigate – Rule 55.03

A lawyer or litigant who files a document with the court certifies that to the best of the person’s knowledge, information and belief, formed after a reasonable inquiry, that the allegations or other factual content contained in the document have evidentiary support or are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery. Rule 55.03(c)(3). However, a lawyer providing drafting assistance pursuant to a LSR arrangement may rely on the litigant’s representations of facts, unless, the lawyer knows that such representations are false. Rule 55.03(c)(3).

Section .6 Service – Rule 43.01

Every party to a lawsuit must be served with every pleading and motion filed in the case. Rule 43.01(a). If a party is represented by a lawyer, service must be made upon the lawyer. Rule 43.01(b). However, if a lawyer has filed an “Entry of Limited Appearance,” service must be upon the litigant **and** the lawyer until a termination of limited appearance is filed.

Section .7 Litigant Awareness Program and Forms – Rule 88.09

Any litigant who “participates” in a domestic relations proceeding without a lawyer must complete a “litigant awareness program.” Rule 88.09(a). The program must include an explanation of the risks and responsibilities of self-representation. *Id.* Litigants may complete this program by accessing the Missouri Supreme Court’s website at www.selfrepresent.mo.gov.

In addition, any litigant who “participates” in a domestic relations proceeding without a lawyer must use the pleadings, forms, and proposed judgment approved by the Missouri Supreme Court. Rule 88.09(b). These

“approved forms” can also be located on the Missouri Supreme Court’s website at www.selfrepresent.mo.gov.

Rule 88.09 does not require the use of the “approved forms” when the record clearly establishes that a lawyer has drafted the documents. If an attorney’s name or signature appears on a document or a notice of "Entry of Limited Appearance" has been filed which indicates that the attorney has drafted the relevant document(s), then the “approved forms” are not required because the litigant is represented by counsel with respect to those document(s).

In its discretion, the court can waive the use of the “approved forms” pursuant to Rule 88.09(b), and the court should consider waiving this requirement if it appears from the record that a lawyer has assisted a self-represented litigant in drafting the pleadings or other legal documents. Pursuant Rule 55.03(a), an attorney who assists in the preparation of a legal document on behalf of a self-represented litigant is not required to include his or her name or signature on the document. In addition, an attorney assisting in the preparation of a legal document on behalf of a self-represented litigant is not required to file a notice of "Entry of Limited Appearance" indicating that the attorney has drafted the relevant document(s) filed by a self-represented litigant. (NOTE: If an attorney signs a pleading without filing a notice of "Entry of Limited Appearance," he or she has entered a general appearance. Rule 55.03.) The intent and purpose of Rule 88.09 is to promote and ensure that self-represented litigants file legal documents that are legally sufficient. Therefore, if it is apparent to the court that an attorney has assisted in the preparation of legal document(s) filed by a self-represented litigant, the court in its discretion should strongly consider waiving the requirement that the “approved forms” be utilized. However, Rule 88.09 does not contemplate waiving the requirement of the “litigant awareness program,” and the litigant should complete the “litigant awareness program” if the litigant intends to participate without a lawyer in any aspect of a domestic relations proceeding.

Section .8 Use of LSR to Assist Low-Income Litigants

Many low-income persons with legal problems have the choice of suffering without access to justice or attempting represent themselves and presenting their own case to the court. The increasing number of *pro se* litigants is a growing burden to the courts, which creates confusion for litigants, delay for judges and attorneys, and frustration for all. Litigants are better prepared and better served with the representation of an attorney. LSR is an efficient way for litigants of modest or no means to obtain the services of a lawyer, and LSR gives lawyers the

flexibility to assist needy clients on a limited *pro bono* basis and/or agree to represent a client on a limited basis for a reduced fee. For these reasons, the Missouri Bar and the Missouri Supreme Court are promoting the use of LSR.

The Missouri Bar is educating its members on LSR and encouraging its members when appropriate to provide LSR legal services to low-income litigants. The Bar is encouraging lawyers who practice LSR to file and sign the legal documents they draft. The Bar is also encouraging lawyers to file entries of limited appearances, so it is clear who is drafting the documents filed in a case and what extent the lawyer is representing the litigant. If a lawyer drafts but does not sign a legal document filed in a case, the Bar is suggesting that lawyers include the following statement on the document: “This is a true copy of the above document as prepared with the assistance of (name of lawyer) on (date).”

The Missouri Supreme Court is also encouraging the use of LSR. If you want to learn more about LSR, you can go to the Missouri Supreme Court’s website at www.courts.mo.gov and search under “Publications,” “Handbooks & Manuals” – Judge’s Tool Kit on *Pro Bono* Legal Assistance.

Section .9 References

1. Missouri Supreme Court Rules 55.03, 43.01 and 88.09.
2. Missouri Rules of Professional Conduct 4-1.2 and 4-1.16.
3. Judge’s Tool Kit on *Pro Bono* Legal Assistance
4. www.selfrepresent.mo.gov.