

STATE BAR OF ARIZONA

PRACTICE 2.0

TIPS FOR LAWYERS REPRESENTING CLIENTS ON A LIMITED SCOPE

INTRODUCTION TO THE ETHICAL DUTIES AND REQUIREMENTS IN A LIMITED SCOPE

REPRESENTATION

Your duties and responsibilities when representing a client on a limited basis (also called limited scope) are guided by the ethics rules, the comments to the ethics rules, and three ethics opinions. There are numerous applicable ethics rules such as ER 1.1 (Competence), 1.2 (Scope of Representation and Allocation of Authority between Client and Lawyer), 1.5 (Fees), 1.6 (Confidentiality of Information), 3.3 (Candor Toward the Tribunal), and 5.2 (Communication with Person Represented by Counsel). ER 1.2 is most directly related to representing clients on a limited scope. In addition, there are three directly pertinent ethics opinions to provide guidance: 06-03, 05-06, and 91-03. This guide will summarize the highlights and provide tips about undertaking a limited scope representation. If you would like to discuss limited scope representations in further detail, contact the Practice 2.0 hotline at (602) 340 – 7332.

DETERMINING WHETHER A LIMITED SCOPE REPRESENTATION IS REASONABLE

Ethics Rule 1.2(c) deals with the scope of representation and the allocation of authority between a lawyer and a client. Under ER 1.2(c), lawyers may limit the scope of representation of a client but only if the limitation is reasonable.

Comment 7 to ER 1.2 elaborates on when a limited representation is reasonable by way of example. The comment provides, “[i]f, for example, a client's objective is limited to securing general information about the law the client needs in order to handle a common and typically uncomplicated legal problem, the lawyer and client may agree that the lawyer's services will be limited to a brief telephone consultation. Such a limitation, however, would not be reasonable if the time allotted was not sufficient to yield advice upon which the client could rely. Although an agreement for a limited representation does not exempt a lawyer from the duty to provide competent representation, the limitation is a factor to be considered when determining the

legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.” Thus a lawyer should ensure that he/she devotes a sufficient amount of time to the client’s case or problem such that a client can justifiably and reasonably rely on the advice that the lawyer provides.

It is okay to limit the representation to a discrete task but the lawyer must have enough knowledge and skill to give reliable counsel to the client. *See Ethics Opinion 05-06*. This requires that lawyers have the requisite competence, knowledge, and skill to be able to discern whether limiting the scope of the representation in a particular circumstances is reasonable for the client. For example, if a client approaches a lawyer asking for a basic will, the lawyer should be able to determine whether that limitation is necessary. If the client has a complex estate or a large amount of assets, a simple will is unreasonable and therefore there should not be such a limited scope representation.

PROVIDING INFORMED CONSENT

Ethics Rule 1.2 requires that a client give informed consent to a limited scope representation. Informed consent is defined in Ethics Rule 1.0(e). To comply with the informed consent requirement, the lawyer has to communicate enough information about the material risks and reasonably available alternatives to the course of conduct and the client must agree to the representation under those circumstances. Comment 8 to ER 1.2 points out that the informed consent does not necessarily need to be in writing. It is a best practice, however, that the informed consent is in writing and accompanies a written fee agreement.

DISCLOSING THE LIMITED SCOPE REPRESENTATION

Lawyers are not required to disclose to the court or another tribunal that the lawyer is providing limited scope representation to a client who is proceeding in propria persona. *Ethics Opinion 05-06*.

An attorney who limits the scope of representation and coaches the client or ghost-writes papers must direct the client to be truthful and candid in the client’s activities. While an attorney is not required to disclose to opposing counsel that the attorney is providing limited-scope representation, the attorney must maintain client confidentiality if doing so. Though a lawyer is not affirmatively required to inform opposing counsel about a limited scope

representation, the lawyer must nonetheless make true statements to opposing counsel. The attorney must advise opposing counsel about a limited scope representation if it is necessary to avoid assisting the client with a criminal or fraudulent act. The attorney should also note that this disclosure should only be made if he/she is authorized by his/her client because the disclosure could adversely affect the client. *Ethics Opinion 06-03*.

If the attorney does end up disclosing the limited scope representation, the attorney “should provide opposing counsel with explicit instructions, after consultation with the client, as to when opposing counsel may communicate about the subject of the representation with the client. The ground rules could include directions about whom the opposing counsel should contact and on what matters, to whom and where opposing counsel should send pleadings, correspondence and other notices, and whether the attorney is authorized to accept service for the client.” *Ethics Opinion 06-03*. Engaging in a limited scope representation is not a license to play bait and switch with opposing counsel, clients or the court.

OTHER NOTES

Attorneys should also consult the relevant court rules for their practice. For example, family law attorneys can look at the Arizona Rules of Family Law Procedure for rules regarding limited scope as well as a form to file for a Notice of Limited Scope Representation. The Arizona Rules of Civil Procedure including Rule 11 should also be consulted.

When engaging in a limited scope representations attorneys should consider, and avoid, what is commonly known as “scope creep.” If hired for a specific discrete task, or until a certain stage of the case, the lawyer should draft the scope of representation carefully to be certain that the parameters of the representation are clearly defined.

FORMS AND CHECKLISTS

CHECKLIST FOR UNDERTAKING A LIMITED SCOPE REPRESENTATION

- ✓ Determine whether a limited scope representation is reasonable for the case at hand.
- ✓ Ensure that you have enough time to render advice upon which a client can rely.
- ✓ Discuss the case issues with your client and how the tasks will be divided between you and the client.
- ✓ Obtain a written fee agreement that details the scope of representation in detail including what tasks will and will not be performed, price, and other expectations.
- ✓ Obtain informed consent from your client for the limited scope representation. The best practice is that the informed consent is in writing.
- ✓ If you will be the attorney of record, file a Notice of Limited Scope Appearance and inform opposing counsel about whether you or the client is the appropriate party to communicate with.
- ✓ Work on the case.
- ✓ When the tasks that were outlined in the fee agreement are complete and/or when the case is finished (depending on what was agreed to with the client), send the client a disengagement letter.
- ✓ When the tasks that were outlined in the fee agreement are complete and/or when the case is finished (depending on what was agreed to with the client) and if appropriate, prepare and file a Notice of Withdrawal from Limited Scope Appearance.
- ✓ Abide by rules of confidentiality for former clients.
- ✓ Review the pertinent ethics rules and opinions such as ER 1.1 (Competence), 1.2 (Scope of Representation and Allocation of Authority between Client and Lawyer), 1.5 (Fees), 1.6 (Confidentiality of Information), and 3.3 (Candor Toward the Tribunal) along with three ethics opinions on point which are 06-03, 05-06, and 91-03.
- ✓ Stay current on court rules that may pertain to limited scope representations.

SAMPLE LIMITED SCOPE FEE AGREEMENT LANGUAGE

_____ (“Client”) hires [NAME/LAW FIRM] (“Firm”) to pursue claims he or she may have in connection with [INSERT DESCRIPTION OF REPRESENTATION OF WHAT YOU SPECIFICALLY ANTICIPATE DOING, INCLUDING WHEN THE REPRESENTATION STARTS AND WHEN THE REPRESENTATION CONCLUDES (e.g. DECREE IS ENTERED). ALSO INDICATE WHAT IS NOT INCLUDED IN THIS FEE AGREEMENT, (e.g. APPEAL, MISTRIAL, QUADRO AND IF FURTHER REPRESENTATION IS NEEDED AFTER THAT A SEPARATE FEE AGREEMENT WILL BE DRAFTED)].

You are agreeing that the scope of this representation is limited as follows: (provide limitations)

Notwithstanding anything to the contrary in this agreement, this representation is terminated when the services listed in this document have been completed, and you will not expect any further services to be performed, including document-drafting, giving legal advice, or court appearances, unless you sign a new fee agreement with this firm.

Unless the opposing party or attorney knows of this firm’s representation, you are considered to be unrepresented; you will be expected to communicate with the opposing party or attorney as though you do not have a lawyer representing you.

[OR]

We will inform the opposing party or attorney of the limited scope representation, and we will instruct them as to when they may communicate directly with you. These instructions will include which of us to contact concerning specific matters, to whom and where they should send pleadings, correspondence and other notices, and whether you have authorized us to accept service on your behalf.

If this matter involves litigation, we will notify the Court that we have agreed to provide you with limited scope representation, specifying the matters, hearings or issues on which we will represent you. When we have completed the representation, we will withdraw from the action with your consent, and we will surrender all documents and property to which you are entitled, and all documents reflecting work done for you. We will provide your contact

information, including your address, telephone number, and e-mail address to the Court and the other parties.

You agree not to unreasonably withhold your consent to our withdrawal or make it subject to any conditions.

At the end of the representation, we anticipate that the status of the matter will be as follows: We will inform you of any outstanding deadlines at that time. Unless you get another lawyer to represent you, you will be responsible for representing yourself. This includes communicating with the opposing attorney, but if the party is unrepresented, then with the party directly. This also includes appearing at all court hearings and filing whatever documents are appropriate within the timeframes specified by statute, order or rule, and sending copies to the opposing party or their lawyer.

*Note that Practice 2.0 provides
confidential reviews of your
fee agreement!*

SAMPLE INFORMED CONSENT

You have retained the Firm to [explain the scope of representation]. The risks with the Firm representing you on a limited scope are as follows: [explain the risks]. The reasonably available alternatives to this are: [explain the alternatives]. You are encouraged to consult outside counsel to determine if this is the best course of conduct. You agree to the risks as outlined above and agree that we should proceed.

Signed: _____ Date: _____

Client

Signed: _____ Date: _____

Firm

SAMPLE DISENGAGEMENT LETTER

[Date]

Dear [Name]:

Thank you for allowing us to represent you in the [describe limited scope matter]. In order to complete your legal matter, and according to the agreement we reached when we were hired, we will [explain anything the firm needs to complete]. In addition, you will need to [explain anything the client needs to complete].

Since this matter has now concluded, we suggest that you keep all of your copies of information related to this matter in a safe place where you can easily locate them. We are closing our file which we will retain for a [explain your document retention policy].

We hope that this matter has been concluded to your satisfaction. Thank you for allowing us to represent you. If we can be of further assistance on this or any other matter, please let us know.

The form that follows is Form 1 from the Arizona Rules of Family Law Procedure. While the State Bar of Arizona makes every effort to ensure that the information contained herein is up to date, lawyers are responsible for ensuring accuracy of any documents they submit to the Court.

FORM 1: NOTICE OF LIMITED SCOPE REPRESENTATION

Name: _____

Mailing Address: _____

City, State, Zip Code: _____

Daytime Phone Number: _____

Evening Phone Number: _____

Representing: Self Petitioner Respondent

State Bar Number: _____

ARIZONA SUPERIOR COURT, COUNTY OF _____

Case No. _____

Petitioner

ATLAS No. _____

Respondent

NOTICE OF LIMITED SCOPE
REPRESENTATION

The undersigned attorney enters a Notice of Limited Appearance for Petitioner
 Respondent _____, pursuant to Rule 9(B).

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

- Protective Orders
 - Order of Protection
 - Injunction Against Harassment
 - Injunction Against Workplace Harassment
- Voluntary acknowledgement of paternity
- Establishment of Child Support (IV-D)
- Rule 32 motion (specify) _____

Case No. _____

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

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

Accelerated or Expedited Petition (Pre-Decree) _____

Resolution Management Conference

Arbitration

Mediation

Other ADR process (specify) _____

Settlement Conference

Expedited Services Conference (specify type, e.g. child support establishment, enforcement, or modifications; custody or parenting time enforcement or modification; or other) _____

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

Child support _____

Custody & parenting time _____

Spousal maintenance _____

Property/debt issues _____

Other: _____

Modification of Decree or Order (specify as follows):

Child support _____

Custody & parenting time _____

Case No. _____

- Spousal maintenance
- Other: _____

- Emergency Petition (Post-Decree) _____

- Qualified Domestic Relations Order _____

- Filing of Foreign Decree _____

- Warrant to take Physical Custody _____

- Child Custody or Parenting Time by a Non-Parent _____

- Other motion and hearing thereon, specifically: _____

- Attend Deposition(s) of (names) _____
- Conduct the following discovery: _____

- Other: _____

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

ARIZONA SUPERIOR COURT, COUNTY OF _____

Case No. _____

Petitioner

ATLAS No. _____

Respondent

NOTICE OF WITHDRAWAL OF ATTORNEY
WITH CONSENT

Under Arizona Rules of Family Law Procedure Rule 9, notice is given that Limited Scope Attorney _____ concluded the limited scope representation and withdraws as an attorney of record in this case.

1. I entered a Notice(s) of Limited Appearance on the following date[s]:
2. I have completed all services within the limited scope representation agreement and will no longer be representing the Petitioner/Respondent _____.
3. The last known address and telephone number of the party who will no longer be represented is (unless protected):
4. This Notice of Withdrawal is effective _____.
5. Now that _____ is no longer represented by me, all communication must be made directly to _____.

Case No. _____

Signed and Agreed by:

Attorney's Name

Contact Information

Former Client's Name

Contact Information