

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.