



Ohio Board of Professional Conduct

LIMITED SCOPE REPRESENTATION

AKRON BAR ASSOCIATION
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WHY LIMITED SCOPE?

- **National Statistics:**
- In 70% of domestic relations cases, one or both parties are unrepresented.
- Figure is higher in Phoenix and D.C. (90%) and Florida (80%).
- In other civil cases, the nearly half of the parties are unrepresented.



WHY LIMITED SCOPE?

- Clients want (1) control, (2) price, and (3) service.
- Move away from “attorney-centered” representation model.
- Move toward “client-centered” or “client-focused” model.



WHY LIMITED SCOPE?

- Reduction in funding for civil legal services
- Fewer attorneys serving low income individuals
- Cost of full-service representation
- Some *pro se* litigants have enough disposable income to pay for the limited representation they need
- A former client with no funds converts to a *pro se* litigant
- Self-help through internet-based services
- Dissatisfaction with or distrust of lawyers



WHAT IS LIMITED SCOPE?

- When a client hires a lawyer, generally both client and lawyer assume that the lawyer will perform these services in a full-service package or “full bundle.”
- “Full bundle” is the gathering of facts, advising the client, discovering facts of opposing party, researching the law, drafting correspondence and documents, negotiating, and representing the client in court.



WHAT IS LIMITED SCOPE?

“Limited scope representation,” also referred to as “unbundling,” refers to an arrangement where the lawyer agrees to some, but not all, of the legal services typically provided in a representation.



EXAMPLES OF UNBUNDLED SERVICES

- Drafting of pleadings, motions, briefs
- Preparation for administrative hearings, without making an appearance
- Identify legal issues
- Limited court appearances
- Attending mediation
- Pre-litigation activities—negotiation, discovery, investigation
- Stand alone interview and advice services





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LIMITED SCOPE REPRESENTATION AND THE OHIO RULES OF PROFESSIONAL CONDUCT



APPLICABLE RULES

Limited scope not expressly recognized or addressed in former Code. Since 2007, Ohio Rules of Professional Conduct expressly contemplate and authorize limited scope representation.

Limited scope representation does not:

- Lessen or relieve a lawyer from professional obligations;
- Reduce or limit the quality of the legal services provided;
- Insulate a lawyer from consequences of malpractice or discipline relative to the services provided.



APPLICABLE RULES

- Rule 1.1 (competence)
- Rule 1.3 (diligence)
- Rule 1.4 (communication)
- Rule 1.6 (confidentiality)
- Rule 1.7 (conflicts)



RULE 1.1

Competence:

- Must provide competent representation, even if scope is limited.
- Thoroughness and preparation. Comment [5].
- Accurate and relevant advice, even if outside scope (*e.g.*, additional steps/actions client must or should take once limited legal services are concluded).



RULE 1.2

Communication:

- A lawyer may limit the scope of a new or existing representation if the limitation is (1) **reasonable** under the circumstances, and (2) **communicated** to the client preferably in writing. Prof.Cond.R. 1.2(c)



RULE 1.2. COMMENT [7]

- Expands on “reasonableness” requirement:
 - Reasonable under the circumstances;
 - Limited to client’s objectives;
 - Example: representation during DR mediation, withdrawal if contested divorce.
- Reiterates duty of competence and recognizes limitation as a factor in determining necessary knowledge, skill, thoroughness, and preparation.



RULE 1.2. COMMENT [7A]

Preference for written confirmation of limited scope.

May be accomplished by:

- Form or checklist;
- Court-ordered appointment;
- Letter or email to client.



UNBUNDLING OF LEGAL SERVICES

- Written confirmation of the limitation is preferred., Rule 1.2, cmt. [7A].
- Creation of a form or checklist that specifies the scope of the client –lawyer relationship and the fees charged. Rule 1.2, cmt. [7A].





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OHIO RULES OF CIVIL PROCEDURE



OHIO RULES OF CIVIL PROCEDURE

New amendments, eff. 7/1/2018:

- Encourage attorneys to assist *pro se* parties without undertaking the full representation of the client on all issues.
- Enlarge access to justice in Ohio courts as recommended by 2015 Report of the Court's Task Force on Access to Justice.



OHIO RULES OF CIVIL PROCEDURE

- Civ. R. 3(B):
 - Allows an attorney to enter a "Notice of Limited Appearance" in a case.
 - Requires attorney to (1) specifically describe the limited scope, and (2) indicate party's authorization.



OHIO RULES OF CIVIL PROCEDURE

- Civ. R. 3(B) (cont.):
- At end of representation, a “Notice of Completion of Limited Appearance” is filed; if no objection, the party may end involvement in the case without leave of court.
- Any doubts about scope resolved in a manner that promotes the interests of justice, the client, and the opposing party. [Staff Note.]



OHIO RULES OF CIVIL PROCEDURE

- Civ. R. 5:
- When a party is not represented by an attorney, service shall be made upon the party.
- If a notice of limited appearance has been made, then service shall be made upon both the attorney and the party, until the Notice of Completion of Limited Appearance is filed.
- Makes sure that the client has copies of all key documents in the case.



OHIO RULES OF CIVIL PROCEDURE

- Civ. R. 11
- An attorney may assist a party in preparing or drafting a filing, but without having to sign the filing as required by the existing rule.
- Any filing prepared with an attorney’s assistance must indicate “prepared with the assistance of counsel” on the document.
- The court may order that the party identify the attorney if the court has any concerns about the adequacy of the assistance provided.





BEST PRACTICES



BEST PRACTICES

Case law suggests problems arise post-representation:

- *Fee disputes* (client did not receive full services in exchange for fee, fee was unreasonable given limited scope);
- *Malpractice claims* (did not handle matter properly, bad result due to limited services);
- *Disciplinary complaints* (excessive fee; lack of competence or communication).

How to avoid or minimize?



BEST PRACTICES

- Stay within your field of practice; don't dabble or experiment.
- Initial interview is critical—issue spotting.
- Conflict check – Prof. Cond. R. 6.5
- Is limited scope representation appropriate? :
 - Consider capacities of the client, nature and importance of the legal problem.
 - Understanding of the client that excluded services will fall to them to complete.



BEST PRACTICES

- Identify all legal problems, write a retainer agreement that identifies what legal issue the attorney will handle.
- Identify possible remedies.
- Alert client to apparent issues, even if outside scope of representation.
- Notify of deadlines, service requirements, court dates.
- Refer to court forms that may be required post-representation.



BEST PRACTICES

- Written retainer agreement—essential!
- Informed consent—not required, but a good idea. Expressly state that the client agrees and acknowledges that the “lawyer’s services are limited by express agreement and at the client’s direction.”
- Acknowledgement that the lawyer has fully explained the nature and risk of limited services.
- Acknowledgement that the client understands the risks of self-representation.



GHOSTWRITING

- “Ghostwriting” pleadings is a form of limited scope representation.
- *Ostevoll v. Ostevoll*, 2000 WL 1611123 (S.D. Ohio):
“If a pleading is prepared in any substantial part by a member of the bar, it must be signed by that attorney to avoid misrepresentation.”



COMMUNICATION WITH OPPOSING PARTY

Is the client in a limited scope representation considered “represented” for purposes of Prof.Cond.R. 4.2?

- Opposing counsel cannot be expected to be aware of the other lawyer’s involvement.
- Unduly onerous to place the burden on opposing counsel to determine scope and nature of another lawyer’s involvement.
- Treat as unrepresented, unless and until the *pro se* party or lawyer provides reasonable notice that representation has been obtained.



RESOURCES

- Limited Scope Representation Toolkit:
<http://chicagobarfoundation.org/pdf/resources/limited-scope-representation/toolkit.pdf>
- Ethics Primer on Limited Scope Representation:
California State Bar, *Ethics Hotliner*, Fall 2004
- Unbundled Legal Services—sample engagement letter:
<http://lawyersmutualnc.com> (search “unbundled”)





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