

A Look at Limited Scope Legal Assistance

by

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A trusted and longtime colleague phones you to say she's representing a husband in an uncontested dissolution of marriage. Your colleague tells you that the parties have agreed on everything, including custody, child support, spousal maintenance and what to do with the family house. She has drafted a marital termination agreement to reflect their wishes. The wife does not have her own lawyer, and your colleague does not want to finalize the matter unless the wife has counsel. Your colleague asks if you're willing to attend a settlement conference, spend a few minutes reviewing the paperwork and answer any questions the client may have.

This scenario, or variations of it, represents what has become known as limited scope legal assistance. As the U.S. economy worsens, more and more divorcing clients may be seeking less expensive alternatives for untying the knot. One way to beat the high cost of divorce is by hiring a lawyer only to do certain tasks, such as "ghostwriting" pleadings or handling a final hearing, or for a certain, limited period of time.

Limited scope legal assistance is not new. In 2003, the American Bar Association published a 150-page "Handbook on Limited Scope Legal Assistance." The MSBA's Pro Se Implementation Committee has been considering the issue since at least 2004.

The subject of limited objectives or limited scope legal representation has generated an increasing amount of interest and attention over the last several years, including a Legal Aid pilot project in Stearns County that provides legal advice and assistance to pro se litigants.

The most applicable ethics rule is Rule 1.2 of the Minnesota Rules of Professional Conduct.

Prior to 2005, rule 1.2(b) provided that "a lawyer may limit the objectives of the representation if the client consents after consultation." In 2005, the rule was amended and renumbered as 1.2(c) to correspond with the ABA's revised model rules. This rule now states, "A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent" (emphasis supplied).

Are there risks or possible pitfalls in agreeing to a limited scope legal assistance representation in family law matters? Here are some things to consider:

1. Is your agreed-on limitation and the client's informed consent in clear, plain English, preferably confirmed in a writing signed by the client prior to undertaking the representation? Regardless

of how limited the representation and your intended role in the legal matter, you may still be obligated to advise or alert your client to issues and problems outside the scope of your representation. Carefully and clearly document this advice as well.

2. Rule 11.02 presumes that an attorney who signs a pleading has “made a reasonable inquiry reasonable under the circumstances.” In a limited scope legal representation, may a lawyer sign pleadings relying solely on the client’s information and statements without verifying them or conducting any independent investigation or review?

3. If you agree to sign pleadings on behalf of your client, have you made an “appearance” for purposes of services of post-decree motions or an appeal? Are you then required to formally withdraw if the case proceeds beyond the default hearing and beyond the scope of your limited representation?

4. Even if the representation is limited, it still must be competent. If you are not competent in the subject matter, or if you don’t exhibit the skill, thoroughness and preparation reasonably necessary for the representation, your conduct might still violate rule 1.1.

5. Rule 1.4(b) requires a lawyer to “explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.” How much explanation and questioning of the client is necessary to meet the requirements of this rule or to avoid malpractice?

These are a few of the possible issues and causes for concern and caution when undertaking limited scope legal assistance in a family law matter. Considerable, useful information about these issues and ways to deal with them is available on the Web. (For an example, see California Commission on Access to Justice, “Family Law Limited Scope Representation,” at www.calbar.ca.gov/calbar/pdfs/accessjustice/Risk-Management-Packet_2004-01-12.pdf.)

It is essential to take careful steps before undertaking limited scope legal representation to 1) clarify the scope of the representation, and 2) ensure that the client fully understands and agrees with the limitations.

Attempting to do so after the fact will likely be unsuccessful and might also result in disciplinary action for a violation of the ethics rules or a claim of malpractice.