**Limited Scope Representation a/k/a Unbundled Legal Services**

By Sara Rittman

The Supreme Court adopted[1] rule changes, effective July 1, 2008, clarifying the duties and procedures that apply when an attorney provides limited scope legal services to a client. Although the adoption of these changes was somewhat controversial, it was common, and ethically permissible, for attorneys to provide limited scope legal services prior to the adoption of these changes. However, previously, the method by which this was accomplished by attorneys and the manner in which it was treated by various courts and judges differed greatly.

The new version of Rule 4-1.2(c) makes it clear that the client must give "informed consent in a writing signed by the client." A sample form is included in the comment. Attorneys who engage in limited scope representation should pay close attention to the written agreement to make sure it spells out what the attorney will do *and* what the attorney will not do. In general, a good fee agreement or engagement letter, for any type of representation, will spell out what is excluded as well as what is included. Complete coverage of excluded as well as included services is paramount in a limited scope representation fee agreement.

The requirement of a signed writing does not apply to: (1) an initial consultation, (2) pro bono services provided through a nonprofit organization, a court-annexed program, a bar association, or an accredited law school, or (3) services provided by a not-for-profit organization funded in whole or in part by the Legal Services Corporation. However, better practice dictates that the attorney will document the contact and the services provided, even if a signed writing is not mandated.

The exception for initial consultations will likely be the most commonly used exception to the signed writing requirement. Paragraph [2] of the comment recognizes that an attorney may provide legal advice during an initial consultation. "The initial consultation ends when the lawyer and the client agree that the lawyer will or will not undertake the representation."

The requirement of a signed writing only applies to limitations on the scope of the representation in a particular matter. For example, it would apply if the attorney agreed only to review pleadings and other documents to be filed by the client, *pro se*. It would apply if the attorney agreed to draft a trust but not to be involved in transferring title of property to fund the trust. It would also apply if the attorney agreed to represent the client at trial, but not on appeal.

The signed writing requirement would not apply to a situation in which an attorney agrees to fully represent a defendant in a damages case but does not agree to handle a related subrogation action. It would not apply if the attorney agreed to fully defend a client against a criminal charge but does not agree to handle civil litigation arising from the same facts. Malpractice and other concerns make it advisable to exclude the other actions in writing, but Rule 4-1.2 would not require a signed, written agreement. In these situations, the attorney is not limiting the scope of the representation in the matter for which the attorney was hired.

Several other rules were amended to establish uniformity in relationships among attorneys who provide limited scope representation, the courts, and opposing counsel. One of these rules is Rule 55.03. If an attorney provides assistance with preparation of pleadings, that fact may be shown on the pleading without constituting an entry of appearance by the attorney. Rule 55.03(b)(2).

These rules specifically provide that an attorney may enter a limited appearance. The attorney must specify the purpose(s) for which he or she is entering a limited appearance. As a general rule, during the period the limited appearance is in effect, the opposing party will continue to serve papers on the otherwise self-represented party. However, the limited appearance attorney may serve opposing counsel "with a copy of the notice of limited appearance setting forth a time period within which service of papers shall be upon the attorney for the otherwise self-represented party." Rule 44.03(b). Similarly, under Rule 4-1.2(e), the otherwise self-represented party will be treated as unrepresented under Rules 4-4.2 and 4-4.3, unless the limited appearance attorney "provides other counsel with a written notice of a time period within which other counsel shall communicate only with the lawyer of the party who is otherwise self-represented."

Withdrawal is automatic, once the limited appearance attorney "has fulfilled the duties as set forth in the notice and files a termination of limited appearance with the court." Rule 55.03(b)(3). *See also,* Rule 4-1.16(c).

In terms of liability for sanctions, an "attorney providing drafting assistance may rely on the otherwise self-represented person's representation of facts, unless the attorney knows that such representations are false…." Rule 55.03(c)(3).

At the same time these rules were adopted, the Supreme Court adopted Rule 88.09, which applies to the related subject of parties not represented by counsel in dissolution related proceedings. That topic is beyond the scope of this article.

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[1] The rules were originally adopted by Order dated December 21, 2007. A new Order was issued with revisions to Rule 4-1.2 on June 23, 2008. The most recent revisions are not in the bound version or the May 15, 2008, supplement to the *Missouri Court Rules* handbook. The complete rule is available online through the www.courts.mo.gov website.

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