
Practical and Ethical Considerations to Integrating Unbundled Legal Services

Thank you to:

Hon. Adam Espinosa, Denver County Court

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Hon. Daniel Taubman, Colorado Court of Appeals

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www.cobar.org

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PRESENTATIONS

Ethical Considerations



Ethical Considerations Related to Modest Means Representation and Unbundled Legal Services

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1

Modest Means Task Force

- 2012 CBA established Modest Means Task Force
 - Address the gap between clients with modest means and unemployed lawyers.
 - Deal with the lack of affordable attorneys to represent clients of modest means.
 - Develop a business plan and tool kit to assist lawyers.
 - Access to Justice.

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Modest Means Task Force

- Results:
 - Developing a lawyer information database available with the Self-Represented Litigant Coordinators.
 - Some, but not all, districts have lists.
 - There may be (a) pilot projects, (b) an enhanced CBA online directory in 2015 and an SCAO statewide directory in 2016.
 - There is an enhance CBA directory, allowing lawyers to list enhanced billing arrangements, which include unbundling.

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Modest Means Task Force

- CLE training program.
 - Half day CLE was held May 7, 2015
- Comprehensive tool kit published August 2013.
 - Successful Business Planning: Representing the Moderate Income Client.
 - Free on-line for CBA members. Fee for non-members.
 - Printed copies available for purchase by CBA members and non-members.

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Modest Means Task Force

- Comprehensive tool kit includes chapters on:
 - Client Screening
 - Finances
 - Getting Competent
 - Unbundled/Limited Scope Representation
 - Marketing
 - Technology
 - Office Space
 - Staffing
 - Legal Malpractice Insurance/Professional Liability
 - Ethical Issues in Representing Modest Means Clients

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Modest Means Task Force

- Benefits:
 - Access to Justice
 - Modest means client
 - Procedural Fairness
 - Courts
 - Successful law practice
 - Alternative business model

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Super Committee

- Chief Justice Rice established Super Committee
January 2014
 - Develop list of attorneys willing to engage in modest means representation.
 - Resulted in concept of Equal Access Center

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Super Committee

- Equal Access Center
 - Housed in SCAO
 - Create central coordination for all Colorado Access to Justice programs
 - Bring legal and non-legal resources to assist
 - Ensure equal access, support judges and courtroom personnel.

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UNBUNDLED LEGAL SERVICES

The “full bundle” of representation in litigation includes:

- 1) gathering facts,
- 2) advising the client,
- 3) discovering facts of opposing party,
- 4) researching the law,
- 5) drafting correspondence & documents,
- 6) negotiating, and
- 7) representing the client in court.



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Unbundled Legal Services

- Chief Judge Connie Peterson’s February 1996 article in The Docket, Is Unbundling Legal Services An Answer?
- Colorado Bar Association Formal Ethics Opinion 101, January 17, 1998.
- Colorado Supreme Court amends C.R.C.P. 11, C.R.C.P. 311, and Colo. RPC 1.2(c) effective July 1, 1999.

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Unbundled Legal Services

- Why allow unbundled legal services?
 1. Gain access to judicial system.
 2. Address increasing number of pro se litigants.
 3. Explain legal procedures, principles, and strategies.
 4. Provide some legal assistance rather than none.

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Need for Unbundled Legal Services

- Fiscal Year 2014
- 75% of all DR cases had no attorney on the case.
- 60% of parties in County Court civil had no representation.
 - 98% are responding party.
- 90% of all responding parties in DR, District Civil, and County Civil in all jurisdictions are *pro se*.

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When to use Unbundled Legal Services

- Pro Bono Cases
- Fee paying clients (especially modest means clients).

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What About Discipline or Malpractice Claims?

- Unbundled Legal Services has not been a significant problem with OARC.
- Unbundled Legal Services has not been a significant problem with National Organization of Bar Counsel (NOBC).
- Malpractice Carriers have not reported additional claims related to Unbundled Legal Services

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Unbundled Legal Services

- Rules implicated:
 - Colo. RPC 1.2(c)
 - C.R.C.P. 11(b) and 311(b)
 - C.R.C.P. 121, § 1-1(5)
 - C.A.R. 5(e)

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Unbundled Legal Services

- Colo. RPC Rule 1.2(c), “ a lawyer may limit the scope or objectives, or both, of the representation if the limitation is reasonable under the circumstances and the client gives informed consent. A lawyer may provide limited representation to pro se parties as permitted by C.R.C.P. 11(b) and C.R.C.P. 311(b).

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Unbundled Legal Services

- Colo. RPC 1.2(c)-
 - Permits limiting scope and/or objective of representation
 - must be reasonable under the circumstances.
 - Informed consent of client.
 - Colo. RPC 1.0(e), agreement by person to proposed course of conduct after the lawyer has communicated adequate information and explanation about the risks and reasonable alternatives to the proposed course of conduct.
 - In **WRITING**, signed by both parties.

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C.R.C.P. 11(b) and 311(b)

- An attorney may undertake to provide limited representation in accordance with Colo. RPC 1.2(c) to a *pro se* party involved in a court proceeding.
 - Draft and prepare pleadings or papers filed by the *pro se* party.

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Ghost Writing

Ghost Writing is when an attorney prepares pleadings for a party appearing ***pro se***.



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Unbundled Legal Services

- Limited representation must comply with C.R.C.P. Rules 11(b)/311(b):
 - Ghost writing pleadings or papers
 - Must include name, address, telephone #, and bar #.
 - Attorney must certify that the pleading or paper is:
 - Well grounded in fact based on reasonable inquiry.
 - Warranted by existing law or a good faith argument for extension
 - Is not made for an improper purpose, harass, delay, etc.

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Ghost Writing cont.

Ghost Writing is prohibited in the Federal District Court for the District of Colorado. *Johnson v. BCCC Fremont*, 868 F.Supp. 1226 (D.C. Colo. 1994).

Preparing court documents but not entering an appearance is permitted in the Colorado state courts.

See C.R.C.P. 11; 311; 121 §1-1; and Colo. RPC 1.2

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Ghost Writing cont.

- Each ghost written pleading or paper must contain a statement that it was prepared by or with the assistance of an attorney and shall include the attorney's name, address, telephone number, and registration number.
- Exception for pre-printed judicial forms.
- Does not constitute an entry of appearance by the attorney.

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C.R.C.P. 121, §1-1(5)

- Attorney may undertake limited representation of a pro se party in a court proceeding.
- At request of client AND with consent of client.
- Notice of limited appearance prior to or simultaneous with proceeding.
- Attorneys role terminates without leave of court and upon filing a notice of completion.

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C.R.C.P. 121, §1-1(5)

- Amended rule change effective October 20, 2011.
- Purpose is to implement a procedure to authorize limited representation.
- Provides assurances that an attorney can withdraw from a case when engaged in limited representation.
- Encourage pro bono service or modest means representation.

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C.A.R. 5(e)

- Amended rule change effective October 11, 2012.
- An attorney may undertake to provide limited representation to a pro se party involved in a civil appellate proceeding.
- Purpose is to implement a procedure to authorize limited representation in civil appellate proceedings.

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Unbundling Legal Services

- What does this mean?
 1. Legal clinics
 2. Consulting
 3. Single task
 4. Not limited to out of court legal services
 5. Limited representation in court permitted*

* ABA Ethics Opinion 1414 concluded that it is a misrepresentation if a lawyer provides every legal service except sitting at counsel table during trial and examination of witnesses

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Unbundled Legal Services

- Limited representation must comply with all other Colo. RPC Rules:
 - 1.1 Competence
 - Requires the legal knowledge, skill, thoroughness and preparation reasonably necessary.
 - 1.3 Diligence
 - Lawyer shall act with reasonable diligence and promptness in representing a client.

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Unbundled Legal Services

- Limited representation must comply with all other Colo. RPC Rules:
 - 1.4 Communication
 - 1.4(a)(2) reasonably consult with client about the means by which the client's objectives are to be accomplished.
 - 1.5 Reasonable fee
 - 1.5(b) The basis or rate of the fee and expenses shall be communicated to the client in writing. **INCLUDE** scope of limited representation.

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Possible Issues When Engaging in Limited Representation

- Service of Process
 - Attorney for specific proceeding or pro se litigant for other proceedings.
 - If unsure, ask opposing counsel.
- Communication
 - Attorney or pro se party.
 - Similar analysis as service of process.
- Retainer Agreement
 - Written basis and rate of fee still required.
 - DEFINE scope of limited representation.

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Sources of Information

- Colorado Rules of Professional Conduct
 - Comments and Annotations
- Colorado Rules of Civil Procedure
- Colorado Lawyer Articles
- Colorado Bar Association
 - Ethics Opinion 101 (to be revised and updated in 2015)
 - Successful Business Planning: Representing the Moderate Income Client handbook
- American Bar Association
 - www.americanbar.org
 - Handbook on Limited Scope Legal Assistance

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Ethical Considerations Related to Modest Means Representation and Unbundled Legal Services

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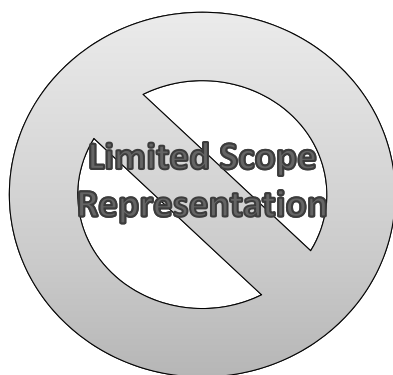
Limited Scope Representation

Limited Scope Representation “Unbundling”



1

What it is NOT



- For every case
- For every issue
- For every client
- Second class practice

2

What is Limited Scope Representation

- Ethical
- Safe
- Limited scope
- Practice of law
- Attorney-client relationship
- Profit center

3

Why Limited Scope

- Public believes they can not afford a lawyer
- People want a lawyer.
- Even those who believe that they can handle their case, become confused, lost, perplexed.

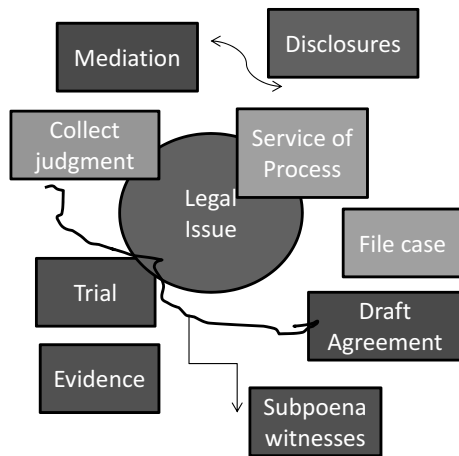
Parties without Attorneys: FY 2014

- Domestic Relations: 75%
- County civil (debtor/creditor, FED's) respondents: 98%

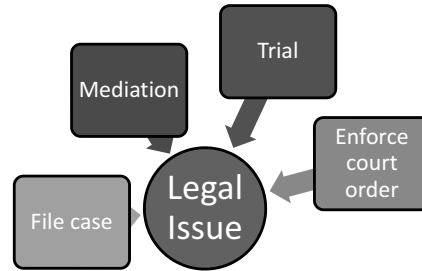
4

Why Limited Scope

Litigant view of Legal Issue



Attorney View of Legal Issue



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Areas of Practice

- Family Law
- Consumer Law
- Landlord/Tenant
- Government benefits/housing
- Homeowners association
- ????

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Types of Activities

- Drafting pleadings/ filling in forms
- Coaching
- Reviewing documents
- Strategy and advice
- Attending mediation/ reviewing agreements
- Make limited appearance in one or more specific proceedings

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Four Basic Rules (aka “No Brainers”)*

NON-DELEGABLE (Attorneys must do)

- Limitations must be informed and in writing
- Limitations must be reasonable under the circumstances
- Changes in scope must be documented
- Clients must be advised on related issues **EVEN IF THEY DO NOT ASK**

Sue Talia, Esq. and Private judge., California.

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CRCP 11(b) & CRCP 311(b) CRCP 121 §1-1(5)

- Limited scope representation to pro se party
- With consent of the party (JDF 631)
- In one or more specified proceedings CRCP 121
- Notice to the court and other party (JDF 630)
- Upon completion of task, file notice of completion CRCP 121 (JDF 632)

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NOTICE OF LIMITED APPEARANCE BY ATTORNEY WITH CONSENT OF PRO SE PARTY UNDER C.R.C.P. 11(b) AND 121, SECTION 1-1(5) IN A CIVIL MATTER

COMES NOW _____ (name of attorney), and enters a limited appearance as counsel for _____ (the pro se party in interest to this notice) and as grounds therefore, counsel states:

1. The pro se party in interest to this notice has requested and consented to this limited appearance for the following proceeding(s): _____.

2. I have advised the pro se party in interest that the Court retains jurisdiction over the pro se party in interest to this case. That at the conclusion of this limited appearance he/she has the burden of keeping the Court and the other parties informed where later notices, pleadings, and other papers may be served; that he/she has the obligation to prepare for trial or have other counsel prepare for trial; and that failure or refusal to meet these burdens may subject him/her to a possible default and that the dates of any proceedings including trial and holding of such proceedings will not be affected by the completion of the limited appearance of counsel.

Service of process may be served upon the pro se party in interest to this case at the last known address which is: _____, Phone: _____.

The following hearings or other Court settings have been scheduled in this case: _____.

DATE: _____, 20__

Attorney Signature: _____

Name: _____

Registration No: _____

Address: _____

Phone: _____

JDF 630

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NOTICE OF COMPLETION OF LIMITED APPEARANCE UNDER C.R.C.P. 11(b) AND 121,
SECTION 1-1(5) IN A CIVIL MATTER COMES

NOW _____ (name of attorney), and enters a notice of completion of limited appearance as counsel for _____ (the pro se party in interest to the Notice of Limited Appearance dated: _____), as grounds therefore, counsel states: I have advised the pro se party in interest that the Court retains jurisdiction over the pro se party in interest to this notice. That he/she has the burden of keeping the Court and the other parties informed where later notices, pleadings, and other papers may be served; that he/she has the obligation to prepare for trial or have other counsel prepare for trial; and that failure or refusal to meet these burdens may subject him/her to a possible default and that the dates of any proceedings including trial and holding of such proceedings will not be affected by this completion of the limited appearance of counsel. Service of process may be served upon the pro se party in interest to this notice at the last known address which is: _____,
Phone: _____. The following hearings or other Court settings have been scheduled in this case:

_____, 20__ Attorney Signature: _____ . DATE: _____
Name: _____
Registration No: _____
Address: _____

JDF 632

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Drafting Pleadings (Ghostwriting) CRCP 11(b)



- Must include attorney name, address, telephone number, and registration number
- UNLESS, filling out preprinted and electronic forms developed by Colorado Judicial branch

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Colorado Appellate Rule 5(e) & (f)

- Limited scope representation to pro se party
- With consent of the party (JDF 641)
- In one or more specified proceedings
- Notice to the court and other party (JDF 640)
- Upon completion of task, file notice of completion (JDF 642)

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Client Intake for Unbundling

- Is it an appropriate case?
- Can the client handle the other portions of the case?
- Tools
 - Sample budget for various aspects of case
 - Client handouts - explaining limited scope, map with location of courthouse, common issues (how to divide furniture)
 - List of common websites

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ESTIMATED BUDGET
Re: Defense of Breach of Contract Action

	Task	Low Estimate of Hours	High Estimate of Hours	Average Rate per Hour	Low Estimate of Cost	High Estimate of Cost
<i>Prediscovery</i>						
Case Evaluation/ Preliminary Research	Review file, facts and documents, develop strategy	3.0 hours	5.0 hours	\$250	\$750	\$1,250
Communications	Conferencing with opposing counsel, client	1.0 hour	2.0 hours	\$250	\$250	\$300
Fact Investigation	Conference with client, gather documents	1.5 hours	5.0 hours	\$250	\$375	\$1,250
Motion practice	Draft, edit & file motions: continuance, entry of appearance, mediation, etc.	3.0 hours	5.0 hours	\$250	\$750	\$1,250
Draft Pleadings	Answer, affirmative defense, counterclaim, etc.	2.5 hours	5.0 hours	\$250	\$625	\$1,250
<i>Total Prediscovery</i>		11.0 hours	22 hours		\$2,750	\$5,500

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Engagement Agreements
Informed Consent CRPC 1.0 (e)

- Client responsible to disclose facts to you
- Client responsible for ultimate outcome of case
- Say what attorney will do AND WHAT ATTORNEY WILL NOT DO
- Inform client how to expand the scope

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SAMPLE ENGAGEMENT AGREEMENT

Thank you for choosing [law firm name] as your legal counsel. This is our Engagement Agreement, which is our contract with one another. Please read it carefully, and if you agree with its terms after fully understanding all of them, please sign in the space provided on page 4 of this Engagement Agreement.

ATTORNEY SERVICES

You have determined, after consultation with me, that you wish to retain my services as legal counsel in a limited capacity, for the specific purpose of [detailed description of exactly the services being provided under this agreement]. You understand that I will not be appearing as your counsel before the Court. Unless we agree otherwise at a later time, and enter into an Addendum expanding the scope of my limited legal services to you to include my appearance at a hearing, you will be appearing before the Court by yourself. This means you alone will be signing pleadings, going to Court, attending settlement conferences such as mediation, and negotiating and communicating with the opposing party and/or opposing counsel. If my services include helping you draft pleadings to be filed with the Court, I am required to put my name, attorney registration number, address, and telephone number on those pleadings. I will not be signing those pleadings, however.

We have fully discussed the possible problems and dangers associated with this type of limited representation, as well as the benefits. You have agreed that you wish to proceed with this type of representation nevertheless, and you agree after consultation that your legal needs can be effectively met with this type of representation.

CLIENT RESPONSIBILITIES

CONSULTATION FEES

PREPARATION OF PLEADINGS, ETC.

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TIPS

- Make clear who will have contact with opposing counsel and/or party
- Document any changes in scope of the representation
- Attorney/client relationship is SUBJECTIVE
- Notify the court verbally upon first appearance, even if you filed Notice of Limited Appearances

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How Will the Public Know

- Self-help centers at the courthouse
- Colorado Bar Association’s online “Find a Lawyer” – ability to search for attorneys that provide “alternative fee arrangements”
- Legal services providers referrals
- Court’s website – link to “Find a Lawyer”
- Lawyers need to educate clients and potential clients

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More Information

- Colorado Bar Association Family Law Section
- CAMP – Colorado Attorney Mentoring Program (John Baker)
- Colorado Bar Association Solo and Small Firm Section (list serv and blog)
- “Successful Business Planning” workbook – available on the Colorado Bar Association website (download free to members)

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Limited Scope Representation “Unbundling”



HANDOUTS

Practical and Ethical Considerations to Integrating Unbundled Legal Services

Authors: Danaé D. Woody & Amy Goscha

1. BRIEF HISTORY AND RULE CHANGE

- a. On June 17, 1999, effective July 1, 1999, the Colorado Supreme Court recognized the need for limited scope representation in Colorado. In an effort to address this need, the Colorado Supreme Court amended C.R.C.P. 11(b) and C.R.C.P. 311(b) to allow for limited scope representation.¹
- b. C.R.C.P. 11(b) and C.R.C.P. 311(b) allow attorneys to limit the scope of representation, but does not address the ability for attorneys to withdraw from limited scope representation.
- c. On June 29, 2011, the Colorado Supreme Court proposed an amendment to Colorado Rules of Civil Procedure 121 § 1-1.
- d. On October 20, 2011 effective immediately, section 5 was added to C.R.C.P. 121 § 1-1:

(5) In accordance with C.R.C.P. 11(b) and C.R.C.P. 311(b), an attorney may undertake to provide limited representation to a pro se party involved in a court proceeding. Upon the request and with the consent of a pro se party, an attorney may make a limited appearance for the pro se party in one or more specified proceedings, if the attorney files and serves with the court and the other parties and attorneys (if any) a notice of the limited appearance prior to or simultaneous with the proceeding(s) for which the attorney appears. At the conclusion of such proceeding(s), the attorney's appearance terminates without the necessity of leave of court, upon the attorney filing a notice of completion of limited appearance. Service on an attorney who makes a limited appearance for a party shall be valid only in connection with the specific proceeding(s) for which the attorney appears.
- e. The rule change allows attorneys, with the consent of a pro se party, to make a limited appearance for the pro se party in one or more specified proceedings.² At the conclusion of such proceeding(s), the attorney's appearance terminates without the necessity of leave of court, upon the attorney filing a notice of completion of limited appearance.³

¹ See C.R.C.P. 11(b) and C.R.C.P. 311(b).

² See C.R.C.P. 121 § 1-1(5).

³ *Id.*

- f. Prior to the addition of C.R.C.P. 121 § 1-1(5), if an attorney filed an entry of appearance, signed a pleading, or appeared in a court proceeding, the attorney, without substitution of counsel, was required to file and serve a motion to withdraw from the case.⁴
- g. The Supreme Court adopted a Committee Comment explaining that the rule change was to allow attorneys to make a limited appearance in both *pro bono* and fee based cases to be able to withdraw from the case, at the consent of the party, without having to request leave from the court.⁵
- h. The Colorado Court of Appeals and Colorado Supreme Court allow for limited scope representation.⁶
- i. Colorado Federal Courts have explicitly rejected the Colorado Bar Association's view and Colorado Supreme Court's specific grant of permission for the practice of ghostwriting as a form of limited representation (through CBA Ethics Committee Formal Opinion 101, and subsequent amendments to Colo. RPC 1.2 and C.R.C.P. 11(b)).⁷
 - i. Shortly after the Colorado Supreme Court adopted rule amendments to specifically condone ghostwriting and other forms of limited scope representation, the United States District Court for the District of Colorado stated, by administrative order, that the practice of limited representation, and particularly ghostwriting, is a "deception on the court," and therefore is a violation of Colo. RPC 1.1 (regarding an attorney's duty to provide competent representation).⁸

2. UNBUNDLED/LIMITED SCOPE REPRESENTATION AS AN EFFECTIVE BUSINESS MODEL

- a. Hourly rate: Billing is at a regular hourly rate, not a discounted/sliding scale rate.
- b. Upfront payment: The client pays for the specific legal services upfront. This helps to eliminate collection issues and working for free.
- c. Low supply/high demand: The demand for unbundled services is high, the number of attorneys marketing the model as a part of their practice is low.

⁴ See C.R.C.P. 121 § 1-1(1) and (2)(b).

⁵ See Committee Comment to C.R.C.P. 121 § 1-1(5).

⁶ C.A.R. 5(e) and (f).

⁷ Micklewright, "Discrete Task Representation a/k/a Unbundled Legal Services," 29 *The Colorado Lawyer* 5 (Jan. 2000).

⁸ *Id.* See also Fuller, "Unbundling Family Law Practice Creates Pro Bono Opportunities," 27 *The Colorado Lawyer* 29 (Sept. 1998).

- d. Flexibility: Attorneys and clients can contract for specific legal services, á la carte. Attorneys can avoid getting stuck as attorney of record on a case.
- e. Revenue generating: About 40% of unbundled cases in our practices have converted to fully retained cases.
- f. Not riskier than traditional representation: In Colorado, we know of only one disciplinary case opinion issued by the Hearing Board where an attorney who *claimed* he represented a client on a limited scope basis by providing the defendant with a “preliminary defense” against a sexual assault charge and then withdrawing, leaving the defendant facing several other serious criminal charges, was suspended for one year and one day.⁹
- g. Malpractice insurance costs are not higher: Attorneys currently providing unbundled representation have not seen a distinction in terms of coverage or costs when disclosing to the insurers that they are handling such cases under this model.
- h. Referral source: Unbundled clients serve as an additional referral source and can utilize other services in your legal practice (i.e. estate planning/bankruptcy needs).
- i. Expands the market: The model provides a middle/flexible option to clients who either do not want full representation or who cannot afford full representation.
- j. Opportunity to build rapport with clients: The model allows attorneys to establish trust with clients who normally do not trust or wish to involve attorneys. The model aids in establishing lasting business or referral source relationships.

3. UNBUNDLING THE MODEL

- a. What types of clients does an unbundled model serve?
 - i. Individuals who cannot afford your full hourly rate, your full retainer amount, or the full amount of legal assistance they will need to successfully address the legal problems they are experiencing.
 - ii. This group can be broken into two categories:
 - (1) *Limited appearance representation* pursuant to C.R.C.P. 121 § 1-1(5).
 - (2) *Discrete task representation* pursuant to C.R.C.P. 11

⁹ See *People v. Jerry Lee Stevens*, O.P.D.J. (No. 10PDJ002, Oct. 7, 2010).

- a. i.e. consultation and legal advice, document review, potential drafting, and can include appearance in court under C.R.C.P. 121 § 1-1(5) or at mediation.*
 - b. These models may fit:
 - i. The sophisticated client who may only be interested in having a “big gun” present at the hearing (limited appearance);
 - ii. The relatively unsophisticated client who has experience with the system or the case such that she is confident that she can manage on her own (limited appearance);
 - iii. The sophisticated client who is able to manage deadlines prepare documents and represent herself in court with some legal guidance (discrete task);
 - iv. The relatively unsophisticated client who would benefit from traditional representation but simply cannot afford it. Some legal advice is better than none (discrete task).
 - c. What kind of client can effectively use unbundled representation?
 - i. The client who can successfully use unbundled representation is honest and at least slightly sophisticated, organized, and can follow directions.
 - ii. Dishonest people will likely misuse this model to your personal detriment. If you find yourself in a situation like this, you must discern a way to give them advice that they cannot use to manipulate or commit a fraud on the Court or other litigants.
 - iii. It is up to lawyer offering this service model to educate the potential client during the initial consultation.
4. INTEGRATING THE MODEL WITH YOUR PRACTICE
 - a. Conduct an Initial Intake.
 - i. Meet with the potential client to gather all of the pertinent or material facts and documents you need to competently represent the potential client on an unbundled basis.
 - ii. Explain the differences between the unbundled model and the full representation model to the potential client. Remember that the lawyer-client relationship is subjective, from the client’s perspective.¹⁰ Regardless of your

¹⁰ See *People v. Gabriesheski*, 262 P.3d 653 (Colo. 2011).

engagement agreement, if a client has explained her/his complicated matter to you, she/he may be under the expectation that you will “take care of it” for her/him

- iii. Determine exactly which services you will provide for the client.

Practice pointer: It is generally not cost effective for an attorney to prepare C.R.C.P. 16. 2 disclosures on behalf of an unbundled client. Some alternative options are for the attorney to review and commenting on a draft sworn financial statement prepared by the unbundled client with the client providing the underlining documents for the attorney’s review/reference; answering specific questions the unbundled client has regarding the sworn financial statement (i.e. what source a client can use to find an estimated value for his/her vehicle); drafting the certificate of compliance.

- b. Engagement Agreement.¹¹

- i. Draft and require your new unbundled client to review and sign an engagement agreement.
- ii. Review your entire engagement agreement with the new unbundled client to make sure he/she understands the type of services you will/will not provide.
- iii. The engagement agreement should set forth the specific parameters of the scope of your representation.
- iv. The engagement agreement should make it clear to the client that he/she is responsible for disclosing material facts to you and complying with rules, statutes, and deadlines.
- v. Make communication procedures clear in the engagement agreement. Indicate whether you will be communicating with other attorneys/mediators/court personnel on the client’s behalf.
- vi. If you expand the scope of your representation, draft and require your clients to review and sign an addendum outlining the expanded scope of the representation. *Refer to the attached sample addendum to the engagement agreement.*

- c. File and properly serve the correct Notice of Limited Appearance under C.R.C.P. 11(b) and Notice of Completion of Limited Appearance under C.R.C.P. 11(b).¹²

¹¹ Refer to the attached sample engagement agreement.

¹² Refer to the attached JDF 630 Civil Notice of Limited Appearance; JDF631 Consent to Represent; and JDF632 Civil Notice of Completion by Attorney.

- d. Drafting pleadings.
 - i. When drafting pleadings and other documents on an unbundled/limited scope basis, be sure to include your name, address, telephone number and registration number.¹³
 - ii. Attorneys are not required to disclose their name, contact information, or certification when assisting unbundled clients with filling out preprinted forms and electronic published forms issued through the judicial branch.¹⁴
- e. Instructions for filing and serving pleadings.
 - i. Provide specific instructions to the client regarding proper filing and service of pleadings.
- f. Communication procedures.
 - i. If an attorney has entered an appearance for the limited purpose of representing a client at a temporary orders hearing, the opposing party or opposing attorney must communicate with the attorney providing limited representation with respect to that specific temporary orders proceeding. However, if unrelated matters or proceedings occur simultaneously, the opposing party or opposing attorney must communicate about unrelated matters or proceedings directly with the pro se litigant. In the event that the opposing party or opposing attorney is unsure whom to communicate with, he/she should contact the limited scope representation attorney for clarification.¹⁵
- g. Do not take a highly complex case on an unbundled/limited scope basis.
 - i. Remember that the Colorado Rules of Professional Conduct require attorneys to provide competent representation. While you may be “competent,” the limited nature of the representation may severely limit your ability to adequately represent certain clients and matters.

¹³ See C.R.C.P. 11(b).

¹⁴ *Id.*

¹⁵ Espinosa, “Ethical Considerations When Providing Unbundled Legal Services,” 40 *The Colorado Lawyer* 9, 75 (Sept. 2011).

5. ACCESS TO JUSTICE ISSUES

a. Pro se statistics

- i. Colorado Supreme Court Justice Gregory J. Hobbs, Jr. notes in his *Judicial Support for Pro Bono Legal Service* paper states:

75% to 85% of domestic civil cases filed in Colorado trial courts involve at least one pro se party, many of whom presumably are persons of limited means who cannot afford an attorney and need pro bono assistance.¹⁶

- ii. The Modest Means Task Force Modest Means in the introduction of the tool kit entitled, *Successful Business Planning: Serving the Moderate Income Client*, states:

Statistics from the State Court Administrator's Office (SCAO) show that for fiscal year 2012, 58,000 civil cases (not including tax liens, foreclosure, or small claims) were filed in Colorado courts in which a lawyer never entered an appearance. For instance, in domestic relations cases, 63% (21,441 of the 34,897 filed) did not have any representation by a lawyer at any time during the case.¹⁷

- iii. In 2014, 66% of domestic relations cases filed statewide had no attorney on the case.¹⁸ Within the group of cases filed, there were 70,128 parties and of those parties, 75% did not have representation when the data was extracted.¹⁹ For County Court civil, 60% of parties had no representation at the time the data was extracted.²⁰ 98% of responding parties in a county court cases filed in 2014 were without representation.²¹

b. Theory.

- i. Unbundled legal services/limited scope representation provides another avenue, distinct from traditional representation, for litigants to gain access to legal representation to aid them in resolving their disputes.

¹⁶ Justice Gregory J. Hobbs, Jr., *Judicial Support for Pro Bono Legal Service*, at 3 (referring to Memorandum from Veronica Marceny, Office of the State Court Administrator, Colorado State Judicial Branch, to Justice Hobbs and on file with Justice Hobbs).

¹⁷ The number of pro se filings changes on a daily basis.

¹⁸ Cases and Parties without Attorney Representation in Civil Cases FY 2014 Handout (attached).

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

- ii.* Modest-means litigants find it difficult to gain access to legal representation as they may not be able to afford full representation and are unable to qualify for pro bono or low-cost services. Unbundled/limited scope representation provides litigants with at least some legal representation.
- iii.* The number of pro se litigants in the Colorado court system is growing. Pro se litigants are ill-equipped to represent themselves in court. It is difficult for pro se litigants to navigate through the court system without some legal assistance. An attorney, on even an unbundled/limited scope representation basis, can advise the pro se party on how to effectively manage the case, meet deadlines, and file accurate pleadings and disclosures.

6. ETHICAL CONSIDERATIONS

- a. The amendments to Colo. RPC 1.2(c) specifically allow a lawyer to limit the scope and objectives of the representation, so long as they are “reasonable,” and the client gives informed consent.
 - i.* An “unreasonable” limitation includes one that interferes with the knowledge, skill, thoroughness or preparation required to competently represent the client.²²
 - ii.* The requirement of “informed consent” is satisfied when the attorney communicates to the client any limitations on the scope of the representation, and provides information and explanation about the material risks associated with not being fully represented, and the alternatives available to limited representation.²³
 - (1) Examples of material risk:
 - a. The client that may later be confronted with an issue that he or she does not understand.
 - b. The client may be prohibited from presenting evidence to the court if he or she does not adequately understand and follow the rules of evidence.
 - (2) The client’s informed consent to the limited representation and its scope should be in writing.²⁴

²² See Colo. RPC 1.2 COMMENT [7].

²³ See Colo. RPC 1.0(e).

²⁴ See Colo. RPC 1.0 (e) and COMMENT [1]. Refer to Sample Engagement Agreement and Addendum.

- b. C.R.C.P. 11 prohibits attorneys from filing frivolous pleadings.
 - i. An attorney may not assist a pro se client in completing or drafting pleadings that are frivolous. However, upon eliciting sufficient information from the pro se party, the attorney may rely on the pro se party's representation of facts, unless the attorney has reason to believe that such representations are false or materially insufficient. In such an instance, the attorney shall make an independent, reasonable inquiry into the facts.²⁵
- c. It may not be a good model for all types of legal cases/issues.
 - i. i.e. high conflict or complex legal issue cases.
- d. As explained above, it is important enter into engagement agreement clearly explaining the limited scope of representation.
 - i. Colo. RPC 1.5(b) requires:

When the lawyer has not regularly represented the client, the basis or rate of the fee and expenses shall be communicated to the client, in writing, before or within a reasonable time after commencing the representation. Any changes in the basis or rate of the fee or expenses shall also be promptly communicated to the client, in writing.
- e. The limited scope of the representation does not negate a conflict of interest that would exist under traditional representation. Remember that an attorney may only represent one of the parties involved in the litigation.²⁶

7. RESOURCES

- a. Espinosa, "Ethical Considerations When Providing Unbundled Legal Services," 40 *The Colorado Lawyer* 9, 75 (Sept. 2011).
- b. Espinosa, "Limited Scope Representation Under the Proposed Amendment to C.R.C.P. 121, Section 1-1," 40, *The Colorado Lawyer* 11, 89 (Nov. 2011).
- c. *People v. Jerry Lee Stevens*, O.P.D.J. (No. 10PDJ002, Oct. 7, 2010).
- d. *People v. Gabriesheski*, 262 P.3d 653 (Colo. 2011).
- e. Justice Gregory J. Hobbs, Jr., *Judicial Support for Pro Bono Legal Service* paper.

²⁵ See C.R.C.P. 11(b) & C.R.C.P. 311(b).

²⁶ See Colo. RPC 1.7(a)(1).

- f. Preview of “Successful Business Planning: Serving the Moderate Income Client” by the Modest Means Task Force Modest Means Committee.
- g. American Bar Association Court Rules – Pro Se Unbundling Resource Center available at: http://www.americanbar.org/groups/delivery_legal_services/resources/pro_se_unbundling_resource_center/court_rules.html
- h. California State Bar Legal Services Section, Standing Committee on Legal Services to Middle Income Persons, *The Pro Per Counseling Handbook* (1994) at 4.
- i. Ethics Opinion 101: Unbundled Legal Services, 01/17/98; Addendum Issued 2006.
- j. “Unbundled Services,” 18 *The Docket* 5 (Denver Bar Assoc., Sept., 1996).
- k. American Bar Association - Handbook on Limited Scope Legal Assistance: *A Report of the Modest Means Task Force*, available at: <http://apps.americanbar.org/litigation/taskforces/modest/report.pdf>
- l. Fuller, “Unbundling Family Law Practice Creates Pro Bono Opportunities,” 27 *The Colorado Lawyer* 29 (Sept. 1998).
- m. Micklewright, “Discrete Task Representation a/k/a Unbundled Legal Services,” 29 *The Colorado Lawyer* 5 (Jan. 2000).
- n. Chief Justice Directive 13-01, Directive Concerning Colorado Courts’ Self-Represented Litigant Assistance, (June 12, 2013) at: http://www.courts.state.co.us/Courts/Supreme_Court/Directives/13-01.pdf
- o. Fogg, “Improving the Profession and the Community One Goal at a Time” 41 *The Colorado Lawyer* 5 (November 2012).
- p. *In re Seare*, 493 B.R. 158, (Bankr. D. Nev. 2013), as corrected (Apr. 10, 2013), *aff’d*, 515 B.R. 599 (B.A.P. 9th Cir. 2014).
- q. ABA Committee on Delivery of Legal Services, http://www.americanbar.org/groups/delivery_legal_services.html
- r. ABA Committee on Delivery of Legal Services, video trainings, See “Train the Trainer” videos, http://www.americanbar.org/groups/delivery_legal_services/events_training.html
- s. Sue Talia, trainer on unbundling, <http://unbundledlaw.org/>

Rules Handout

Authors: Amy Goscha & Danaé D. Woody

Colorado Rules of Civil Procedure Rule 11(b)

Limited Representation. An attorney may undertake to provide limited representation in accordance with Colo. RPC 1.2 to a pro se party involved in a court proceeding.

Pleadings or papers filed by the pro se party that were prepared with the drafting assistance of the attorney shall include the attorney's name, address, telephone number and registration number.

The attorney shall advise the pro se party that such pleading or other paper must contain this statement.

In helping to draft the pleading or paper filed by the pro se party, the attorney certifies that, to the best of the attorney's knowledge, information and belief, this pleading or paper is:

- (1) Well-grounded in fact based upon a reasonable inquiry of the pro se party by the attorney,
- (2) Is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law, and
- (3) Is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

The attorney in providing such drafting assistance may rely on the pro se party's representation of facts, unless the attorney has reason to believe that such representations are false or materially insufficient, in which instance the attorney shall make an independent reasonable inquiry into the facts.

Assistance by an attorney to a pro se party in filling out pre-printed and electronically published forms that are issued through the judicial branch for use in court are not subject to the certification and attorney name disclosure requirements of this Rule 11(b).

Limited representation of a pro se party under this Rule 11(b) shall not constitute an entry of appearance by the attorney for purposes of C.R.C.P. 121, section 1-1 or C.R.C.P. 5(b), and does not authorize or require the service of papers upon the attorney.

Representation of the pro se party by the attorney at any proceeding before a judge, magistrate, or other judicial officer on behalf of the pro se party constitutes an entry of an appearance pursuant to C.R.C.P. 121, section 1-1. The attorney's violation of this Rule 11(b) may subject the attorney to the sanctions provided in C.R.C.P. 11(a).

Colorado Rules of County Court Civil Procedure Rule 311(b)

Limited representation. An attorney may undertake to provide limited representation in accordance with Colo. RPC 1.2 to a pro se party involved in a court proceeding.

Pleadings or papers filed by the pro se party that were prepared with the drafting assistance of the attorney shall include the attorney's name, address, telephone number and registration number.

The attorney shall advise the pro se party that such pleading or other paper must contain this statement. In helping to draft the pleading or paper filed by the pro se party, the attorney certifies that to the best of the attorney's knowledge, information and belief, this pleading or paper is:

- (1) Well-grounded in fact based upon a reasonable inquiry of the pro se party by the attorney,
- (2) Is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law, and
- (3) Is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

The attorney in providing such drafting assistance may rely on the pro se party's representation of facts, unless the attorney has reason to believe that such representations are false or materially insufficient, in which instance the attorney shall make an independent reasonable inquiry into the facts. Assistance by an attorney to a pro se party in filling out pre-printed and electronically published forms that are issued through the judicial branch for use in court are not subject to the certification and attorney name disclosure requirements of this Rule 311(b).

Limited representation of a pro se party under this Rule 311(b) shall not constitute an entry of appearance by the attorney for purposes of C.R.C.P. 121, section 1-1 or C.R.C.P. 305, and does not authorize or require the service of papers upon the attorney. Representation of the pro se party by the attorney at any proceeding before a judge, magistrate, or other judicial officer on behalf of the pro se party constitutes an entry of an appearance pursuant to C.R.C.P. 121, section 1-1. The attorney's violation of this Rule 311(b) may subject the attorney to the sanctions provided in C.R.C.P. 311(a).

Colorado Rules of Civil Procedure 121 § 1-1(5):

In accordance with C.R.C.P. 11(b) and C.R.C.P. Rule 311(b), an attorney may undertake to provide limited representation to a pro se party involved in a court proceeding. Upon the request and with the consent of a pro se party, an attorney may make a limited appearance for the pro se party in one or more specified proceedings, if the attorney files and serves with the court and the other parties and attorneys (if any) a notice of the limited appearance prior to or simultaneous with the proceeding(s) for which the attorney appears. At the conclusion of such proceeding(s), the attorney's appearance terminates without the necessity of leave of court, upon the attorney filing a notice of completion of limited appearance. Service on an attorney who makes a limited appearance for a party shall be valid only in connection with the specific proceeding(s) for which the attorney appears.

Colorado Appellate Rules 5(e) and (f)

(e) Notice of Limited Representation Entry of Appearance and Withdrawal. An attorney may undertake to provide limited representation to a pro se party involved in a civil appellate proceeding. Upon the request and with the consent of a pro se party, an attorney may make a limited appearance for the pro se party to file a notice of appeal and designation of record in the court of appeals or the supreme court, to file or oppose a petition or cross-petition for a writ of certiorari in the supreme court, to respond to an order to show cause issued by the supreme court or the court of appeals, or to participate in one or more specified motion proceedings in either court, if the attorney files and serves with the court and the other parties and attorneys (if any) a notice of the limited appearance prior to or simultaneous with the proceeding(s) for which the attorney appears. At the conclusion of such proceeding(s), the attorney's appearance terminates without the necessity of leave of court, upon the attorney filing a notice of completion of limited appearance in the appellate court in which the attorney appeared, a copy of which may be filed in any other court, except that an attorney filing a notice of appeal or petition or cross-petition for writ of certiorari is obligated, absent leave of court, to respond to any issues regarding the appellate court's jurisdiction. Service on an attorney who makes a limited appearance for a party shall be valid only in connection with the specific proceedings(s) for which the attorney appears. The provisions of this C.A.R. 5(e) shall not apply to an attorney who has filed an opening or answer brief pursuant to C.A.R. 31.

(f) Termination of Representation. When an attorney has entered an appearance, other than a limited appearance pursuant to C.A.R. 5(e), on behalf of a party in an appellate court without having previously represented that party in the matter in any other court, the attorney's representation of the party shall terminate at the conclusion of the proceedings in the appellate court in which the attorney has appeared, unless otherwise directed by the appellate court or agreed to by the attorney and the party represented. Counsel may file a notice of such termination of representation in any other court.

Colorado Rules of Professional Conduct 1.0(b), (e), (h), (n) and Comment 1

(b) “Confirmed in writing,” when used in reference to the informed consent of a person, denotes informed consent that is given in writing by the person or a writing that a lawyer promptly transmits to the person confirming an oral informed consent. See paragraph (e) for the definition of “informed consent.” If it is not feasible to obtain or transmit the writing at the time the person gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter.

(e) “Informed consent” denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct.

(h) “Reasonable” or “reasonably” when used in relation to conduct by a lawyer denotes the conduct of a reasonably prudent and competent lawyer.

(n) “Writing” or “written” denotes a tangible or electronic record of a communication or representation, including handwriting, typewriting, printing, photostating, photography, audio or videorecording and e-mail. A “signed” writing includes an electronic sound, symbol or process attached to or logically associated with a writing and executed or adopted by a person with the intent to sign the writing.

COMMENT [1] If it is not feasible to obtain or transmit a written confirmation at the time the client gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter. If a lawyer has obtained a client’s informed consent, the lawyer may act in reliance on that consent so long as it is confirmed in writing within a reasonable time thereafter.

Colorado Rules of Professional Conduct 1.1

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

Colorado Rules of Professional Conduct 1.2(c) and Comment 7

A lawyer may limit the scope or objectives, or both, of the representation if the limitation is reasonable under the circumstances and the client gives informed consent. A lawyer may provide limited representation to pro se parties as permitted by C.R.C.P. 11(b) and C.R.C.P. 311(b).

COMMENT [7] Although this Rule affords the lawyer and client substantial latitude to limit the representation, the limitation must be reasonable under the circumstances. If, 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. See Rule 1.1.

Colorado Rules of Professional Conduct 1.5(b)

When the lawyer has not regularly represented the client, the basis or rate of the fee and expenses shall be communicated to the client, in writing, before or within a reasonable time after commencing the representation. Any changes in the basis or rate of the fee or expenses shall also be promptly communicated to the client, in writing.

Colorado Rules of Professional Conduct 1.7

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

- (1) the representation of one client will be directly adverse to another client; or
- (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

- (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
- (2) the representation is not prohibited by law;
- (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
- (4) each affected client gives informed consent, confirmed in writing.

Colorado Rules of Professional Conduct 4.2

In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.

COMMENT [8] The prohibition on communications with a represented person only applies in circumstances where the lawyer knows that the person is in fact represented in the matter to be discussed. This means that the lawyer has actual knowledge of the fact of the representation; but such actual knowledge may be inferred from the circumstances. See Rule 1.0(f). Thus, the lawyer cannot evade the requirement of obtaining the consent of counsel by closing eyes to the obvious.

COMMENT [9] In the event the person with whom the lawyer communicates is not known to be represented by counsel in the matter, the lawyer's communications are subject to Rule 4.3.

COMMENT [9A] A pro se party to whom limited representation has been provided in accordance with *C.R.C.P. 11(b)* or *C.R.C.P. 311(b)*, and Rule 1.2, is considered to be unrepresented for purposes of this Rule unless the lawyer has knowledge to the contrary.

Colorado Rules of Professional Conduct 4.3

In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding. The lawyer shall not give legal advice to an unrepresented person, other than the advice to secure counsel, if the lawyer knows or reasonably should know that the interests of such a person are or have a reasonable possibility of being in conflict with the interests of the client.

COMMENT [2A] The lawyer must comply with the requirements of this Rule for pro se parties to whom limited representation has been provided, in accordance with *C.R.C.P. 11(b)*, *C.R.C.P. 311(b)*, Rule 1.2, and Rule 4.2. Such parties are considered to be unrepresented for purposes of this Rule.

FORMS

<input type="checkbox"/> District Court <input type="checkbox"/> County Court _____ County, Colorado Court Address: _____ Plaintiff: and Defendant:	
▲ COURT USE ONLY ▲	
Attorney (Name and Address): Phone Number: E-mail: FAX Number: Atty. Reg. #:	Case Number: Division Courtroom
CERTIFICATE OF SERVICE OF NOTICE OF LIMITED APPEARANCE BY ATTORNEY WITH CONSENT OF PRO SE PARTY UNDER C.R.C.P. 11(b) AND 121, SECTION 1-1(5) IN A CIVIL MATTER	

I certify that on _____ (date) a true and accurate copy of the *Notice of Limited Appearance by Attorney with Consent of Pro Se Party Under C.R.C.P. 11(b) and 121, Section 1-1(5) in a Civil Matter* was served on the client and all other counsel or parties of record by:

- Hand Delivery,
- E-filed,
- Faxed to this number _____, or
- Placing it in the United States mail, postage pre-paid, and addressed to the following:

To: _____

Date: _____

 Print Name

 Signature

Consent to Limited Appearance by an Attorney (JDF 631)

<input type="checkbox"/> District Court <input type="checkbox"/> County Court _____ County, Colorado Court Address: _____ Plaintiff: and Defendant:	COURT USE ONLY
Attorney (Name and Address): Phone Number: E-mail: FAX Number: Atty. Reg. #:	Case Number: Division Courtroom
CONSENT TO LIMITED APPEARANCE BY AN ATTORNEY UNDER C.R.C.P. 11(b) AND 121, SECTION 1-1(5) IN A CIVIL MATTER	

I, _____, (Pro se party name) do hereby consent to granting a limited entry of appearance to (name of counsel) _____ for permission to represent me for the following proceeding(s):
 _____.

I understand that the Court retains jurisdiction over me as the pro se party in interest to this case. That at the conclusion of this limited appearance I have the burden of keeping the Court and the other parties informed where later notices, pleadings, and other papers may be served; that I have the obligation to prepare for trial or have other counsel prepare for trial; and that failure or refusal to meet these burdens may subject me to a possible default and that the dates of any proceedings including trial and holding of such proceedings will not be affected by the completion of the limited appearance of counsel.

Service of process may be served upon me as the pro se party in interest to this case at my address which is _____
 _____.

DATE: _____

 Signature

Name: _____

Address: _____

Telephone: _____

<input type="checkbox"/> District Court <input type="checkbox"/> County Court _____ County, Colorado Court Address: <hr/> Plaintiff: and Defendant:	
Attorney (Name and Address): Phone Number: E-mail: FAX Number: Atty. Reg. #:	▲ COURT USE ONLY ▲ Case Number: Division Courtroom
CERTIFICATE OF SERVICE OF NOTICE OF COMPLETION OF LIMITED APPEARANCE UNDER C.R.C.P. 11(b) AND 121, SECTION 1-1(5) IN A CIVIL MATTER	

I certify that on _____ (date) a true and accurate copy of the *Notice of Completion of Limited Appearance Under C.R.C.P. 11(b) and 121, Section 1-1(5) in a Civil Matter* was served on the client and all other counsel or parties of record by:

- Hand Delivery,
- E-filed,
- Faxed to this number _____, or
- Placing it in the United States mail, postage pre-paid, and addressed to the following:

To: _____

Date: _____

 Print Name

 Signature

CLIENT TOOLS

Sample Engagement Agreement

Authors: Amy Goscha & Danaé D. Woody

[Letterhead]

[Date]

[Potential client name]

[Address]

Dear [potential client name]:

Thank you for choosing [law firm name] as your legal counsel. This is our Engagement Agreement, which is our contract with one another. Please read it carefully, and if you agree with its terms after fully understanding all of them, please sign in the space provided on page 4 of this Engagement Agreement.

ATTORNEY SERVICES

You have determined, after consultation with me, that you wish to retain my services as legal counsel in a limited capacity, for the specific purpose of [detailed description of exactly the services being provided under this agreement]. You understand that I will not be appearing as your counsel before the Court. Unless we agree otherwise at a later time, and enter into an Addendum expanding the scope of my limited legal services to you to include my appearance at a hearing, you will be appearing before the Court by yourself. This means you alone will be signing pleadings, going to Court, attending settlement conferences such as mediation, and negotiating and communicating with the opposing party and/or opposing counsel.

If my services include helping you draft pleadings to be filed with the Court, I am required to put my name, attorney registration number, address, and telephone number on those pleadings. I will not be signing those pleadings, however.

We have fully discussed the possible problems and dangers associated with this type of limited representation, as well as the benefits. You have agreed that you wish to proceed with this type of representation nevertheless, and you agree after consultation that your legal needs can be effectively met with this type of representation.

I will not at any time be responsible for any of your misunderstandings of law, the legal process, or of fact. You understand that one of the dangers of limited services is that you may not fully understand the law or the facts relevant to your matter, even though you have been advised by me regarding the same. Any of your misunderstandings may significantly prejudice your case.

I cannot, at any time, do anything on your behalf that I, as an officer of the Court, could not personally do. In my limited representation of you, I cannot be party to giving false information to the Court or to interposing any argument or pleading designed to harass or annoy the other party, or to cause unnecessary delay or needlessly increase the costs of litigation. Further, I will only draft pleadings on your behalf that I believe to be well-grounded in fact based upon a reasonable inquiry of you and if I believe the contents of the pleading are warranted by existing law or a good faith extension of the same.

In the event you wish me to fully represent you in this matter, and thus manage all aspects of your case, we will enter into a new engagement agreement and this engagement agreement will become null and void. However, we both may agree to add additional services by way of an Addendum to this agreement, which will not cause this agreement to be null and void, but will expand the scope of my limited legal services to you to those specific services agreed upon in the Addendum.

CLIENT RESPONSIBILITIES

You understand that as you will be preparing your case, I can only counsel you based upon information that you provide to me. You understand that I will not conduct any independent investigation into the facts of your case. The level of counseling will be commensurate with how much I know about your case. If you do not provide me with all of the information I need, I cannot provide you with a high level of legal counseling. You are solely responsible for providing me with all relevant facts of the case.

You specifically understand and agree that the management of this case is your sole responsibility. *[Define communication protocol and case management procedures. Example: “Unless we agree otherwise at a later time, and enter into an Addendum expanding the scope of my limited legal services to you to include my appearance at a hearing, you will be appearing before the Court by yourself. This means you alone will be signing pleadings, going to Court, attending settlement conferences such as mediation, and negotiating and communicating with the opposing party and/or opposing counsel.]* You must follow all Court rules during your case. If you do not follow these rules, you may be penalized, including but not limited to fines or sanctions issued by the Court.

CONSULTATION FEES

I will bill you an hourly fee of *[hourly rate]* for all telephone, e-mail, and in-person consultation with me regarding legal rights, statutory law and case law pertinent to your case, court rules, court procedures, preparation for hearings, and analysis of settlement positions. At this time, you have asked that I render consultation services regarding the following:

**[name of the matter such as Dissolution of Marriage]*

I will require a *[amount of the retainer]* retainer for consultation services. Hourly fees will be billed against the retainer. Should your retainer be depleted before consultation services are completed, I will require you to replenish your retainer. If you do not replenish the retainer, consultation services will terminate.

[Explain client's responsibility for administrative costs and fees.]

You will be responsible for any and all costs associated with this matter, including, but not limited to, filing fees, witness fees, subpoenas, evaluations and reports, depositions, experts, outsourced copy costs and transcripts.

PREPARATION OF PLEADINGS

I will prepare the following pleadings on your behalf for the following flat fees:

[List any specific pleadings and specify the flat fee amount in the consultation fees section. If none, then state: "None, unless there is a specific Addendum to this Engagement Agreement that provides for such preparation."]

Payment for flat fee services is due before pleadings are prepared.

PLEADINGS MANAGEMENT, DOCKETING

I will not mail or e-file your pleadings to the Court, receive Court orders, or keep you apprised of Court deadlines. You are solely responsible for all filings and deadline management associated with your case.

OTHER SERVICES

I will provide you with other services, on the following terms:

[List any specific other services. If none, then state: "None, unless there is a specific Addendum to this Engagement Agreement that provides for such other services."]

CONTINGENCIES

If any of the following contingencies occur, I will discontinue limited representation:

[List contingencies.]

I will not counsel you on how to prepare for a contested hearing, unless there is a specific Addendum to this Engagement Agreement that provides for such representation.

TERMINATION OF SERVICES

You may terminate my services at any time for any or no reason. I may terminate my services at any time for any or no reason. You agree that if you petition the Court to disallow my termination of services to you, you will pay me my hourly consultation fee for any pleadings prepared by me or court appearances made by me in conjunction with such a petition.

PRIVACY POLICY

We collect nonpublic personal information about you from the following sources:

- Information we receive from you on applications or other forms;
- Information you provide for use in connection with our provision of financial products or services to you;
- Information about your transactions with us, our affiliates, or others; and
- Information we receive from a consumer reporting agency.

We do not disclose any nonpublic personal information about our clients or former clients to anyone, except as permitted by law. We restrict access to nonpublic personal information about you to those employees who need to know that information to provide products or services to you. We maintain physical, electronic, and procedural safeguards that comply with federal regulations to guard your nonpublic personal information. This notice is being provided to you in accordance with 16 C.F.R. Part 313—Privacy of Consumer Financial Information.

Sincerely,

[Law firm name]

[Attorney name]

I, *[potential client name]*, have fully read and understood the above engagement agreement, and agree to be bound by its terms. I specifically state that I have been fully counseled of the many possible problems associated with limited representation, and believe that my case can be adequately handled with limited representation. I also understand that at all times, I am solely responsible for managing my own case and for abiding by all court rules.

Agreed to by:

[potential client name]

Date

Sample Addendum to Engagement Agreement

Authors: Amy Goscha & Danaé D. Woody

[Letterhead]

[Date]

[Client name]

[Address]

ADDENDUM TO ENGAGEMENT AGREEMENT **SIGNED [DATE OF ORIGINAL ENGAGEMENT AGREEMENT]**

As the nature and scope of our original engagement regarding limited representation has changed and/or expanded, we are entering an Addendum to our original Engagement Agreement dated *[date of the original engagement agreement]* to include the additional limited legal services you have requested. The purpose of this Addendum is to set forth the objectives of the changed and/or expanded services under limited scope representation and to clearly define the beginning and completion of these changed and/or expanded limited scope representation services.

Please read the Addendum carefully, and if you agree with its terms after fully understanding all of them, please sign on the signature line provided on page 2 of this Addendum.

ADDITIONAL SERVICES

I will provide you with the following additional services:

[specify additional services that will be provided]

CONSULTATION FEES

As stated in the Engagement Agreement dated *[date of the original engagement agreement]*, I will continue to bill you an hourly fee of *[insert hourly rate]*. Should your retainer be depleted before consultation services are completed per this Addendum, I will require you to replenish your retainer pursuant to the Engagement Agreement dated *[date of the original engagement agreement]*. If you do not replenish the retainer, consultation services per this Addendum will terminate, and this Addendum will become null and void.

*[*Note: Attorneys may wish to require an additional retainer to cover any services added by this Addendum.]*

My limited scope representation under this Addendum ends either upon my completion of terms defined under “Additional Services” of this Addendum or upon your failure to replenish your retainer per the Engagement Agreement dated *[date of the original engagement agreement]* after depletion. At that time, unless we enter into an additional Addendum to the initial Engagement Agreement dated *[date of the original engagement agreement]* or we sign a new Engagement Agreement, this Addendum shall terminate and my limited representation will revert back to the terms as set forth in the original Engagement Agreement dated *[date of the original engagement agreement]*.

All of the terms and conditions as set forth in the Engagement Agreement dated *[insert date of the original engagement agreement]* not modified herein shall remain in full force and effect.

Sincerely,

[Law firm name]

[Attorney name]

I, *[Client name]*, have fully read and understood the above Addendum to the Engagement Agreement signed on *[date of the original engagement agreement]*, and agree to be bound by its terms. I specifically state that I have been fully counseled as to the many possible problems associated with limited representation, and believe that my case can be adequately handled with limited representation. I also understand that at all times, I am solely responsible for managing my own case and for abiding by all court rules.

[Client name]

Date

Sample Estimated Litigation Budget

ESTIMATED LITIGATION BUDGET							
			Small Business Client Dec. 2014	HIGH ESTIMATE OF HOURS	AVERAGE RATE PER HOUR (blended atty/paralegal rates)	LOW ESTIMATE OF COST	HIGH ESTIMATE OF COST
I	PREDISCOVERY	TASKS	LOW ESTIMATE OF HOURS	HIGH ESTIMATE OF HOURS	AVERAGE RATE PER HOUR (blended atty/paralegal rates)	LOW ESTIMATE OF COST	HIGH ESTIMATE OF COST
	Case Research	Evaluation/Preliminary Research	4.0		6.0 \$ 225.00	\$ 900.00	\$ 1,350.00
	Communications	Review file, invoices, communications and other documents to date, develop strategy	2.5	4.0	\$ 225.00	\$ 562.50	\$ 900.00
	Legal Research/Rule 11 research	Conferring with client/relevant witnesses to get familiar with facts/review draft pleadings/discuss pros/cons of claims, strategy review UCC/custom ordered goods statutes/case law; update research; ensure complaint has basis in fact and law re: CRCP	3.0	5.0	\$ 225.00	\$ 675.00	\$ 1,125.00
	Drafting Pleadings	organize claims/caption, statement of facts; draft, edit	5.0	8.0	\$ 225.00	\$ 1,125.00	\$ 1,800.00
	Procedural/Service	work with process server; organize service upon defendants; supervise filing of same	2.5	4.0	\$ 225.00	\$ 562.50	\$ 900.00
			14.5	23.0			
			TOTAL PREDISCOVERY COST:			\$ 3,825.00	\$ 6,075.00

	TASKS	LOW ESTIMATE OF HOURS	HIGH ESTIMATE OF HOURS	AVERAGE RATE PER HOUR (blended attorney/paralegal rates)	LOW ESTIMATE OF COST	HIGH ESTIMATE OF COST
III	DISCOVERY					
	Docketing/Case mgt	1.0	2.0	\$ 225.00	\$ 225.00	\$ 450.00
	Rule 26 Disclosures	8.0	10.0	\$ 225.00	\$ 1,800.00	\$ 2,250.00
	Case Management	6.0	8.0	\$ 225.00	\$ 1,350.00	\$ 1,800.00
	Drafting Discovery	7.0	12.0	\$ 225.00	\$ 1,575.00	\$ 2,700.00
	Discovery Response	7.0	10.0	\$ 225.00	\$ 1,575.00	\$ 2,250.00
	Deposition time	16.0	40.0	\$ 225.00	\$ 3,600.00	\$ 9,000.00

Sample Estimated Litigation Budget

					LOW ESTIMATE OF HOURS	HIGH ESTIMATE OF HOURS	AVERAGE RATE PER HOUR (blended atty/paralegal rates)	LOW ESTIMATE OF COST	HIGH ESTIMATE OF COST
Experts	Identify whether an expert is necessary; negotiate contracts with and work with experts to understand opinions, facts (likely won't need damages expert; requires discussion)	N/A	0.0	20.0	225.00	-	\$ 4,500.00		
			45.0	102.0					
			TOTAL DISCOVERY COST:		\$ 10,125.00	\$ 22,950.00			
III	MEDIATION								
Mediation	if ordered by Court, prepare mediation statement for and attend, draft comprehensive settlement statement re: facts, law and settlement position; cost depends on whether 1 day or half day		8.0	15.0	225.00	1,800.00	\$ 3,375.00		
IV	MOTIONS								
Procedural	unpredictable to anticipate what motion practice might be necessitated by opponents		0.0	30.0	225.00	-	\$ 6,750.00		
Discovery	motion to compel documents anticipated, as well as hearing		5.0	20.0	225.00	1,125.00	\$ 4,500.00		
Summary Judgment	After discovery/disclosures, consider motions to resolve without hearing; research, draft, edit and file summary judgment motion; work with affiants to draft and prepare affidavits in support of same		0.0	20.0	225.00	-	\$ 4,500.00		
<i>In Limine</i>	none anticipated		0.0	10.0	225.00	-	\$ 2,250.00		
Other	none anticipated - but difficult to predict		0.0	0.0	225.00				
			5.0	80.0					
			TOTAL COST OF MOTIONS:		\$ 1,125.00	\$ 18,000.00			

PRETRIAL/TRIAL		LOW ESTIMATE OF HOURS	HIGH ESTIMATE OF HOURS	AVERAGE RATE PER HOUR (blended atty/paralegal rates)	LOW ESTIMATE OF COST	HIGH ESTIMATE OF COST
<i>(remember, very few cases go this far; a high percentage settle prior to this phase)</i>						
Settlement Discussions (NOTE: these tasks can occur at any stage of litigation)	Confer with client, opposing counsel re: possible settlement terms; draft agreements, exchange drafts; supervise signatures; draft stipulated dismissals/proposed orders; file dismissals with court as necessary	5.0	10.0	\$ 225.00	\$ 1,125.00	\$ 2,250.00
	Court Conferences	4.0	6.0	\$ 225.00	\$ 900.00	\$ 1,350.00
	Jury Instructions	0.0	0.0	\$ 225.00	\$ -	\$ -
Trial Preparation	Prepare witnesses; direct questions, organize all documents; prepare witness and exhibit lists; review and comply with court's requirements as to trial; prepare pre-trial brief, management and technology; final research and prepare opening and closing arguments	40.0	50.0	\$ 225.00	\$ 9,000.00	\$ 11,250.00
Trial	travel to and attend 1 day hearing; draft proposed orders for court's consideration if requested by court; file same	12.0	16.0	\$ 225.00	\$ 2,700.00	\$ 3,600.00
		56.0	72.0			
		ESTIMATED FEES - SECTION V:				
		120.5	277.0		\$ 13,725.00	\$ 18,450.00
		TOTAL ESTIMATED LEGAL FEES OF LITIGATION:				
					\$ 30,600.00	\$ 68,850.00

ADDITIONAL INFORMATION

Formal Ethics Opinion 101: Unbundled Legal Services

101

UNBUNDLED LEGAL SERVICES

Adopted January 17, 1998.

Addendum issued 2006.

Introduction and Scope

For many years, courts have experienced increasing numbers of *pro se* litigants. While by definition attorneys do not enter appearances for *pro se* litigants, attorneys are often asked by *pro se* litigants to explain legal procedures, principles, and strategies. A lawyer who provides a client with some, but not all, of the work normally involved in litigation is said to be providing “unbundled” legal services.¹ By this unbundling, a person who cannot afford full representation can receive at least some legal assistance. In certain circumstances, it may be preferable for a lay person to have limited legal services rather than no services at all.

The Need for Unbundled Legal Services

Recent years have witnessed greater numbers of *pro se* litigants. A seminal American Bar Association study in Maricopa County (Phoenix), Arizona found that in 1980, at least one lawyer appeared in 76 percent of all divorce filings. By 1990, that number had dropped to 48 percent. In only 12 percent of the 1990 filings were both parties represented by counsel.² It has been estimated that in California, between 45 percent and 55 percent of the divorces are entirely *pro se*.³

The Denver District Court has responded to the increasing number of *pro se* divorce litigants by establishing an “Information and Referral Office.” The office is staffed, in part, by lawyers who provide limited legal assistance, but who do not enter their appearance for the client. The office also maintains a referral list of attorneys who provide unbundled legal services.⁴

The need for unbundled assistance is not limited to divorce cases. The U.S. District Court for the District of Colorado reported that 36 percent of the civil filings between January and May 1995, were filed *pro se*.⁵ While many of these were filed by incarcerated persons, non-prisoner filings involved such disparate topics as copyright infringement, trademark disputes, product liability, bankruptcy appeals, and “torts to land.” A recent newsletter from the Boulder County (Colorado) Bar Association reported that 37 percent of all cases filed in the Colorado state judicial system involve at least one *pro se* party.

Outside the courtroom, unbundled legal services are both commonplace and traditional. For example, clients often negotiate their own agreements, but before the negotiation ask a lawyer for advice on issues that are expected to arise. Sometimes, a lawyer’s only role is to draft a document reflecting an arrangement reached entirely without the lawyer’s involvement. Clients involved in administrative hearings (such as zoning or licensing matters) may ask their lawyer to help the client to prepare for the hearing, but not to appear at the hearing. In each of these situations, the lawyer is asked to provide discrete legal services, rather than handle all aspects of the total project.

Although unbundling is commonplace in many areas of the law, the concept is receiving the most attention in connection with *pro se* litigation. As a way of coping with the enormous number of *pro se* litigants, legal services organizations such as the Colorado State Public Defender and the Metro Volunteer Lawyers Program (formerly known as the “Thursday Night Bar”) conduct self-help seminars to assist persons in representing themselves in eviction and divorce proceedings, as well as in criminal proceedings where incarceration is not threatened. These organizations then provide attorneys only for those aspects of the case in which the skilled help of a lawyer is required. Other tasks are left to the client.

Many individuals who do not qualify for public or private legal assistance programs, but who cannot afford the full service of a lawyer, recognize that their chances of success in the legal arena can be enhanced by advice from lawyers who supplement case management without dominating it. In such circumstances, the lawyer is retained to diagnose legal problems, but not to appear as counsel of record.

New York State has approved of the unbundling of legal services, noting: “We firmly believe that the creation of barriers to the procurement of legal advice by those in need and who are unable to pay in the name of legal ethics ill serves the profession.” New York State Opinion 613 (9/24/90).

Different circumstances may create the need for unbundled legal services. Perhaps the most common is when a client cannot afford full representation. Others include where time constraints prevent full representation from being provided or the client requests only limited representation.

Ethical Issues

Rule 1.2 of the Colorado Rules of Professional Conduct allows a lawyer and client to limit the scope of the lawyer’s representation. Rule 1.2(a) considers the issue from the client’s perspective in providing that “[a] lawyer shall abide by a client’s decisions concerning the objectives of the representation. . . .”

Rule 1.2(c) addresses the lawyer’s point of view in providing that “[a] lawyer may limit the objectives of the representation if the client consents after consultation.” The Comment to Rule 1.2 further emphasizes that a lawyer’s representation need not include the full bundle of services in every instance:

The objectives or scope of services provided by a lawyer may be limited by agreement with the client or by the terms under which the lawyer’s services are made available to the client.

The unbundling of legal services is not limited to situations where an attorney is entirely absent from the courtroom. The Comment to Rule 1.2 suggests that an appearance in court for only some of a client’s claims is not unethical. For example, where an insurance contract provides a defense for certain lawsuit claims, but not others, the Comment states that, “the representation may be limited to matters related to the insurance coverage.”⁶

The ABA Ethics Committee concluded under the prior Code of Professional Responsibility that there was no *per se* prohibition against unbundled legal services:

We do not intend to suggest that a lawyer may never give advice to a litigant who is otherwise proceeding *pro se*, or that a lawyer could not, for example, prepare or assist in the preparation of a pleading for a litigant who is otherwise acting *pro se*.

ABA Informal Ethics Opinion 1414, *Conduct of Lawyer Who Assists Litigant Appearing Pro Se* (1978).

However, in the unusual situation where the lawyer provided every legal service except sitting at counsel table during trial and examining witnesses, ABA Opinion 1414 concluded that the lawyer was participating in a misrepresentation that the client was conducting the litigation *pro se*. In that circumstance, ABA Opinion 1414 concluded that the lawyer’s conduct constituted fraud, deceit or misrepresentation in violation of Disciplinary Rule 1-102(A)(4).⁷

A lawyer who limits the scope of the representation must consult with the client about the limited representation and obtain the client’s consent to the limitation. Colo. RPC 1.2(c). As noted in the Terminology section of the Colorado Rules of Professional Conduct, “consult or consultation denotes communication of information reasonably sufficient to permit the client to appreciate the significance of the matter in question.” A lawyer engaged in unbundled legal services must clearly explain the limitations of the representation, including the types of services which are not being provided and the probable effect of limited representation on the client’s rights and interests. Where it is “foreseeable that more extensive services probably will be required” the lawyer may not accept the engagement unless “the situation is adequately explained to the client.” Comment, Colo. RPC 1.5.

The lawyer’s disclosure to the *pro se* litigant ought to include a warning that the litigant may be confronted with matters that he or she will not understand. That, however, is the trade-off which is inherent in unbundled legal services. As noted in Alaska Ethics Opinion 93-1, in providing unbundled legal services

. . . the client then proceeds without legal representation into the courtroom for the hearing. The client may then be confronted by more complex matters, such as evidentiary arguments . . . to which he is ill-prepared to respond. The client essentially elects to purchase only limited services from the attorney and to pay less in fees. In exchange, he assumes the inevitable risks entailed in not being fully represented in court. In the Committee’s view, it is not inappropriate to permit such limitations on the scope of an attorney’s assistance.

Examples of the “inevitable risks entailed in not being fully represented in court” include the *pro se* litigant’s inability to introduce facts into evidence due to a lack of understanding of the requirements of the rules of evidence; the *pro se* litigant’s failure to understand and present the elements of the substantive legal claims or defenses; and the *pro se* litigant’s inability to appreciate the ramifications of court rulings entered or stipulations offered during the proceedings. Since many of these issues will not arise until the court proceeding begins, it will be impossible to advise the client of each and every problem which might later arise. However, the lawyer should counsel the client about those risks and problems which are typical in cases of the type presented by the client.

Generally, the duty of competence of Rule 1.1 is circumscribed by the scope of representation agreed to pursuant to Rule 1.2. However, a lawyer may not so limit the scope of the lawyer’s representation as to avoid the obligation to provide meaningful legal advice, nor the responsibility for the consequences of negligent action. As noted in the Comment to Rule 1.1, “competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners.” Thoroughness and preparation requires the lawyer to make the factual inquiry necessary to understand the client’s legal situation and provide competent advice.

The nature of the required “thoroughness and preparation” is not the same in every matter. As noted in the Comment to Rule 1.1, “the required attention and preparation are determined in part by what is at stake; major litigation and complex transactions ordinarily require more elaborate treatment than matters of lesser consequence.”

Conclusion

The Colorado Rules of Professional Conduct, and especially Rule 1.2, allow unbundled legal services in both litigation and non-litigation matters. A lawyer who provides limited representation must nonetheless make a sufficient “inquiry into and analysis of the factual and legal elements of the problem” to provide the competent representation required by Rule 1.1.

2006 Addendum

Subsequent to the adoption of Opinion 101, C.R.C.P. 11 was amended. C.R.C.P. 11(b) now provides as follows:

(b) Limited Representation. An attorney may undertake to provide limited representation in accordance with Colo. RPC 1.2 to a pro se party involved in a court proceeding. Pleadings or papers filed by the pro se party that were prepared with the drafting assistance of the attorney shall include the attorney’s name, address, telephone number and registration number. The attorney shall advise the pro se party that such pleading or other paper must contain this statement. In helping to draft the pleading or paper filed by the pro se party, the attorney certifies that, to the best of the attorney’s knowledge, information and belief, this pleading or paper is (1) well-grounded in fact based upon a reasonable inquiry of the pro se party by the attorney, (2) is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law, and (3) is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. The attorney in providing such drafting assistance may rely on the pro se party’s representation of facts, unless the attorney has reason to believe that such representations are false or materially insufficient, in which instance the attorney shall make an independent reasonable inquiry into the facts. Assistance by an attorney to a pro se party in filling out pre-printed and electronically published forms that are issued through the judicial branch for use in court are not subject to the certification and attorney name disclosure requirements of this Rule 11(b). Limited representation of a pro se party under this Rule 11(b) shall not constitute an entry of appearance by the attorney for purposes of C.R.C.P. 121, section 1-1 or C.R.C.P. 5(b), and does not authorize or require the service of papers upon the attorney. Representation of the pro se party by the attorney at any proceeding before a judge, magistrate, or other judicial officer on behalf of the pro se party constitutes an entry of an appearance pursuant to C.R.C.P. 121, section 1-1. The attorney’s violation of this Rule 11(b) may subject the attorney to the sanctions provided in C.R.C.P. 11(a).

Colorado Rule of County Court Civil Procedure 311 is consistent with C.R.C.P. 11(b). Other states have adopted similar provisions.

On the other hand, the United States District Court for the District of Colorado adopted Administrative Order 1999-6 on April 10, 2000 which provides as follows:

Under D.C.COLO.LR 83.6, the rules of professional conduct, as adopted by the Colorado Supreme Court, are adopted as standards of professional responsibility applicable to this court. On June 17, 1999, the Colorado Supreme Court, en banc, adopted Colo.R.P.C. 1.2 Scope and Objectives of Representation; Colo.R.P.C. 4.2 Communication with Person Represented by Counsel; Colo.R.P.C. 4.3 Dealing with Unrepresented Person and C.R.C.P. 11 Signing of Pleadings as new rules. Those rules were adopted to permit limited representation by counsel. These changes are not consistent with Fed. R. Civ. P. 11 and are also inconsistent with the view of the judges of this court concerning the ethical responsibility of members of the bar of this court. Accordingly, it is now

ORDERED that the above described changes to the Colorado Rules of Professional Responsibility are not applicable:

- a) in this court; and
- b) in the United States Bankruptcy Court for the District of Colorado in adversary proceedings or matters governed by Fed.R.Bankr.P.9014. In addition, any limitation in the scope of representation of a Debtor, whether in a bankruptcy case or adversary proceeding, shall be disclosed in the statement required by 11 U.S.C. § 329 and Fed.R.Bankr.P.2016(b).

In 2002, the United States District Court for the District of Colorado adopted the following Local Rules pertaining to civil (Rule 83.4) and criminal (Rule 57.6) matters:

D.C.COLO.LCivR 83.4 - STANDARDS OF PROFESSIONAL RESPONSIBILITY

Except as otherwise provided in attached Amended Administrative Order 1999-6 concerning unbundling of legal services, the rules of professional conduct adopted by the Colorado Supreme Court and in effect on the effective date of these rules are adopted as standards of professional responsibility applicable in this court.

D.C.COLO.LCrR 57.6 - STANDARDS OF PROFESSIONAL RESPONSIBILITY

Except as otherwise provided in attached Amended Administrative Order 1999-6 concerning unbundling of legal services, the rules of professional conduct adopted by the Colorado Supreme Court and in effect on the effective date of these rules are adopted as standards of professional responsibility applicable in this court.

NOTES

1. The “full bundle” of representation in litigation has been described as: “(1) gathering facts, (2) advising the client, (3) discovering facts of opposing party, (4) researching the law, (5) drafting correspondence and documents, (6) negotiating, and (7) representing the client in court.” Mosten, “Unbundling Legal Services and the Family Lawyer,” *Family Law Quarterly* at 423 (Fall 1995).

2. ABA Standing Committee on the Delivery of Legal Services, *Self-Representation in Divorce Cases* (1993) at 6-7.

3. California State Bar Legal Services Section, Standing Committee on Legal Services to Middle Income Persons, *The Pro Per Counseling Handbook* (1994) at 4.

4. “Unbundled Services,” 18 *The Docket* 5 (Denver Bar Assoc., Sept., 1996).

5. 417 of 1,162 civil cases were filed *pro se*. *Pro Se Litigation Summary* prepared by the Civil Justice Reform Act Advisory Group for the U.S. District Court, D. Colorado (1996).

6. This Committee previously approved multiple lawyers appearing in insurance defense cases, with each lawyer's appearance limited to specific issues in the litigation. Our Ethics Opinion 91, *Ethical Duties of Attorney Selected by Insurer to Represent Its Insured* (Jan. 16, 1993) [22 *The Colorado Lawyer* 497 (March 1993)], suggests that "[w]hen there are significant issues of uninsured exposure (such as damages sought in excess of policy limits or uncovered claims), the defense counsel should so advise the insured and inform the insured that he or she has the right to retain independent counsel."

Opinion 91 also approves the use of separate counsel to pursue any counterclaims an insured defendant might have against the plaintiff: "Insurance defense counsel should, in most cases, recommend that another attorney pursue the counterclaim on the insured's behalf because of the potential for conflict between the insured and the insurance company." *Id.* at § II(C)(2).

In *Johnson v. Board of County Commissioners*, 868 F. Supp. 1226 (D. Colo. 1994), *aff'd on other grounds*, 85 F.3d 489 (10th Cir. 1996), the federal district court concluded that a lawyer who wished to defend only the "official capacity" claims against a former county employee violated Rule 1.1 of the Colorado Rules of Professional Conduct. The Tenth Circuit Court of Appeals disapproved that conclusion and held that a limited appearance is not only ethically permissible, but is sometimes ethically *required*:

. . . when a potential conflict exists because of the different defenses available to a government official sued in his official and individual capacities, it is permissible, but not required for the official to have separate counsel for his two capacities. . . . Obviously, if the potential conflict matures into an actual material conflict, separate representation would be required.

85 F.3d at 493 (10th Cir. 1996), *cert denied*, S. Ct. 611, 136 L. Ed. 2d 536.

7. The related issue of a lawyer "ghostwriting" court papers for a *pro se* litigant is beyond the scope of this opinion. Ghostwriting has been the subject of numerous and contradictory ethics opinions. Some opinions hold that "ghostwriting of pleadings . . . is a deception on the court" and constitutes "conduct involving dishonesty, fraud, deceit and misrepresentation." (Iowa Opinion 94-35, May 23, 1995). Others approve of a lawyer preparing the initial court pleading, so long as the lawyer's name (but not necessarily a signature) appears. (Kentucky Bar Association Opinion E-353, Jan. 1991). Others do not require the lawyer's name to appear, but instead require only that the document bear the statement "Prepared by Counsel." (N.Y. City Bar Assoc. Opinion 1987-2). Still others find no reason whatsoever for disclosure of the lawyer's involvement. (Maine Ethics Commission No. 89, August 31, 1988) (Alaska Bar Assoc. No. 93-1, March 19, 1993) (Los Angeles County Bar Assoc. No. 483, March 20, 1995).

Colorado lawyers should consider *Johnson, supra*, note 6 (ghostwriting violates the duty of candor to the tribunal, and therefore violates the Rules of Professional Conduct); *aff'd on other grounds*, 85 F.3d 489 (10th Cir. 1996) (*see n. 3*: "The [trial] court was also critical of the practice of attorneys ghostwriting for *pro se* litigants. . . . This aspect of the court's ruling is not at issue in this appeal."); *cert. denied*, 117 S. Ct. 611, 136 L. Ed. 2d 536.

See also Laremont-Lopez v. Southeastern Tidewater Opportunity Center, 968 F. Supp.1075, 1080 (E.D.Va. 1997) (while there is no specific ethical, procedural or substantive rule against ghostwriting, attorneys "should have known that this practice was improper. . . .").

Cases and Parties Without Attorney Representation in Civil Cases FY 2014

Cases and Parties without Attorney Representation in Civil Cases FY 2014

Providing appropriate resources for pro se parties in the courts is important both as an access to justice issue for citizens and for the efficient operation of courts across the state.

The following tables identify the volume of parties and cases that come before the court without attorney representation. All of these measures have been limited on the time period the case was initially filed; in this sample, the time period is fiscal year 2014 (July 2013 through June 2014). There are several similar, but distinct ways to measure this activity.

Case Level Pro Se Rate: The first measure calculates the number of *cases* in which no attorney has entered an appearance on the case- meaning neither side has representation. This measure is significant because it illustrates the number of cases in which it is possible no one involved in the case has had experience with the courts or the legal system.

Party Level Pro Se Rate: The second measure calculates the number of *parties* without representation involved in court cases. This measure allows us to more fully illustrate the number of litigants who come into the court without representation. This measure can also provide further direction for court policy and resources as it can demonstrate which side of a case has representation in various case types.

Caveats and limitations: *These measures are based on the moment in time the data was extracted from the court's database. The attorney representation numbers will change over time. A party that did not have an attorney on the day the data was extracted may get an attorney in the future. At the same time, a person who had an attorney at the beginning of their case may choose to proceed without an attorney in the future. Due to the way the data must be extracted, once an attorney has entered an appearance for a party, that party and case will still be measured as having an attorney. This data was extracted in December of 2014.*

We have calculated these measures in three civil case classes: domestic relations, county civil and district civil. More detailed analysis follows.

Domestic Relations Cases Filed in FY2014

Domestic Relations

Judicial District	Number of Cases	Cases with No Attorney	Case Level Pro Se Rate	Number of Parties	Parties with No Attorney	Party Level Pro Se Rate
1	3,443	2,289	66%	6,918	5,117	74%
2	4,600	3,431	75%	9,214	7,495	81%
3	178	130	73%	357	285	80%
4	5,789	3,895	67%	11,583	8,802	76%
5	469	310	66%	938	691	74%
6	397	277	70%	798	613	77%
7	702	458	65%	1,406	1,057	75%
8	1,839	1,134	62%	3,695	2,605	71%
9	539	338	63%	1,080	782	72%
10	1,247	701	56%	2,500	1,756	70%
11	582	363	62%	1,173	869	74%
12	402	321	80%	807	690	86%
13	495	354	72%	992	781	79%
14	303	179	59%	606	413	68%
15	141	89	63%	282	202	72%
16	239	166	69%	479	362	76%
17	3,309	2,237	68%	6,674	5,078	76%
18	5,471	3,423	63%	10,961	7,766	71%
19	1,782	1,075	60%	3,642	2,634	72%
20	1,465	933	64%	2,931	2,097	72%
21	1,345	869	65%	2,693	2,103	78%
22	194	144	74%	399	329	82%
Total	34,931	23,116	66%	70,128	52,527	75%

Domestic Relations cases include dissolutions of marriage and civil unions, allocation of parental responsibility, administrative support orders, marriage invalidity, as well as legal separation. The parties included in this measure were petitioner, co-petitioner, and respondent. As this table demonstrates, 66% of the domestic relations cases filed in fiscal year 2014 had no attorney on the case, meaning that every party involved was pro se. However, within that group of cases filed, there were 70,128 parties and of those parties, 75% did not have representation when the data was extracted. When this data was broken out by specific case types, the party pro se rate was fairly consistent with the overall rate.

District Civil Cases Filed in FY2014

District Court Civil (Excludes "Tax Lien" and "Foreclosure" Cases)

Judicial District	Number of Cases	Cases with No Attorney	Case Level Pro Se Rate	Number of Parties	Parties with No Attorney	Party Level Pro Se Rate
1	2,156	362	17%	5,851	2,384	41%
2	4,765	608	13%	13,868	4,760	34%
3	123	12	10%	448	165	37%
4	2,933	152	5%	7,989	2,750	34%
5	767	32	4%	2,991	1,556	52%
6	307	37	12%	972	420	43%
7	424	60	14%	1,279	526	41%
8	1,024	127	12%	2,795	1,071	38%
9	472	47	10%	1,471	563	38%
10	662	93	14%	1,694	680	40%
11	451	93	21%	1,475	733	50%
12	249	102	41%	768	478	62%
13	289	72	25%	945	523	55%
14	321	14	4%	1,152	530	46%
15	69	14	20%	171	80	47%
16	117	39	33%	354	209	59%
17	1,637	82	5%	5,608	2,036	36%
18	3,932	515	13%	11,047	4,231	38%
19	809	77	10%	2,558	976	38%
20	1,572	210	13%	3,816	1,206	32%
21	562	43	8%	1,424	614	43%
22	106	14	13%	289	147	51%
Total	23,747	2,805	12%	68,965	26,638	39%

In this case class both tax liens (distrain warrants) and residential foreclosures (Rule 120s) have been excluded from the measure. Tax lien cases are filed administratively with no attorney, and have experienced volatile filing volumes in the past several years, skewing the pro se numbers in this category. Similarly, foreclosure cases almost always have an attorney representing the filing party, which is generally a bank, while the responding party (the homeowner) rarely does. The parties included in these cases were plaintiff/petitioner (including 3rd, 4th, 5th party plaintiffs), respondent/defendant (including 3rd, 4th, 5th party defendants) and intervenors and interpleaders.

This table demonstrates that in 12% of cases no party has an attorney. More dramatically, the table shows that of the 68,965 parties involved in these cases, 39% were not represented when the data was extracted.

County Court Civil Cases Filed in FY2014

County Court Civil (Excludes "Name Change" and "Other" Cases)

Judicial District	Number of Cases	Cases with No Attorney	Case Level Pro Se Rate	Number of Parties	Parties with No Attorney	Party Level Pro Se Rate
1	19,718	2,142	11%	43,664	25,649	59%
2	n/a	n/a	n/a	n/a	n/a	n/a
3	627	194	31%	1,536	1,068	70%
4	27,825	4,198	15%	62,080	37,306	60%
5	1,689	369	22%	3,724	2,325	62%
6	1,567	428	27%	3,420	2,235	65%
7	2,421	474	20%	5,416	3,364	62%
8	8,996	968	11%	20,634	12,298	60%
9	2,041	367	18%	4,553	2,798	61%
10	7,322	737	10%	16,340	9,535	58%
11	1,925	443	23%	4,295	2,760	64%
12	1,227	388	32%	2,656	1,788	67%
13	1,993	311	16%	4,479	2,749	61%
14	1,233	218	18%	2,767	1,723	62%
15	527	156	30%	1,132	749	66%
16	1,040	258	25%	2,287	1,473	64%
17	23,683	2,301	10%	52,484	30,724	59%
18	32,809	3,055	9%	71,802	41,286	57%
19	8,709	1,380	16%	19,538	12,027	62%
20	6,582	929	14%	14,218	8,387	59%
21	5,843	1,842	32%	13,026	8,916	68%
22	755	202	27%	1,675	1,111	66%
Total	158,532	21,360	13%	351,726	210,271	60%

County Court civil cases are made up primarily of collection cases ("money"). In addition, county court civil cases include eviction cases ("forcible entry and detainer"), as well as restraining order cases. Parties included in this measure were plaintiffs, petitioners, and defendants. While only 13% of county civil cases had no attorney, 60% of parties had no representation at the time the data was extracted.

While these two measures give an overview of pro se activity in the state courts in Colorado, further analysis of these data may be more revealing. Below is a table that demonstrates pro se party rates by party type.

Pro Se Rate By Party Type

Filing Party				
Case Class	Number of Filing Parties (Plaintiffs/Petitioner/Co-Petitioner)	Number of Filing Parties (Plaintiffs/Petitioner/Co-Petitioner) With Attorneys	Number of Filing Parties (Plaintiffs/Petitioner/Co-Petitioner) Without Attorneys	Filing Party Pro Se Rate
Domestic Relations	46,360	11,557	34,803	75%
District Civil	27,451	23,056	4,395	16%
County Civil	164,687	137,764	26,923	16%
Total	238,498	172,377	66,121	28%
Responding Party				
Case Class	Number of Responding Parties	Number of Responding Parties with Attorneys	Number of Responding Parties Without Attorneys	Responding Party Pro Se Rate
Domestic Relations	23,768	6,044	17,724	75%
District Civil	41,514	19,271	22,243	54%
County Civil	187,039	3,691	183,348	98%
Total	252,321	29,006	223,315	89%

What these two tables demonstrate is while the total number of parties in county civil without attorneys is 60%, the total number of responding parties in the case without representation is 98%. This gives us a more accurate picture of the number of cases in which one party is represented, most often the filing party, while the other is not. At the same time, it is interesting to note in domestic relations cases, the pro se party rate is the same for both filing and responding parties.

As stated previously, the value of this analysis is in helping the courts to better anticipate and serve the needs of those seeking the services of the courts, regardless of whether they are represented by an attorney or not. For further information or questions about this data, please contact Jessica Zender at 720.625.5947 or jessica.zender@judicial.state.co.us

RESOURCES

“Find a Lawyer” Online Directory Instructions: “Accepting Alternative Fees”

The CBA’s Online Find A Lawyer Directory for Members

CBA FIND A LAWYER

The CBA’s online Find A Lawyer Directory is now mobilized and responsive in design, with advanced search options for the public to find you.

All CBA members receive a free premium listing trial until September 1, 2016.

Once the trial expires, premium listings will be available for purchase by CBA members only.

Premium listings include fields of practice, biography, education, CLE speaker/author experience, local bar plus CBA section and committee memberships, and more. Your basic CBA member listing information has been automatically transferred from the print edition of the 2015 Colorado Legal Directory. To take advantage of your free premium enhancements, you must update the information by logging into the directory. Get Found—update your listing today using the instructions below.



1. Go to cobar.org/directory and log in using your cobar.org web id and password. Need assistance? Call us at 303-860-1115.



2. Once in, you will be taken to your dashboard, where you will need to click on "Update My Find A Lawyer Listing."

3. As a CBA member, here you can add information to your free premium listing such as:
 - Additional Addresses
 - Headshot
 - Resume
 - Fields of Practice
 - Languages Spoken
 - Additional Certifications
 - States Admitted to Practice
 - Education
 - Bio
 - Blog and Website
 - And additional information such as Accepting Alternative Fee Arrangements*
4. Make sure to click "Update Profile" at the bottom of the screen to save your changes.

If you would like to view your old Find A Lawyer listing for reference or to copy and paste from, go to www.cobar.org, log in using your web id and password, and select "Access your old Find a Lawyer listing," found under the "My Cobar" tab.

*"The **alternative fee arrangement check box** provides a way the public can sort for lawyers who provide "alternative fee arrangements," such as limited scope representation (unbundling) [as set forth in Colorado Rule of Professional Conduct 1.2], flat fee, sliding scale, use of credit cards, payment plans, etc. One resource for ethical considerations, rules, and cases regarding fee arrangements is the Colorado Bar Association's "Successful Business Planning: Representing the Moderate Income Client."*

**“Successful Business Planning:
Representing Moderate Income Client”**

Successful Business Planning:

Representing
the Moderate Income Client



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COLORADO BAR ASSOCIATION
Established in 1897

Available at www.cobar.org/moderateincome
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Lending Library

We have gathered together a collection of books and materials, including ABA publications, on a variety of topics including Unbundling, Finance, Practice Management, Technology, Skills, Starting a Practice, Marketing, Practice Specific and others. There are no substantive law materials in our Lending Library.

The CBA Lending Library is an **exclusive** CBA member benefit. When you are ready to borrow materials, contact Sue Bertram (303) 824-5372 or sbertram@cobar.org, to see if the materials are available. We have limited copies of each title and are happy to put you on a wait list if something isn't immediately available. Then, download a Checkout Form and Agreement and email it to Sue or bring it with you to the CBA offices to pick up your materials, or we can mail you the materials for a \$5 fee.

A few of the titles available in the Unbundling category are: *Limited Scope Legal Services* by Stephanie L. Kimbro, *Reinventing the Practice of Law* edited by Professor Luz Herrera and *Unbundling Legal Services* by Forrest S. Mosten.

For questions or additional information please contact Sue Bertram (303) 824-5372 or sbertram@cobar.org.



Public Brochure on Limited Scope Representation

Limited Scope Representation

Do you want help with certain parts of your case?

- parenting plans
- discovery
- pleadings
- negotiation
- hearings
- mediation

Limited Scope Representation

Often referred to as "unbundling," limited scope representation means that you and your attorney agree how to divide up the tasks of handling your case. The attorney may coach, advise, draft, or provide other legal assistance. You pay the attorney for only the parts of the case that they are responsible for. For example, you may gather all financial documents while the attorney may draft court pleadings. The attorney may coach you on how to prepare for mediation or may appear with you at mediation. There are many options.

This brochure answers some basic questions about Limited Scope Representation.

an attorney to perform only part of your case, you are responsible for the outcome of the other parts, even if the attorney coached you. Therefore you must discuss your legal matter completely with your attorney and be sure you are comfortable in handling the case. Sometimes what seems simple is complex, such as introducing evidence to the court.

What happens if I need more assistance from the attorney, new issues arise or I feel like I do not understand what is happening in court?

You should go back to the attorney and ask for more assistance. This attorney is familiar with your case and you might be able to add other pieces or the entire case to your agreement. Again, you pay the attorney for every part of the case that they do. It may be easier and less expensive for the attorney to handle the full case. It may be worth the investment.

Will the courts let me do this?

Court rules allow limited scope representation.

How to find a lawyer that will do limited scope representation?



You can find an attorney that will discuss alternative fee options, including limited scope representation, on the Colorado Bar Association website, cobar.org. Click on "Find a Lawyer." You can search by geographic area, practice area (such as family law or probate), and "alternative fee arrangements". "Alternative fee arrangements" is an option under "advanced search." ("Alternative fees" may include other options, such as flat fee, using credit cards, etc.)



Limited Scope Representation

Often referred to as “unbundling,” limited scope representation means that you and your attorney agree how to divide up the tasks of handling your case. The attorney may coach, advise, draft, or provide other legal assistance. You pay the attorney for only the parts of the case that they are responsible for. For example, you may gather all financial documents while the attorney may draft court pleadings. The attorney may coach you on how to prepare for mediation or may appear with you at mediation. There are many options. This brochure answers some basic questions about Limited Scope Representation.



Public Brochure on Find A Lawyer Online Directory

IN NEED OF A LAWYER?

Try the Colorado Bar Association's
Online Find A Lawyer Directory
cobar.org/directory



THE CBA'S ONLINE FIND A LAWYER DIRECTORY

is mobilized, responsive, and up-to-date, with advanced search options and results featuring the detailed profiles of all active attorneys licensed in the state of Colorado. Search and find attorneys by geographic location, practice area (such as family law or probate), alternative fee arrangements, and more. The directory lists over 25,000 attorneys and is a trusted source for Colorado licensed attorneys.

Visit cobar.org/directory today to start your search, and enter your criteria into one or several search fields.

BASIC SEARCH

1. **Keywords**—Enter the keyword to your search, such as “DUI,” “Divorce,” “Adoption,” etc.
2. **Practice**—Choose the practice area for your case from the drop down menu, such as “Family Law” or “Probate.”
3. **City, State, Zip**—Use any of these fields to narrow your search by geographic area.

ADVANCED SEARCH

Advanced Search

Narrow your search results by clicking the (+)

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Bar Association Membership (All)

CBA Section Membership (All)

CBA Committee Membership (All)

1. Language (All)

Additional Certifications (All)

Are Currently:

2. Seeking Employment

Accepting New Clients

Available for Expert Testimony/Consultation

Accepting of Counsel Inquiries

Accepting Alternate Fee Arrangements

SEARCH RESET

1. Language—Need to speak to an attorney in a language other than English? Choose a variety of languages from this drop-down menu.
2. Are Currently—Check any of these boxes to narrow your search. One that is most valuable to members of the public is the “Accepting Alternative Fee Arrangement” box. *See right for more information.*



WHAT IS AN ALTERNATIVE FEE ARRANGEMENT?

“Alternative fees,” also known as limited scope representation or unbundling, means that you and your attorney agree how to divide up the tasks of handling your case. The attorney may coach, advise, draft, or provide other legal assistance, and you pay the attorney only for the parts of the case that they are responsible for. Alternative fees may also include other payment options, such as flat fees, sliding scale, use of credit cards, payment plans, etc.

You can find an attorney who will discuss alternative fee options by checking the “Accepting Alternative Fee Arrangements” box under the Advanced Search options. Want more information on limited scope representation? Refer to the CBA’s brochure on Limited Scope Representation available at courthouse self-help centers or online at cobar.org/public.



**HAVE A FEW LEGAL QUESTIONS—
BUT NOT READY TO HIRE AN ATTORNEY?**

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