

UNBUNDLING AND LIMITED SCOPE REPRESENTATION

# Practical and Ethical Considerations to Integrating Unbundled Legal Services

Third Edition



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# Practical and Ethical Considerations to Integrating Unbundled Legal Services

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**Third EDITION**

**Thank you to:**

Hon. Adam Espinosa, Denver County Court

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[www.cobar.org](http://www.cobar.org)

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# PRESENTATIONS



# Ethical Considerations



## Ethical Considerations Related to Modest Means Representation and Unbundled Legal Services

Presented By: Hon. Daniel M. Taubman, Colorado Court of Appeals,  
Hon. Adam J. Espinosa, Denver County Court.

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## 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.
    - 2<sup>nd</sup> Edition being published by CBA in 2016
  - 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.
  - Enhanced CBA online directory in 2015 and an SCAO statewide directory in 2016.
    - The enhanced CBA directory allows lawyers to list alternative billing arrangements, which include unbundling.

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## Modest Means Task Force

- Results:
  - CLE training program.
    - Half day CLE was held May 7, 2015
    - CLE on June 30, 2015 for Specialty Bars.
    - Regular CLE training throughout the State.
  - 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.
      - 2<sup>nd</sup> Edition published in 2016.

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## Modest Means Task Force

- Results:
  - Unbundling Handbook published 2015
    - Practical and Ethical Considerations to Integrating Unbundled Legal Services.
  - Ask-A-Lawyer pilot project in Denver for DR cases.
  - Virtual Incubator program.
  - Antitrust issues

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## Modest Means Task Force

- Successful Business Planning: Representing the Moderate Income Client 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
  - Alternative Fee Arrangements

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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 with assistance from the Supreme Court Library staff.
- Create central coordination for all Colorado Access to Justice programs
  - Bring legal and non-legal resources to assist.
  - Comprehensive website with decision-tree.
- 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.
  - Currently, the Ethics Committee is updating and rewriting this opinion. It should be published in 2016.
- 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 2015
- 69,951 parties in DR cases in CO in 2015; 75% did not have an attorney.
  - 12<sup>th</sup> JD- 722 parties in DR cases; 623 with no attorney; 86%.
  - 2<sup>nd</sup> JD- 9,012 parties in DR cases; 7,359 with no attorney; 82%.
  - 4<sup>th</sup> JD- 12,114 parties in DR cases; 9,321 with no attorney; 77%.
  - 1<sup>st</sup> JD- 6,867 parties in DR cases; 5,100 with no attorney; 74%.
  - 18<sup>th</sup> JD- 10,766 parties in DR cases; 7,491 with no attorney; 70%.
- 89% of all responding parties in DR, District Civil, and County Civil in all jurisdictions are *pro se*.
  - 75% in DR cases.
  - 98% in County Civil cases.

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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.
  - People v. Jerry L. Stevens, 10PDJ002 (O.P.D.J. 2010).
- 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. 31(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).
  - Federal Court in Colorado now permits, if ordered, limited representation by an attorney to an unrepresented prisoner in a civil action; D.C.COLO.LAttyR 2(b)(1).
- 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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## 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.
  - Colo. RPC 4.2 and 4.3.
  - Similar analysis as service of process.
  - See ABA Formal Opinion 472 (November 30, 2015)
- **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 2016)
  - Successful Business Planning: Representing the Moderate Income Client handbook
- **American Bar Association**
  - [www.americanbar.org](http://www.americanbar.org)
    - Handbook on Limited Scope Legal Assistance

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## Ethical Considerations Related to Modest Means Representation and Unbundled Legal Services

Presented By: Hon. Daniel M. Taubman, Colorado Court of Appeals,  
Hon. Adam J. Espinosa, Denver County Court.

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## Limited Scope Representation

### Limited Scope Representation “Unbundling”



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### What it is NOT



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

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## What is Limited Scope Representation

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

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## 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.

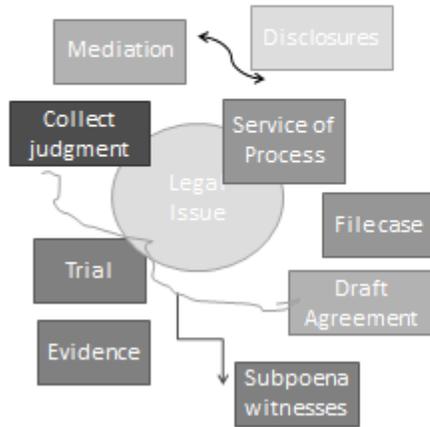
*Parties without Attorneys: FY 2015*

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

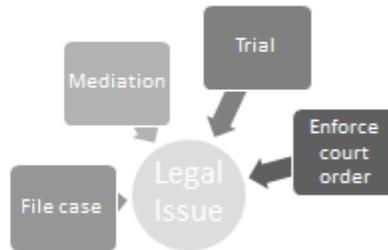
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## Why Limited Scope

### 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 Tala, 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	\$500
Fact Investigation	Conferences with client, gather documents	1.5 hours	3.0 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
Oral Hearings	Answer, affirmative defense, counterclaim, etc.	2.5 hours	5.0 hours	\$250	\$625	\$1,250
<i>Total Prediscovery</i>		<b>11.0 hours</b>	<b>22 hours</b>		<b>\$2,750</b>	<b>\$5,500</b>

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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"
- Referral from legal services providers
- Equal Access Center (EAC) – 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 (Ryann Peyton)
- Colorado Bar Association Solo and Small Firm Section (list serv and blog)
- "Successful Business Planning" workbook – second edition currently being worked on; First version available on the Colorado Bar Association website (download free to members)

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# Limited Scope Representation “Unbundling”



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# 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.<sup>1</sup>
- 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.<sup>2</sup> 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.<sup>3</sup>
- 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.<sup>4</sup>

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<sup>1</sup> See C.R.C.P. 11(b) and C.R.C.P. 311(b).

<sup>2</sup> See C.R.C.P. 121 § 1-1(5).

<sup>3</sup> *Id.*

<sup>4</sup> See C.R.C.P. 121 § 1-1(1) and (2)(b).

- 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.<sup>5</sup>
- h. The Colorado Court of Appeals and Colorado Supreme Court allow for limited scope representation.<sup>6</sup>
- 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)).<sup>7</sup>
  - 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).<sup>8</sup>

## 2. 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
      - 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);

<sup>5</sup> See Committee Comment to C.R.C.P. 121 § 1-1(5).

<sup>6</sup> C.A.R. 5(e) and (f).

<sup>7</sup> Micklewright, “Discrete Task Representation a/k/a Unbundled Legal Services,” 29 *The Colorado Lawyer* 5 (Jan. 2000).

<sup>8</sup> *Id.* See also Fuller, “Unbundling Family Law Practice Creates Pro Bono Opportunities,” 27 *The Colorado Lawyer* 29 (Sept. 1998).

- 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.

### 3. UNBUNDLED/LIMITED SCOPE REPRESENTATION AS AN EFFECTIVE BUSINESS MODEL

- a. Hourly rate: Billing can be 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.
- 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 40-70% 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.<sup>9</sup>

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

- 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.

#### 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.<sup>10</sup> Regardless of your 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.
- b. Engagement Agreement.<sup>11</sup>
  - 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.

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

<sup>11</sup> Refer to the attached sample engagement agreement.

- 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).<sup>12</sup>
- 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.<sup>13</sup>
  - 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.<sup>14</sup>
- 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.<sup>15</sup>
- 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

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

<sup>13</sup> See C.R.C.P. 11(b).

<sup>14</sup> *Id.*

<sup>15</sup> Espinosa, "Ethical Considerations When Providing Unbundled Legal Services," 40 *The Colorado Lawyer* 9, 75 (Sept. 2011).

nature of the representation may severely limit your ability to adequately represent certain clients and matters.

## 5. 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.<sup>16</sup>
  - 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 as well as the alternatives available to limited representation.<sup>17</sup>
    1. Examples of material risk:
      - a. The client 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.<sup>18</sup>
- 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.<sup>19</sup>
- 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.

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<sup>16</sup> See Colo. RPC 1.2 COMMENT [7].

<sup>17</sup> See Colo. RPC 1.0(e).

<sup>18</sup> See Colo. RPC 1.0 (e) and COMMENT [1]. Refer to Sample Engagement Agreement and Addendum.

<sup>19</sup> See C.R.C.P. 11(b) & C.R.C.P. 311(b).

- 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.<sup>20</sup>

## 6. 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.<sup>21</sup>

- 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.<sup>22</sup>

- iii. In 2015, 67% of domestic relations cases filed statewide had no attorney on the case.<sup>23</sup> Within the group of cases filed, there were 69,951 parties and of those parties, 75% did not have representation when the data was extracted.<sup>24</sup> For County Court civil, 60% of parties had no representation at the time the data was extracted.<sup>25</sup> 98% of responding parties in a county court cases filed in 2015 were without representation.<sup>26</sup>

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<sup>20</sup> See Colo. RPC 1.7(a)(1).

<sup>21</sup> 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).

<sup>22</sup> The number of pro se filings changes on a daily basis.

<sup>23</sup> Cases and Parties without Attorney Representation in Civil Cases FY 2015 Handout (attached).

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

- 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.
  - 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.

## 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.
- 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](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](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](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](http://www.americanbar.org/groups/delivery_legal_services/events_training.html)
- s. Sue Talia, trainer on unbundling, <http://unbundledlaw.org/>

# Rules Handout

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## **Colorado Rules of Civil Procedure Rule 11(a)**

Obligations of Parties and Attorneys. Every pleading of a party represented by an attorney shall be signed by at least one attorney of record in his individual name.

The initial pleading shall state the current number of his registration issued to him by the Supreme Court. The attorney's address and that of the party shall also be stated.

A party who is not represented by an attorney shall sign his pleadings and state his address. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit.

The signature of an attorney constitutes a certificate by him that he has read the pleading; that to the best of his knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

If a pleading is not signed it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader. If the current registration number of the attorney is not included with his signature, the clerk of the court shall request from the attorney the registration number. If the attorney is unable to furnish the court with a registration number, that fact shall be reported to the clerk of the Supreme Court, but the clerk shall nevertheless accept the filing. If a pleading is signed in violation of this Rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, including a reasonable attorney's fee, provided, however, that failing to be registered shall be governed by Rule 227.

Reasonable expenses, including a reasonable attorney's fee, shall not be assessed if, after filing, a voluntary dismissal or withdrawal is filed as to any claim, action or defense, within a reasonable time after the attorney or party filing the pleading knew, or reasonably should have known, that he would not prevail on said claim, action, or defense.

**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(1) and (2):**

(1) Entry of Appearance.

No attorney shall appear in any matter before the court unless that attorney has entered an appearance by filing an Entry of Appearance or signing a pleading. An entry of appearance shall state (a) the identity of the party for whom the appearance is made; (b) the attorney's office address; (c) the attorney's telephone number; (d) the attorney's E-Mail address; and (e) the attorney's registration number.

(2) Withdrawal From an Active Case.

(a) An attorney may withdraw from a case, without leave of court where the withdrawing attorney has complied with all outstanding orders of the court and either files a notice of withdrawal where there is active co-counsel for the party represented by the withdrawing attorney, or files a substitution of counsel, signed by both the withdrawing and replacement attorney, containing the information required for an Entry of Appearance under subsection 1 of this Practice Standard as to the replacement attorney.

(b) Otherwise an attorney may withdraw from a case only upon approval of the court. Such approval shall rest in the discretion of the court, but shall not be granted until a motion to withdraw has been filed and served on the client and the other parties of record or their attorneys and either both the client and all counsel for the other parties consent in writing at or after the time of the service of said motion, or at least 14 days have expired after service of said motion. Every motion to withdraw shall contain the following advisements:

(I) the client has the burden of keeping the court and the other parties informed where notices, pleadings or other papers may be served;

(II) if the client fails or refuses to comply with all court rules and orders, the client may suffer possible dismissal, default or other sanctions;

(III) the dates of any proceedings, including trial, which dates will not be delayed nor proceedings affected by the withdrawal of counsel;

(IV) the client's and the other parties' right to object to the motion to withdraw within 14 days after service of the motion;

(V) if the client is not a natural person, that it must be represented by counsel in any court proceedings unless it is a closely held entity and first complies with section 13-1-127 , C.R.S.; and

(VI) the client's last known address and telephone number.

(c) The client and the opposing parties shall have 14 days after service of a motion to withdraw within which to file objections to the withdrawal.

(d) If the motion to withdraw is granted, the withdrawing attorney shall promptly notify the client and the other parties of the effective date of the withdrawal.

**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:	
Attorney (Name and Address):  Phone Number:                      E-mail: FAX Number:                         Atty. Reg. #:	▲ COURT USE ONLY ▲ Case Number:  Division                      Courtroom
<b>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</b>	

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







## Sample Rule 11 Certification Response (JDF 1315)

<input type="checkbox"/> District Court <input type="checkbox"/> Juvenile Court _____ County, Colorado Court Address: _____  In re: <input type="checkbox"/> The Marriage of: <input type="checkbox"/> The Civil Union of: _____ <input type="checkbox"/> Parental Responsibilities concerning: _____  Petitioner: and Co-Petitioner/Respondent: _____ Attorney or Party Without Attorney (Name and Address): _____	▲ ▲ COURT USE ONLY ▲ ▲
Phone Number: _____ E-mail: _____ FAX Number: _____ Atty. Reg. #: _____	Case Number: _____  Division _____ Courtroom _____
RESPONSE TO MOTION FOR: _____	

I am the  Petitioner  Co-Petitioner/Respondent in this action. I am requesting that:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

My reasons are:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
 Petitioner or  Co-Petitioner/Respondent

Address \_\_\_\_\_

City, State, Zip Code \_\_\_\_\_

(Area Code) Telephone Number (home and work) \_\_\_\_\_

---

### CERTIFICATE OF SERVICE

I certify that on \_\_\_\_\_(date) the original was filed with the Court and a true and accurate copy of this RESPONSE TO MOTION FOR was served on the other party by:

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

To: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Your signature

**Prepared Pursuant to C.R.C.P. 11(b) by:**

*(Attorney Name, Registration Number)*

*(Attorney Address)*

*(Attorney Telephone Number)*

# 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

ESTIMATED LITIGATION BUDGET										
Prepared Regarding Breach of Contract/Unjust Enrichment/Misrepresentation/Business Tort Claims										
Small Business Client										
Dec. 2014										
				LOW	HIGH	AVERAGE	LOW	HIGH		
I	PREDISCOVERY	TASKS		ESTIMATE	ESTIMATE	RATE	ESTIMATE	ESTIMATE		
				OF HOURS	OF HOURS	PER HOUR	OF COST	OF COST		
						(blended atty/paralegal rates)				
	Case Evaluation/Preliminary Research	Review file, invoices, communications and other documents to date, develop strategy		4.0	6.0	\$ 225.00	\$ 900.00	\$ 1,350.00		
	Communications	Conferring with client/relevant witnesses to get familiar with facts/review draft pleadings; discuss pros/cons of claims, strategy		2.5	4.0	\$ 225.00	\$ 562.50	\$ 900.00		
	Legal Research/Rule 11 research	UCC/custom ordered goods statutes; law; uniform act; e-commerce complaints based on facts; law; 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					
				<b>TOTAL PREDISCOVERY COST:</b>			\$ 3,825.00	\$ 6,075.00		

Sample

				LOW ESTIMATE OF HOURS	HIGH ESTIMATE OF HOURS	AVERAGE RATE PER HOUR (blended att paralegal rates)	LOW ESTIMATE OF COST	HIGH ESTIMATE OF COST	
<b>II</b>	<b>DISCOVERY</b>	<b>TASKS</b>							
	Docketing/Case mgt	Review case mgt order issued by court; docket necessary due dates and note court's special rules		1.0	2.0	\$ 225.00	\$ 225.00	\$ 450.00	
	Rule 26 Disclosures	Identify appropriate witnesses, gather and organize documents, all other communications; work on production, edit and file same		8.0	10.0	\$ 225.00	\$ 1,800.00	\$ 2,250.00	
	Case Management	attend initial case mgt conference; work on joint case mgt order with opposing counsel; docketing, ensure compliance with Rules of Civil procedure; calendaring of all due dates; setting trial dates		6.0	8.0	\$ 225.00	\$ 1,350.00	\$ 1,800.00	
	Drafting Discovery	Draft stipulations, requests for admissions, document requests and interrogatories; any third party subpoenas; notice of depositions <i>(Note: depends on what discovery we decide)</i>		7.0	10.0	\$ 225.00	\$ 1,575.00	\$ 2,700.00	
	Discovery Response	Respond to Defendant's interrogatories, requests for production of documents; requests for admission <i>(depends if served with any)</i>	N/A	7.0	10.0	\$ 225.00	\$ 1,575.00	\$ 2,250.00	
	Deposition time	Preparation for and Deposition of client; key officer of defendant (there is a lot of variance here, b/c I cannot predict whether other side will delay by demanding deposition of plaintiff representatives; we can discuss pros and cons of taking deposition of defendant's officers)		16.0	40.0	\$ 225.00	\$ 3,600.00	\$ 9,000.00	

	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			
				<b>TOTAL DISCOVERY COST:</b>			\$ 10,125.00	\$ 22,950.00
<b>III</b>	<b>MEDIATION</b>							
	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
				<b>LOW ESTIMATE OF HOURS</b>	<b>HIGH ESTIMATE OF HOURS</b>	<b>AVERAGE RATE PER HOUR (blended rates)</b>	<b>LOW ESTIMATE OF COST</b>	<b>HIGH ESTIMATE OF COST</b>
<b>IV</b>	<b>MOTIONS</b>	<b>TASKS</b>						
	Procedural	notable 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>I 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			
				<b>TOTAL COST OF MOTIONS:</b>			\$ 1,125.00	\$ 18,000.00

Sample



# ADDITIONAL INFORMATION

## Formal Ethics Opinion 101: Unbundled Legal Services

### **New Ethics Opinion 101: Unbundling/Limited Scope Representation**

#### Introduction

In 1998, the Colorado Bar Association Ethics Committee (Committee) adopted Formal Opinion 101, entitled “Unbundled Legal Services.” Since then, the use of unbundling (also known as limited scope representation) has become more widespread in Colorado and throughout the country. (In this opinion, we use the terms unbundling and limited scope representation interchangeably.) Originally conceived as a means to encourage pro bono service by attorneys who would agree to participate in only part of a case, limited scope representation is now used as a means of providing legal representation in both pro bono cases and cases in which private attorneys charge a fee. Many private attorneys have found that providing limited scope representation is a useful means to provide some legal representation to modest means clients who could not otherwise afford to hire an attorney for full representation. This use of limited scope representation has been driven, in part, by the increasing number of pro se litigants. For example, statistics for fiscal year 2015 from the Colorado judicial branch indicate that 75% of all litigants in domestic relations cases are proceeding pro se.<sup>27</sup> Some of these pro se litigants have sought limited scope representation from attorneys to enable them to better litigate their cases.

The term “unbundling” was coined by Forrest Mosten, an attorney, mediator, and professor, in a 1994 law review article.<sup>28</sup> As noted in the

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<sup>27</sup> See “Cases and Parties without Attorney Representation in Civil Cases,” Fiscal Year 2015, at 2, <https://www.courts.state.co.us/Administration/Unit.cfm?Unit=annrep>.

<sup>28</sup> See Forrest S. Mosten, “Unbundling of Legal Services and the Family Lawyer,” 28 *Fam. L.Q.* 421 (1994). Much has been written about unbundling in Colorado. See Molly M. Jennings and D. James Greiner, “The Evolution of Unbundling in Litigation Matters: Three Case Studies and a Literature Review,” 89 *Denver U. L. Rev.* 825 (2012); Adam J. Espinosa and Daniel M. Taubman, “Limited Scope Representation Under the Proposed Amendment to C.R.C.P. 121, §1-1,” 40 *The Colorado*

original Formal Opinion 101, Mosten described the “full bundle” of representation in litigation as consisting of gathering facts, advising the client, discovering the facts of the opposing party, performing legal research, drafting correspondence and documents, negotiating, and representing the client in court.<sup>29</sup> Before this term was coined, many attorneys provided limited scope representation by providing only non-litigation advice to a client or by limiting their services to the drafting of correspondence.

Since Mosten’s article was published, attention has turned to providing limited scope representation in judicial proceedings. Accordingly, in 1999, following the adoption of Formal Opinion 101, the Colorado Supreme Court amended Rule 1.2(c) of the Colorado Rules of Professional Conduct (Colo. RPC) to provide expressly that lawyers may limit the scope of their representation. This change was accompanied by amendments to Rules 11(b) and 311(b) of the Colorado Rules of Civil Procedure (C.R.C.P.) to allow lawyers to “ghostwrite” pleadings for self-represented litigants without entering a formal appearance in, respectively, Colorado district court and county court cases.

In 2011, the Colorado Supreme Court adopted C.R.C.P. 121, § 1-1(5), which required that attorneys file a notice of limited appearance and a notice of completion of limited appearance when providing limited scope representation in a court case. In 2012, the Colorado Supreme Court adopted Colorado Appellate Rule 5(e) to allow for unbundling in appellate proceedings in specific instances. The Supreme Court adopted all of these changes to encourage lawyers to engage in unbundling.

During the past decade, most states have amended their equivalent of Colo. RPC 1.2(c) to allow for limited scope representation. Similarly, many states’ ethics committees have promulgated opinions regarding different aspects of unbundling.<sup>30</sup> Significantly, in 2013, the American Bar Association (ABA) House of Delegates approved Resolution

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*Lawyer* 89 (Nov. 2011); Adam J. Espinosa, “Ethical Considerations When Providing Unbundled Legal Services,” 40 *The Colorado Lawyer* 75 (2011); Raymond P. Micklewright, “Discrete Task Representation a/k/a Unbundled Legal Services,” 29 *The Colorado Lawyer* 5 (Jan. 2000).

<sup>29</sup> Mosten, *supra*, note 2 at 423.

<sup>30</sup>ABA Standing Comm. on Delivery of Legal Services, Pro Se/Unbundling Resource Center, Ethics Opinions, *available at* <http://apps.americanbar.org/legalservices/delivery/delunbundethics.html>.

108, which, among other things, “encourages practitioners, when appropriate, to consider limiting the scope of their representation, including the unbundling of legal services as a means of increasing access to legal services.”<sup>31</sup>

Currently, limited scope representation takes four forms: (1) providing limited litigation assistance to self-represented litigants in court cases; (2) ghostwriting pleadings or briefs for self-represented litigants; (3) providing non-litigation advice to self-represented litigants; and (4) transactional assistance.

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 them 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.

## Syllabus

As noted, the Colorado Supreme Court amended Colo. RPC 1.2(c) to provide expressly for limited scope representation. This opinion discusses the provisions of that rule and related rules that enable lawyers to provide limited scope representation in court cases and to ghostwrite pleadings and briefs for self-represented litigants. This opinion also addresses other rules of professional conduct that lawyers engaged in limited scope representation must follow.<sup>32</sup>

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<sup>31</sup> See Forrest Mosten, “Unbundling Legal Services in 2014, Recommendations for the Courts,” 53 *Judges’ Journal* No. 1, at 10, 11 (2014).

<sup>32</sup> Limited legal representation also may arise where the lawyer represents a client in the insurance context through agreement with the insurance provider. This opinion is not intended to provide an in-depth analysis regarding ethical issues involved in insurance-defense representation or the nuances of the tripartite relationship, which are addressed in the Committee’s Formal Opinion 91, “Ethical Duties of Attorney Selected by Insurer to Represent Its Insured,” (1993, Addendum 2013).

## I. Limited Scope Representation Authorized by Colo. RPC

### 1.2(c)

The Colo. RPC and C.R.C.P. permit limited scope representation. Under Colo. RPC 1.2(c), “[1] [a] **lawyer may limit the scope or objectives, or both, of the representation if [2] the limitation is reasonable under the circumstances and [3] the client gives informed consent.**”

Colo. RPC 1.2(c)’s provision that a lawyer may limit the scope of the representation means that in either a litigation or a non-litigation context, a lawyer may represent a client in only part of a case, transaction, or other legal matter. As discussed below, the better practice is that a lawyer should set forth the specific scope of the limited representation in a written fee agreement or other writing.

Additionally, attorneys must analyze each case or transaction to ensure it is appropriate for limited scope representation. There may be circumstances where the case is of a level, or other circumstances are present, such that the attorney should conclude that providing unbundled services is not reasonable. In those instances, the attorney, at the very least, must advise the client of that conclusion, and potentially, should decline to represent the client on a limited scope basis.

Colo. RPC 1.2(c) also requires that the limited scope representation be reasonable based on the facts of the particular case. For example, it may be reasonable for a lawyer to represent a client in a post-decree dissolution of marriage case on an issue concerning modification of child support. In a landlord-tenant case, it may be reasonable to represent the client on the issue of possession or damages. However, in a dissolution of marriage case, it would not be reasonable to represent the client only on the issue of maintenance, because courts have held that issues concerning the division of marital property, maintenance, and attorney fees are intertwined.

Similarly, it may be reasonable to provide limited representation in a specified part of a court case. For example, it may be reasonable to represent a client with respect to a motion for summary judgment or a motion to dismiss, even if the client does not want representation on subsequent trial proceedings if either motion is denied.

Colo. RPC 1.2(c) also requires a client to give informed consent before a lawyer provides limited scope representation. 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.” See Colo. RPC 1.0(e). The crux of this requirement is that “[t]he lawyer must make reasonable efforts to ensure that the client or other person possesses information reasonably adequate to make an informed decision.” Colo. RPC 1.0, cmt. [6]. Thus, the lawyer must do more than explain the significance of the decision to hire an attorney for limited scope representation; the lawyer also must make sure the client is sufficiently informed to be able to consider available options and risks prior to making that decision.

The lawyer’s explanation should include advising the client that proceeding with full representation may be desirable because the client will be represented for the entire case, but that such representation is likely to be more costly. The explanation also should advise the client that it would be less expensive, at least in the short term, to proceed without legal representation and that proceeding without any representation may lead to mistakes that could be expensive to fix later or mistakes that might not be fixable.

Further, informed consent requires that the lawyer advise the client of potential legal pitfalls that might result from choosing to limit the scope of representation and the likelihood that the client will need additional legal advice later. For example, the attorney should inform the client when, after the conclusion of the limited scope representation, a pending discovery request may require greater client effort to follow up without legal assistance. See L.A. Cty. Bar Ass’s Prof. Resp. & Ethics Comm., Formal Op. 502, “Lawyers’ Duties When Preparing Pleadings or Negotiating Settlement for in Pro Per Litigant” (1999).

In the case of limited scope representation, a prerequisite to a client’s informed consent is an explanation of exactly which legal services the lawyer will provide and a discussion of additional legal issues that might arise after the completion of the limited scope representation. See Colo. RPC 1.4(a)(2) (“A lawyer shall . . . reasonably consult with the client about the means by which the client’s objectives are to be accomplished.”). ABA Formal Comm. on Ethics & Prof. Resp., Formal Op. 472, “Communication With Person Receiving Limited-Scope

Legal Services” (2015) (ABA Op. 472), recommends that lawyers providing limited scope representation confirm with the client the scope of the representation — including the tasks the lawyer will perform and not perform — in a written document that the client can read, understand, and refer to later.

Additionally, a lawyer who provides limited services as part of a legal clinic, legal advice hotline or pro se counseling program, must obtain the client’s consent to limited scope representation and advise the client of the potential need for further legal assistance after the initial consultation. See Colo. RPC 6.5, cmt. [2].

Under C.R.C.P. 11(b) and 311(b), a pleading or paper drafted by an attorney for a pro se party must provide the attorney’s name, address, telephone number, and registration number. In providing such assistance, the attorney certifies that, to the best of the attorney’s knowledge, information, and belief, the pleading or paper (1) is well-grounded in fact based on a reasonable inquiry, (2) is warranted by existing law or good faith arguments for the extension of the law, and (3) is not being used to harass, cause unnecessary delay, or needlessly increase the cost of litigation. However, drafting the pleading under C.R.C.P. 11(b) or C.R.C.P. 311(b) does not constitute an entry of appearance by the attorney.

Alternatively, a client who wishes to appear pro se can find many forms on the Colorado Judicial Branch website that can be used to file motions, stipulations, or complaints with the courts. See <https://www.courts.state.co.us/Forms/Index.cfm>. Forms are available for topics including adoption, appeals, criminal matters, divorce and other family matters, eviction and foreclosure, identity theft, small claims, and trusts, wills, and estates. An attorney whose client seeks limited scope representation in order to appear pro se should be familiar with these forms to properly advise the client about these free resources. Limited scope representation can include advising the client on how and when to fill out and submit these forms. Under C.R.C.P. Rule 11(b) and 311(b), an attorney who helps a client complete these forms is not required to put his or her name, address, and registration number on the forms.

Perhaps the most commonly known form of unbundled legal services is the practice of ghostwriting pleadings, motions, and other documents. With the ever-growing number of pro se litigants and the corresponding need for low, or lower, cost legal services, clients and

consumers are seeking more options, and lawyers are finding a way to fill this demand through ghostwriting, or providing documents written by lawyers for use by pro se parties in litigation.

In amending Colo. RPC 1.2(c), the Colorado Supreme Court expressly permitted ghostwriting and limited scope representation, and therefore does not share the candor concerns — when unbundled representation is handled properly — expressed in some states' ethics opinions and by the federal district court in Colorado.<sup>33</sup>

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<sup>33</sup> **As noted, some** ethics committees have opined that it is permissible under their rules of professional conduct to provide limited representation and ghostwrite pleadings or court filings. See Alaska Bar Ass'n Ethics Comm., Op. 93-1, "Preparation of a Client's Legal Pleadings in a Civil Action Without Filing an Entry of Appearance" (1993); L.A. Cty. Bar Ass'n Prof. Resp. & Ethics Comm., Formal Op. 502, "Lawyers' Duties When Preparing Pleadings or Negotiating Settlement for in Pro Per Litigant" (1999) (L.A. Cty. Op. 502); L.A. Cty. Bar Ass'n Prof'l Resp. & Ethics Comm., Formal Op. 483 (1995); *State Bar of Mich. Standing Comm. on Prof. & Jud. Ethics*, Op. RI-347 (2010) ("Unless there is an affirmative misrepresentation that a pro se litigant has not been assisted by a lawyer, assistance by a lawyer need not be disclosed to the tribunal under the Michigan Rules of Professional Conduct."). The ABA Standing Committee on Ethics and Professional Responsibility and the clear majority opinion among state and local bar ethics committees require some disclosure to the court when the attorney provides assistance to the client in some way that is not complete representation. See ABA Standing Comm. on Ethics & Prof'l Resp., Op. 07-446, "*Undisclosed Legal Assistance to Pro Se Litigants*" (2007); Conn. Bar Ass'n Comm. on Prof'l Ethics, Op. 98-5, "Duties to the Court Owed by a Lawyer Assisting a Pro Se Litigant" (1998); Del. State Bar Ass'n Comm. on Prof'l Ethics, Op. 1994-2 (1994); Fla. State Bar Ass'n Comm. on Prof'l Ethics, Op. 79-7 (Reconsideration) (2000); Ky. Bar Ass'n, Op. E-343 (1991); Mass. Bar Ass'n Comm. on Prof'l Ethics, Op. 98-1 (1998); N.H. Bar Ass'n Ethics Comm., "Unbundled Services – Assisting the Pro Se Litigant" (May 12, 1999); N.Y. Cty. Lawyers Ass'n Comm. on Prof'l Ethics, Op. 742, at 1 (2010); Tenn. Bd. of Prof. Resp. Formal Ethics Op. 2007-F-153, "Ghost Writing for Pro Se Litigant" (2007); Utah State Bar Ethics Advisory Comm., Op. 74 (1981); Va. State Bar Standing Comm. on Legal Ethics, Op. 1127, "Attorney-Client Relationship – Pro Se Litigant: Rendering Legal Assistance" (1988).

Many states have cited the duties of candor to the tribunal and fairness to opposing parties and counsel as the bases for concerns with regard to ghostwriting and limited scope representation generally.<sup>34</sup> Some state ethics opinions have gone so far as to conclude that ghostwriting is automatically a fraud upon the court. Other states have determined that ghostwriting may be permissible without restrictions. Unbundling is not permitted in the federal district court in Colorado, with one limited exception. See *Johnson v. Bd. of Cty. Comm'rs*, 868 F. Supp. 1226, 1232 (D. Colo. 1993) (unbundling prohibited); D.C. COLO. LAttyR. 2(b)(1) (declining to adopt Colo. RPC 1.2(c) and 6.5 “except, that if ordered, an attorney may provide limited representation to a prisoner in civil actions”); D.C. COLO. LAttyR. 2(b)(5) (declining to adopt Colo. RPC 6.5).

## II. Applicability of All Rules of Professional Conduct

Attorneys practicing in the area of limited scope representation should be aware of the ethics rules governing such practice and ensure they are compliant given the activities they propose to undertake. Doing so should ensure the attorney can accomplish the dual goals of providing assistance to people who may need a lesser amount of assistance, or who cannot afford full case representation, while still maintaining compliance with all applicable Colo. RPC.

Attorneys must be aware that, even in the context of limited scope representation, all of the Colorado Rules of Professional Conduct apply, and the limited scope case should be conducted consistent with the attorney’s professional obligations. An attorney’s responsibilities remain the same — whether he or she represents a client for an entire case, or only on a limited basis for a specific portion of a case.

An agreement to limit legal representation does not exempt a lawyer from the duty to provide competent representation under Colo. RPC 1.1. A lawyer must ensure that the limited scope representation is sufficient for the client to meet his or her legal objective. See Colo. RPC 1.2, cmt. [7]. For example, a lawyer should not agree to limit the time allotted to the client’s case such that the lawyer could not provide sufficient advice upon which the client could rely.

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<sup>34</sup> See State Bar of Ariz., Ethics Op. 05-06 “Limited Scope Representation; Candor to the Tribunal; Fees” (2005), for a well-written, detailed discussion of the candor concerns. See also Part IV *infra*.

Attorneys engaging in limited scope representation must communicate with their clients to the extent necessary to keep the client reasonably informed regarding the representation and to provide legally sound advice to the client, as stated in Colo. RPC 1.4. Additionally, the fee charged must be reasonable for the work performed, based on what the attorney will actually do for the client, consistent with Colo. RPC 1.5. Attorneys also must ensure there are no conflicts in the representation, pursuant to Colo. RPC 1.7.

### III. Fee Agreements

Given that the arguments in favor of limited scope representation often center on the issue of affordability and access to justice, attorneys should give careful thought to the fees charged for various tasks and must make sure that the fees are reasonable under the circumstances. *See* Colo. RPC 1.5(a).

A lawyer providing limited representation to a new or only occasional client also must comply with Colo. RPC 1.5(b), which states that, “[w]hen 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.” Although Rule 1.5(b) requires only a written statement of the basis or rate of the fee and expenses, it is desirable for attorneys to include in their written communication the terms of limited scope representation, including the particular limited services that the attorney will render. Such written communication may be in the form of a written fee agreement. ABA Op. 472 recommends that in accord with Model Rule 1.5(b), lawyers providing limited scope representation confirm with the client the scope of the representation “in writing that the client can read, understand, and refer to later.” Providing such information in writing will help provide clarity to both the attorney and the client regarding the nature of the limited scope representation.

In some circumstances, as the case progresses, a client may wish to retain the lawyer to do more than originally agreed or to provide full representation. In that instance, the lawyer should confirm in writing any changes in the basis and rate of the fee. This written confirmation may be in the form of an addendum to the original fee agreement or an amended fee agreement. *See* Colo. RPC 1.5(b). The new or amended

written communication should define the scope of the additional representation, outlining the work to be undertaken and the new fee to be charged, whether flat or hourly. As with any contract for legal services, an attorney may not seek to prospectively limit his or her liability in the agreement. See Colo. RPC 1.8(h)(1).

#### IV. Unbundled Services and Candor to the Tribunal

When a lawyer provides limited or unbundled representation to a client who has a matter before a tribunal, the lawyer's conduct may implicate Colo. RPC 3.3, which requires candor to the tribunal.<sup>35</sup> Colo. RPC 3.3(a)(1) provides that “[a] **lawyer shall not knowingly . . . (1) make a false statement of material fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer.**” This duty would be triggered if a **client who is receiving limited representation before a court, typically through filings, gives the court the misimpression that the client is proceeding pro se, without any attorney assistance. In these and similar circumstances, the lawyer must correct any misapprehension that the court may have by disclosing the fact that he or she is providing limited representation.**

Problems regarding an attorney's duty of candor to the court are likely to be minimized by C.R.C.P. 121, § 1-1(5), which requires lawyers engaged in limited scope representation to file and serve with the court, other parties, and any attorneys a notice of appearance of limited scope representation and a notice of completion of the limited scope representation. See Judicial Department Forms (JDF) 630, 631, and 632 (civil matters); JDF 640, 641, and 642 (appeals); JDF 1334, 1335, and 1336 (family law matters). The purpose of this provision is to implement C.R.C.P. 11(b) and 311(b) in accordance with Colo. RPC 1.2. See C.R.C.P. 121, § 1-1(5) (Comm. Cmt.). See <https://www.courts.state.co.us/forms/Index.cfm>. Nevertheless, in some circumstances, a lawyer may need to advise the court and opposing counsel of his or her entry of limited scope representation in the event that the court or the opposing counsel has not received or does not appear to have read those documents. C.R.C.P. 121, § 1-1(5). **Ordinarily, if a ghostwriting lawyer complies with C.R.C.P. 11(b) or**

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<sup>35</sup> See CBA Formal Op. 123, “Candor to the Tribunal and Remedial Measures in Civil Proceedings” (2011); see also Kan. Bar Assn. Ethics Advisory Comm., Op. 09-01 (2009).

**311(b), as discussed above, that will satisfy Colo. RPC 3.3, too.**

**Additionally, Colo. RPC 3.4(c) provides that “[a] lawyer shall not . . . knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists.” Accordingly, unlike the situations considered by the minority of other ethics committees cited above, C.R.C.P. 11(b)’s and C.R.C.P. 311(b)’s express requirement that the lawyer disclose his or her participation in providing ghostwriting services, combined with Colo. RPC 3.4(c)’s mandate that a lawyer follow the rules of a tribunal, makes it clear that a lawyer owes an ethical obligation to disclose his or her participation in providing unbundled services, unless the lawyer assists a pro se party in “filling out pre-printed and electronically published forms that are issued by the judicial branch for use in court.” See C.R.C.P. 11(b) and 311(b).**

**A lawyer providing limited representation in court should inform the client that the lawyer will be required to disclose the limited representation to the court and opposing counsel. See C.R.C.P. 121, § 1-1(5); see also ABA Op. 472 (“These issues would best be resolved at the inception of the client-lawyer relationship by the client giving the lawyer providing limited scope representation informed consent to reveal to opposing counsel what issues should be discussed with counsel and what issues can be discussed with the client directly.”). However, when a lawyer provides only consultation, the lawyer’s involvement need not be disclosed to opposing counsel.**

## V. Advertising

**An additional consideration is whether a lawyer may advertise or market the fact that he or she provides unbundled legal services. For example, a number of lawyers have used Internet-based platforms to advertise and even supply unbundled legal services for many years. See William Hornsby, *Improving the Delivery of Affordable Legal Services Through the Internet: A Blueprint for the Shift to a Digital Paradigm* (1999), at 4 (“Innovative uses of the Internet, or the adaptation of digital strategies, are being employed to overcome operational inefficiencies in personal plight representation in both full-service models and unbundled services.”); N.C. Formal Eth. Op. 2005-10, “Virtual Law Practice and Unbundled Legal Services” (2006) (N.C. Op. 2005-10) (opining on a virtual law firm’s desire to “offer and deliver its services exclusively over the internet,” including advertising and**

providing unbundled legal services).

Colo. RPC 7.2(a) permits a lawyer to “advertise services through written, recorded or electronic communication, including public media.” If a lawyer providing unbundling services elects to advertise that fact, he or she may do so as long as he or she ensures compliance with Colo. RPC 7.2(b) – (c), which concerns the costs of advertising, referral agreements, and including the name and office address of at least one lawyer or law firm responsible for advertising content. Additionally, the lawyer’s advertisements or communications about the unbundled services must not be false or misleading. See Colo. RPC 7.1(a). Further, the lawyer may not provide communications or advertisements in a form that resembles a legal pleading or formal legal document, to avoid being misleading or creating a misapprehension by the recipient. See Colo. RPC 7.1(c). When describing unbundled services, the lawyer should be clear and accurate about what fees and costs may be charged and should avoid using terms that are likely to be misleading if they cannot be substantiated. See Colo. RPC 7.1, cmt. [5] (“Characterizations of a lawyer’s fees such as ‘cut-rate,’ ‘lowest,’ and ‘cheap’ are likely to be misleading if those statements cannot be factually substantiated.”).

Further, a lawyer who advertises on the Internet the provision of unbundled services should be clear to limit the statements to legal matters in Colorado or other states where the lawyer is licensed so that the lawyer is not unwittingly advertising services that cannot be performed because of unauthorized practice of law (UPL) concerns. See Colo. RPC 5.5 (addressing UPL); *see also* N.C. Op. 2005-10 (discussing UPL and other advertising concerns).

Colo. RPC 7.3(a) provides that a lawyer “shall not by in-person, live telephone, or real-time electronic contact solicit professional employment from a prospective client when a significant motive for the lawyer’s doing so is the lawyer’s pecuniary gain, unless the person contacted: (1) is a lawyer; or (2) has a family, close personal, or prior professional relationship with the lawyer.” Given the nature of unbundled legal services, it is difficult to imagine that the lawyer’s “significant motive for” the contact would be “the lawyer’s pecuniary gain,” but a lawyer who provides, or intends to provide, unbundled services to clients and communicates those facts to prospective clients should take care to ensure compliance with Colo. RPC 7.3(a)-(c).

Finally, in any context, including the provision of unbundled legal services, a lawyer must ensure that he or she does not “engage in

conduct involving dishonesty, fraud, deceit or misrepresentation.” Colo. RPC 8.4(c).

## VI. Dealing With an Opposing Party Who Uses Unbundled Legal Services

In certain cases, questions will arise as to the duties of a lawyer who knows that an opposing lawyer providing unbundled legal services is assisting the opposing party. *See* ABA Op. 472. These questions will most likely arise when an opposing lawyer providing unbundled legal services is assisting with drafting pleadings or other court documents for the opposing party. ABA Opinion 472 addresses the interplay between Model Rules 1.2(c), 4.2 (prohibiting a lawyer from communicating with a person represented by counsel), and 4.3 (governing a lawyer’s interactions with unrepresented persons). The opinion notes that the opposing lawyer providing limited scope legal services generally has no basis to object to communications between the client receiving those services and the lawyer on any matter outside the scope of the limited representation. The opinion recommends that, if asked by the lawyer, the opposing lawyer providing limited scope services should identify the issues on which he or she provided representation and on which the lawyer could not communicate directly with the client.

If the lawyer is told that the opposing lawyer initially providing unbundled legal services is now representing his or her client on *all* communications about a matter, the inquiring lawyer must comply with Colo. RPC 4.2 and communicate only with the opposing lawyer. *See* ABA Op. 472. However, under Colo. RPC 4.2, the lawyer may ask the court for permission to communicate directly with the client receiving unbundled services in defined areas outside the presence of the opposing lawyer providing those services. For example, during a hearing, issues may arise that the court asks the parties to address during a recess. If the court approves a lawyer’s direct communication with an opposing party receiving unbundled services, then the lawyer may do so, keeping in mind any limits that the court has put on this communication. *See generally* ABA Op. 472.

When a lawyer knows that the opposing lawyer is drafting pleadings or other court documents for an opposing party but the opposing lawyer is performing no other services for that party, the first lawyer does not have a duty to communicate with the opposing lawyer providing those unbundled services and instead may communicate

directly with the client receiving the unbundled services. In this situation, the opposing lawyer's assistance in drafting court documents is not considered representation in the matter as contemplated by Colo. RPC 4.2. See C.R.C.P. 11(b) and 311(b). Under comment [9A] of Colo. RPC 4.2, 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 Colo. RPC 1.2 is considered to be unrepresented for purposes of Colo. RPC 4.2, unless the lawyer has knowledge to the contrary.<sup>36</sup> Nevertheless, while a lawyer is providing ghostwriting services, an attorney-client relationship undoubtedly exists. However, principles of substantive law, not the Colorado Rules of Professional Conduct, "determine whether a client-lawyer relationship exists." See Colo. RPC, Preamble and Scope, ¶ [17]; *People v. Gabriesheski*, 262 P.3d 653, 658 (Colo. 2011).

Therefore, in responding to motions filed by a party who is assisted, but not represented, by a ghostwriting, opposing lawyer, the lawyer may respond directly to the opposing party receiving unbundled services both formally and informally. The lawyer may confer about motions with the party receiving unbundled services and may serve motions and pleadings on that party without communicating with the ghostwriting, opposing lawyer. Until the lawyer has information that the party receiving unbundled services is being represented in the matter by the opposing lawyer who previously was only ghostwriting pleadings, the lawyer does not need to comply with Colo. RPC 4.2.

A lawyer also may provide unbundled services in negotiations or mediation. When a lawyer knows that a party is represented by an opposing lawyer providing unbundled services in settlement

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<sup>36</sup> See Ore. State Bar Formal Ethics Op. 2011-183, "Scope of Representation; Limiting the Scope" (2011); L.A. Cty. Op. 502; Wash. D.C. Bar Ass'n Ethics Op. 330, "Unbundling Legal Services" (2005). Florida Rule of Professional Conduct 4-4.2 (b) covers this issue explicitly: "An otherwise unrepresented person to whom limited representation is being provided or has been provided in accordance with Rule Regulating The Florida Bar 4-1.2 is considered to be unrepresented for purposes of this rule unless the opposing lawyer knows of, or has been provided with, a written notice of appearance under which, or a written notice of the time period during which, the opposing lawyer is to communicate with the limited representation lawyer as to the subject matter within the limited scope of the representation."

negotiations or mediation, then, pursuant to Colo. RPC 4.2, the lawyer should communicate only with the opposing lawyer providing unbundled services, and not the client, about settlement or mediation issues. If the case does not settle or resolve, and the lawyer has no reason to believe the representation by the opposing lawyer is continuing, then the lawyer may deal directly with the party on other issues. Further, if the lawyer has questions about whether he or she can communicate directly with the party who received unbundled services in the context of mediation or settlement negotiation, the lawyer should seek clarification or, if necessary, permission from the opposing lawyer who provided the unbundled services to communicate directly with that lawyer's client.

In most circumstances, a lawyer whose client is adverse to a party using the services of an opposing lawyer providing unbundled services will need to follow Colo. RPC 4.3, which governs dealing with an unrepresented person. The lawyer needs to be careful not to give legal advice to the party receiving unbundled services, and to make certain, if it is not apparent, that that party understands the lawyer's role in the matter.

## VII. Fairness to Opposing Parties

Issues in ensuring fairness to opposing parties may arise in domestic relations cases, especially if both parties request assistance from one attorney. A lawyer should not mediate a divorce agreement between unrepresented parties and also prepare a proposed judgment of dissolution of marriage, a marriage separation agreement, or a joint parenting agreement. When a lawyer drafts these formal documents after mediating between the adverse parties, the lawyer goes beyond the role of mediator and takes on the role of representing both parties, which creates a nonwaivable conflict of interest. See Ill. State Bar Ass'n Op. 04-03 (2004). Under Colo. RPC 1.7(b), a lawyer cannot represent a client if that representation would be materially limited by the representation of another client. In the situation explained here, the mediating lawyer who prepares official documents would be effectively representing two adverse parties in one proceeding. See CBA Formal Op. 47, "Attorney Representation in Dissolution of Marriage" (1972, Addendum 1995) ("[C]onflicting interests will nearly always exist in dissolution of marriage cases, whether or not one or both clients know or agree that their interests are conflicting[.]"). Alternatively, the mediating lawyer can help the parties draft an informal agreement or a memorandum of understanding and then recommend that each party

obtain independent and separate legal counsel to draft the final documents for the court.

During a limited scope representation, the lawyer should advise the client to decide whether the client wants legal representation at settlement. Then, in fairness to opposing counsel, the lawyer should inform opposing counsel whether opposing counsel should or can communicate with the individual. See D.C. Ethics Opinion 330 (2005). On the other hand, if the lawyer believes that the client will not be prepared to negotiate alone or without having to consult with the lawyer, the lawyer may recommend that the client retain the lawyer for settlement negotiations to avoid unreasonable delay. See State Bar of Ariz. Ethics Op. 06-03, “Limited Scope Representation; Confidentiality; Coaching; Ghost Writing” (2006).

## Cases and Parties without Attorney Representation in Civil Cases FY 2015

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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 2015 (July 2014 through June 2015). 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 2015.*

We have calculated these measures in three civil case classes: domestic relations, county civil and district civil. These three case classes are highlighted due to the higher volume of pro se litigant participation historically. However, it is important to note that these three case types represent only a fraction of the cases filed in Colorado in Fiscal Year 2015. In fact, the cases included in this analysis (202,528) account for only 25 percent of the total number of cases filed in Fiscal Year 2015 (804,195). Therefore this report does not represent all pro se litigant activity in the State of Colorado, but rather offers a glimpse into pro se activity in a few key areas. More detailed analysis follows.

## Domestic Relations Cases Filed in FY2015

### 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	3,428	2,290	67%	6,867	5,100	74%
2	4,502	3,358	75%	9,012	7,359	82%
3	169	124	73%	338	271	80%
4	6,055	4,176	69%	12,114	9,321	77%
5	518	322	62%	1,037	737	71%
6	363	243	67%	727	549	76%
7	649	457	70%	1,299	1,025	79%
8	1,788	1,101	62%	3,577	2,513	70%
9	575	364	63%	1,152	848	74%
10	1,252	748	60%	2,511	1,777	71%
11	530	345	65%	1,063	810	76%
12	360	293	81%	722	623	86%
13	498	359	72%	996	793	80%
14	339	204	60%	678	464	68%
15	125	89	71%	251	195	78%
16	225	169	75%	456	375	82%
17	3,284	2,291	70%	6,619	5,116	77%
18	5,374	3,283	61%	10,766	7,491	70%
19	1,853	1,129	61%	3,830	2,785	73%
20	1,358	833	61%	2,719	1,900	70%
21	1,376	909	66%	2,752	2,106	77%
22	225	152	68%	465	366	79%
<b>Total</b>	<b>34,846</b>	<b>23,239</b>	<b>67%</b>	<b>69,951</b>	<b>52,524</b>	<b>75%</b>

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, 67% of the domestic relations cases filed in fiscal year 2015 had no attorney on the case, meaning that every party involved was pro se. However, within that group of cases filed, there were 69,951 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 FY2015

### 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	1,960	345	18%	5,342	2,074	39%
2	4,555	575	13%	13,381	4,265	32%
3	119	17	14%	420	180	43%
4	2,802	172	6%	7,803	2,714	35%
5	602	29	5%	2,062	936	45%
6	312	52	17%	1,100	634	58%
7	410	39	10%	1,255	498	40%
8	1,073	161	15%	3,047	1,162	38%
9	406	30	7%	1,344	413	31%
10	575	50	9%	1,536	596	39%
11	450	74	16%	1,498	671	45%
12	173	33	19%	559	286	51%
13	294	77	26%	829	439	53%
14	295	11	4%	1,303	697	53%
15	55	7	13%	192	81	42%
16	105	28	27%	333	172	52%
17	1,714	82	5%	4,951	1,785	36%
18	3,832	522	14%	10,657	4,011	38%
19	853	60	7%	2,712	950	35%
20	1,608	214	13%	4,353	1,334	31%
21	517	69	13%	1,329	545	41%
22	88	9	10%	270	110	41%
<b>Total</b>	<b>22,798</b>	<b>2,656</b>	<b>12%</b>	<b>66,276</b>	<b>24,553</b>	<b>37%</b>

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 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> party plaintiffs), respondent/defendant (including 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> party defendants) and intervenors and interpleaders (included as filing parties).

This table demonstrates that in 12% of cases no party has an attorney. More dramatically, the table shows that of the 66,276 parties involved in these cases, 37% were not represented when the data was extracted.

### County Court Civil Cases Filed in FY2015

#### County Court Civil

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	17,893	2,086	12%	39,763	23,572	59%
2	n/a	n/a	n/a	n/a	n/a	n/a
3	522	183	35%	1,273	910	71%
4	25,510	4,130	16%	57,024	34,624	61%
5	1,407	360	26%	3,147	2,050	65%
6	1,361	423	31%	3,042	2,045	67%
7	2,022	474	23%	4,500	2,883	64%
8	8,271	820	10%	18,890	11,122	59%
9	1,702	334	20%	3,834	2,386	62%
10	6,780	1,261	19%	15,231	9,507	62%
11	1,642	418	25%	3,637	2,368	65%
12	976	324	33%	2,109	1,438	68%
13	1,884	340	18%	4,306	2,723	63%
14	864	229	27%	1,963	1,269	65%
15	437	131	30%	970	646	67%
16	818	244	30%	1,806	1,218	67%
17	22,744	2,254	10%	50,608	29,798	59%
18	29,832	2,708	9%	65,667	37,862	58%
19	8,499	1,344	16%	19,252	11,901	62%
20	5,872	802	14%	12,725	7,486	59%
21	5,208	1,740	33%	11,671	8,107	69%
22	640	173	27%	1,420	931	66%
<b>Total</b>	<b>144,884</b>	<b>20,778</b>	<b>14%</b>	<b>322,838</b>	<b>194,846</b>	<b>60%</b>

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 14% 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	46,545	11,404	35,141	75%
District Civil	26,925	22,726	4,199	16%
County Civil	150,671	124,528	26,143	17%
<b>Total</b>	<b>224,141</b>	<b>158,658</b>	<b>65,483</b>	<b>29%</b>

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	23,406	5,888	17,518	75%
District Civil	39,351	18,997	20,354	52%
County Civil	172,167	3,464	168,703	98%
<b>Total</b>	<b>234,924</b>	<b>28,349</b>	<b>206,575</b>	<b>88%</b>

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](mailto:jessica.zender@judicial.state.co.us)