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Unbundling/Limited Scope Representation

Limited scope representation, often referred to as “unbundling,” can be a great way to offer legal services while increasing your client base and bottom line. The reality is that the vast majority of the American population can afford to pay for some legal assistance. Most people want that assistance but are unaware of how to obtain it. Moreover, the number of pro se litigants in the court system is continually growing and these pro se litigants are ill equipped to represent themselves in court causing a greater strain on judicial resources.

There are many rules associated with limited scope representation, and it is only appropriate for certain clients.

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THE DEFINITION, HISTORY, AND RULES ASSOCIATED WITH LIMITED SCOPE REPRESENTATION

Traditionally, the term “legal representation” has referred to the full bundle of legal services: gathering facts, conducting research and discovery, counseling, drafting pleadings and correspondence, negotiating, and representing the client in court. However, with the inception and adoption of limited scope representation pursuant to C.R.C.P. 121 § 1-1(5) and C.R.C.P. 11, lawyers can now also offer to help clients with discrete parts of a case in an *a la carte* fashion. Practically speaking, this means a lawyer in a court case can assist a client by performing only one of the following tasks:

- drafting a pleading;
- providing coaching/advice; or
- representing the client at a specific hearing or deposition.

In these situations, the client is responsible for representing himself or herself for the remaining parts of the case. Unbundled legal services may involve litigation, transactional services, or negotiation, and may involve either discrete tasks (as illustrated above) or issues, such as child support.

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. In 2011, Section 5

was added to C.R.C.P. 121 § 1-1 to allow an attorney's appearance to terminate at the conclusion of a limited appearance, without waiting for leave from the court, upon the filing of a notice of completion of limited appearance:

(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.

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Limited scope representation is also allowed in Colorado Supreme Court and Colorado Court of Appeals proceedings. Recently, the U.S. District Court for the District of Colorado adopted new local rules allowing for unbundling in civil cases under certain circumstances. Significantly, unbundling is only permitted when there is a court order granting it. The scope of the limited representation must be outlined in a motion to the court, and any change in the scope must be approved again by the court. Unlike Colorado state court, the attorney must file a motion to withdraw after completing limited representation. D.C.Colo.LAtty R2 and R5.

INTEGRATING LIMITED SCOPE REPRESENTATION INTO YOUR PRACTICE

As you begin to offer limited scope representation, consider incorporating the following tips into your practice protocols:

Initial Intake

Conduct an intake by meeting 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. Importantly, you must 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. Regardless of your engagement agreement, if a client has explained their complicated matter to you, the client may be under the expectation that you will "take care of it" for them.

The client may want a deal and be willing to try self-representation to avoid paying a full retainer fee for an attorney to enter an appearance as counsel of record. You must be careful and assess whether that person has the ability to direct his or her own litigation. Some parties have problems that are too complicated or a personality that is just not suited for discrete-task representation.

Engagement Agreement

It is advisable to draft an engagement agreement and review it with your potential client to make sure all parties understand the specific parameters of the scope of your representation. The engagement agreement should make it clear to the client that he or she is responsible for disclosing material facts as well as responsible for complying with the rules, statutes, and deadlines beyond the bounds of your representation. See Chapter Two: Client Intake, Initial Screening, and Client Engagement Agreements for more information on drafting client engagement agreements for cases involving limited scope representation.

If you expand the scope of your representation, draft and require your client to review and sign an addendum outlining the expanded scope of the representation.

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Drafting Pleadings or Ghostwriting

When drafting pleadings and other documents on an unbundled/limited scope basis (a/k/a ghostwriting), you must include your name, address, telephone number, and registration number. However, 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. See C.R.C.P. 11(b).

Ghostwriting as a form of limited representation is prohibited in the Colorado federal courts, absent written permission given by the court in prisoner rights cases. See D.C.COLO. LAttyR 2(b)(1).

Notice of Limited Appearance

If part of the limited scope representation involves your appearing in court, be sure to 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).

Communication

If you have entered an appearance for the limited purpose of representing a client at a temporary orders hearing, the opposing party or opposing lawyer must communicate with you with respect to that specific proceeding. However, if unrelated matters or proceedings occur simultaneously, the opposing party or opposing lawyer must communicate directly with the pro se litigant about those matters. If the opposing party or opposing lawyer is unsure who to communicate with, he or she should contact you for clarification.

Moreover, until you are released from the limited scope representation agreement, you should make sure to stay current on the progress of the case and check in from time to time with your client. Maintaining communication is important to avoid surprises for both you and the client. However, you may not be able to bill the client for your time in merely thinking about his or her case.

Accordingly, it is advisable to make sure communication procedures are clear in the engagement agreement so all parties, including opposing counsel, your client and the court, understand the arrangement.

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Conversion to Full Representation

Be careful when converting from limited scope representation to full representation. Clients who are ready to upgrade may not be willing to divulge how they behaved at the last hearing or how many deadlines have passed when they come back seeking an entry of appearance. Aspects of the case that you can no longer manage and maintain because they happened when you had no control over the strategy can have a great impact on the risks and expense of the remainder of the litigation.

Client Education of Filing, Service, and Deadlines

If you enter into discrete-task representation, make sure the client knows the practical aspects of filing and service. Although the client should know that he or she is taking on nearly all the practical tasks of the litigation as a discrete-task client, some are just not prepared for the volume of extra work they are taking on in their life. Discrete-task clients need a thorough education on service of process and continuing obligations of disclosure under the rules.

The discrete-task client should be repeatedly warned to be careful with deadlines and to be aware that he or she must manage his or her own deadlines. You will not be calling the client to remind him or her of the deadlines in the case. It does not hurt to point out those deadlines, but the discrete-task client needs to know how very important deadlines are to successful litigation.

Unbundling Prohibited in Criminal Cases

While the Colorado Rules of Civil Procedure currently allow for unbundling/limited scope representation, the Colorado Rules of Criminal Procedure do not currently contain parallel rules.

Complex Cases

Do not take a highly complex case on an unbundled/limited scope basis. Remember that the Colorado Rules of Professional Conduct require attorneys to provide competent representation. While you may be “competent,” the limited nature of the representation may severely limit your ability to adequately represent certain clients and matters.

Limited Representation Is Not Litigation Insurance

Watch out for discrete-task clients who are really just trying to buy some protection rather than legal advice. A discrete-task client should know and be clearly informed that the attorney is there to provide advice and not insure the client’s litigation. Even by following the advice of counsel, the client still has risk in litigation.

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ADVANTAGES OF LIMITED SCOPE REPRESENTATION

The entry of online legal service companies and branded legal networks, such as LegalZoom, Rocket Lawyer, and Avvo, into the legal market has demonstrated that a very large segment of the American population who previously did not think they could afford legal services can afford to pay at least some money for unbundled legal services and are willing to do so when provided with options they perceive as affordable and valuable.

Here are a few benefits of offering unbundled legal services:

- *Gain more control over your cases and your life.* If you offer unbundled legal services, you can pick and choose what services you will offer. Typically, the more options you can offer potential clients the better, but if you feel strongly about not going to court or providing some other service, unbundling provides you with the option of not doing so. Flexibility in your representation models gives you more control over your case load and, thus, your life outside of work.
- *Unbundled legal services increase economic diversity in your client base.* Because such cases will have greater predictability of the estimated time involved due to the limited scope of representation, you can make better evaluations about reasonable retainers.

Predictability also increases the opportunity for more flexible alternative fee arrangements. Also, because less time commitment will usually be involved, there is less financial exposure if a client fails to meet his or her fee obligations.

- *There is the potential to improve cash flow and collection rates.* Because the representation will usually involve discrete services that can be accomplished fairly quickly and invoices can be generated throughout the month, there will be a greater number of closed files where invoices can be generated. Also, because unbundled legal services often require clients to spend less money on legal services, there is a greater chance that they will be able to pay your entire fee up front before you even start working on the case. See Colo. RPC 1.5 regarding advance fees.

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TIPS

1. Know the rules around limited scope representation. See C.R.C.P. 121, C.R.C.P. 11(b), and C.R.C.P. 311(b).
2. Remember that limited scope representation is not allowed in criminal cases.
3. When ghostwriting, include name, address, telephone number, and registration number on all pleadings. See C.R.C.P. 11(b).
4. Ghostwriting is not allowed in federal court except when specifically granted in prisoner rights cases. See District of Colorado Attorney Rules 2(b)(1).
5. 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).
6. Clearly define what you will do and will not do for the client in the engagement agreement and review expectations with the client.
7. Get informed consent in writing — have the client sign the engagement agreement setting forth the specific parameters of the scope of the representation and file the Consent under C.R.C.P. 11(b) with the court.
8. Stay within the scope of the agreement and make sure the client understands what his or her responsibility is. See Colo. RPC 1.5(b). Utilize checklists and handouts to educate your client.
9. Develop a marketing strategy for your unbundled legal services. See Chapter 6: Marketing and Business Development.
10. Talk to opposing side about your role — what you are doing and not doing for the client.

Unbundling/Limited Scope Representation

- *Increased and improved courtroom skills.* Due to the nature of limited-scope representation, many lawyers who provide unbundled legal services report that there is an increase in the number of court appearances they make. This means more exposure to judges, courthouses, and courtroom staff and an increase in time “on your feet.”
- *Exposure to several practice areas.* Of course, an attorney must be competent in an area of practice before agreeing to represent a client, whether the services are bundled or the full representation. However, in practice areas where an attorney wishes to gain more experience, unbundled legal services can sometimes be more practical in affiliating with co-counsel and mentoring. Performing discrete tasks with a newer lawyer can also provide good mentoring experiences in working with clients and observing how particular tasks should be performed.
- *Expand your potential client base.* Unbundled representation also allows a lawyer to take a chance on a seemingly risky or “less desirable” client, allowing the lawyer to step down without a court motion if the client’s personal or financial issues prove unworkable.
- *Develop better relationships with your clients.* Anecdotal information from lawyers who have extensive experience offering limited scope representation suggests that it often allows them to develop better client relationships, which frequently results in higher client satisfaction rates and the client’s deciding to switch over to full representation.

Clients also have a lot to gain from lawyers offering unbundled legal services. Unbundled representation allows clients who cannot afford to pay for full representation to still hire a lawyer for what the client, with the lawyer’s counsel, determines to be the part(s) of the matter for which a lawyer is most needed. While most potential clients would hire a lawyer for full representation if they could afford to do so, many potential clients still find value in and benefit from hiring a lawyer for something less than full representation.

ETHICAL CONSIDERATIONS

It is important to be familiar with Colorado Rules of Professional Conduct, as they apply even in situations where attorneys provide limited representation.

According to Colo. RPC 1.2(c):

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

As such, an attorney may limit the scope and objectives of representation so long as (1) they are reasonable and (2) the client gives informed consent. There is no hard-and-fast definition of what is “reasonable” when providing limited representation; however, comment [7] specifically notes that an “unreasonable” limitation includes one that interferes with the knowledge, skill, thoroughness, or preparation required to competently represent the client. Additionally, the requirement of “informed consent” is satisfied when the attorney communicates to the client any limitations on the scope of representation and provides information and explanation about the material risks associated with not being fully represented as well as alternatives available to limited representation. Notably, the client’s informed consent to the limited representation and its scope should be in writing.

For a more complete review of the ethical implications associated with limited representation, see the Appendix.

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APPENDIX

Colorado Bar Association Resources

Law Practice Management

- As a service to its members, the CBA Department of Law Practice Management provides information and resources on a variety of law practice management issues, including templates on Forms2Share, a collection of materials in the Lending Library, Tech Tuesday Webinars, and monthly newsletters.
- The Practical and Ethical Considerations to Integrating Unbundling Services: the Unbundling Road Show is a continuing legal education program that provides the nuts and bolts as well as the ethical considerations in providing limited scope representation.

The Colorado Lawyer

- “Ethical Considerations When Providing Unbundled Legal Services,” Hon. Adam J. Espinosa, Amy Goscha, James Garts, Hon. Daniel Taubman, and Danae D. Woody (Sept. 2011)
- “Limited Scope Representation Under the Proposed Amendment to C.R.C.P. 121, § 1-1,” Hon. Adam J. Espinosa and Judge Daniel M. Taubman (Nov. 2011)

Additional Resources

Limited Scope Representation

- “Expanding Your Practice Using Limited Scope Representation,” M. Sue Talia, Practicing Law Institute CLE Program (Jan. 30, 2015) – IT’S FREE!
- “Unbundling Legal Services: Options for Clients, Courts & Counsel,” Institute for the Advancement of the American Legal System
- ABA Unbundling Resource Center (browse by state), www.americanbar.org/groups/delivery_legal_services/resources.html
- Pro Se/Unbundling Resource Center, <http://apps.americanbar.org/legal-services/delivery/delunbundrules.html>
- “The Ethics of Unbundling,” Stephanie L. Kimbro, *GPSolo eReport* (Oct. 2011)
- “Stop Selling Eight-Tracks and Start Unbundling,” Stephanie L. Kimbro, *Daily Dispatch*, attorneyatwork.com (Aug. 27, 2012)

Self-Represented Litigants

- *The National Self-Represented Litigants Project: Identifying and Meeting the Needs of Self-Represented Litigants: Final Report*, Julie Macfarlane (May 2013)
- *Parties without Attorney Representation in Civil Cases FY 2015*, Office of the State Court Administrator

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Authorities

Colorado Rules of Appellate Procedure

- Rule 5(e), Notice of Limited Representation Entry of Appearance and Withdrawal

Colorado Rules of Civil Procedure

- C.R.C.P. 11(b), Signing of Pleadings
- C.R.C.P. 121 § 1-1(5), Local Rules – Statewide Practice Standards
- C.R.C.P. 311(b), Signing of Pleadings

Colorado Rules of Professional Conduct

- Colo. RPC 1.0(e), Informed Consent
- Colo. RPC 1.2, Scope of Representation and Allocation of Authority Between Client and Lawyer
- Colo. RPC 1.4, Communication
- Colo. RPC 1.5, Fees
- Colo. RPC 4.2, Communication With Person Represented by Counsel

Colorado Ethics Opinions

- CBA Ethics Committee Formal Opinion 101, Unbundled Legal Services

United States District Court for the District of Colorado, Local Rules of Practice

- D.C.Colo.LAttyR2: Standards of Professional Conduct
- D.C.Colo.LAttyR5: Entry and Withdrawal of Appearance and Maintenance of Contact Information

Case Law

- *People v. Stevens*, 10PDJ002 (Oct. 7, 2010)
- *People v. Gabriesheski*, 262 P3d 653 (Colo. 2011)

American Bar Association Ethics Opinions

- ABA Formal Opinion 07-446, Undisclosed Legal Assistance to Pro Se Litigants
- ABA Formal Opinion 15- 472, Communication with Person Receiving Limited Scope Representation

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