

Comments on: Limited Scope Representation

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Comments to the
State Bar of Arizona Access to
Justice Task Force

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Consumers for a Responsive Legal System (“Responsive Law”) is a national, nonprofit organization working to make the civil legal system more affordable, accessible, and accountable to the people. We support policies that expand the range of legal services available to meet consumers’ legal needs.

Limited scope representation (“LSR”) constitutes an important component of the continuum between pure self-representation and full representation by a lawyer. LSR benefits consumers by allowing them to access lawyers’ services when they might not be able to afford full representation, or when they are capable of handling most of a legal matter on their own but need assistance for some of it. However, lawyers who wish to provide LSR have legitimate concerns about running afoul of rules of procedure and ethics drafted to accommodate full-service representation.

Responsive Law endorses the changes proposed by the Access to Justice Task Force to facilitate greater use of LSR. These changes will benefit consumers of legal services in Arizona by allowing them greater choice in the type and amount of assistance they use. Greater availability of LSR will allow low- and middle-income Arizonans access to some assistance from a lawyer when full representation would otherwise be unaffordable.

With that said, we would like to suggest one change to the proposed petition. Arizona should amend ER 1.2(c) to require, in most cases, that the limited-scope agreement between client and lawyer be in writing. The Montana Rules of Professional Conduct, quoted below, could be adapted for this purpose:

1.2(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent in writing.

(1) The client’s informed consent must be confirmed in writing unless:

(i) the representation of the client consists solely of telephone consultation;

- (ii) the representation is provided by a lawyer employed by a nonprofit legal services program or participating in a nonprofit court-annexed legal services program and the lawyer's representation consists solely of providing information and advice or the preparation of court-approved legal forms; or
 - (iii) the court appoints the attorney for a limited purpose that is set forth in the appointment order.
- (2) If the client gives informed consent in writing signed by the client, there shall be a presumption that:
- (i) the representation is limited to the attorney and the services described in the writing; and
 - (ii) the attorney does not represent the client generally or in matters other than those identified in the writing

Requiring the LSR agreement to be in writing clarifies the relationship between attorney and client to both parties. This is particularly important where the client is not a frequent user of legal services (as is often the case in LSR), and thus will not understand the scope of the attorney-client relationship as comprehensively as her lawyer.

However, when the representation is brief, as in telephone consultations and walk-in clinics, there is less chance that a client would mistake the relationship for full representation. Therefore, in those situations, the Montana Rule 1.2(c) does not require LSR agreements to be in writing, as requiring written consent in these situations would place a chilling effect on the provision of these types of services.

Responsive Law hopes that the Task Force will consider this amendment to further protect clients as they take advantage of a greater continuum of legal services in Arizona. We look forward to supporting the State Bar upon its filing of the rule-change petition with the Supreme Court.