

## Limited Scope Representation

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Limited scope representation, also referred to as unbundled legal services, allows clients and attorneys to enter into an agreement in which the attorney does some work for a legal problem or case but does not take on full representation of the client. It may involve consultation and advice in an office setting, document preparation, limited representation in court, collaborative family law practice or other dispute resolution. Unbundled services reduce costs where the client may not be able to afford to hire a lawyer to undertake a complete representation even in a single matter. For example, the lawyer might provide forms, but not accompany the client to court.

### I. Introduction

In June 2014, the Wisconsin Supreme Court unanimously adopted Rules Petition 13-10 and ordered the amendment of SCR Chapter 20 and the Wisconsin Statutes Chapters 800, 801, 802, and 809 relating to limited scope representation. These amendments became effective January 1, 2015, and address three main topics:

- the ethical requirements for limited scope representation,
- ghostwriting, and
- limited appearances.

### II. General Ethical Requirements of Limited Scope Representation under SCR 20:1.2(c)

#### A. The limitation must be reasonable under the circumstances.

1. ABA Comment [7] to SCR 20:1.2 provides guidance:

[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.

2. To be certain that the proposed limitation is reasonable under the circumstances, a lawyer should be sufficiently knowledgeable about the area of law in which the lawyer seeks to provide limited services. For example, an experienced family law practitioner may be able to quickly determine whether providing a brief consultation or assistance with forms is unreasonable for a matter involving complicated marital property and tax issues.
3. In addition, a lawyer must have sufficient understanding of the facts of a matter to determine if a limitation is reasonable.

#### 4. Some Examples

##### a. A Family Law Example

Keep in mind that limited-scope representations may not be reasonable in all cases. The following are some examples of limited-scope representation in family law cases:

- legal consultation only;
- document preparation;
- document review;
- assistance in asset investigations;
- representation on certain issues only, such as child support or custody; and
- representation on a certain hearing date.

##### b. An Estate Planning Example

When a client asks a lawyer for a will, the lawyer will often explain the he or she can provide several levels of estate planning service to the client ranging from a simple will with no considerations for tax consequences to a complicated estate plan with a bypass trust.

- If a client asks for a simple will with no considerations for tax consequences, but the client is wealthy and the economic status is complicated, then it may, in some circumstances, be unreasonable for any lawyer to draft a simple will for a client and it may be a breach of the lawyer's duty of competence.
- But, if this wealthy client had no will and was leaving the country early the next day for a month vacation, then the lawyer may draft a simple will with an understanding that when the client returns, the lawyer will draft a more appropriate estate plan.

##### c. A Worker's Compensation Example

While the lawyer's scope of representation is limited to the worker's compensation claim, the lawyer may be required to inform the client that he or she may have other remedies, and should seek advice of other counsel. For example, in *Nichols v. Keller*, 15 Cal. App. 4th 1672, 19 Cal. Rptr. 2d 601 (1993), the court concluded that a lawyer representing a client in a worker's compensation matter had a duty to advise the client of a possible third-party

claim even if the lawyer did not agree to represent the client with respect to such a claim.

Generally speaking, a worker's compensation attorney should be able to limit the retention to the compensation claim if the client is cautioned (1) there may be other remedies which the attorney will not investigate and (2) other counsel should be consulted on such matters. However, even when a retention is expressly limited, the attorney may still have a duty to alert the client to legal problems which are reasonably apparent, even though they fall outside the scope of retention. The rationale is that, as between the lay client and the attorney, the latter is more qualified to recognize and analyze the client's legal needs. The attorney need not represent the client on such matters. Nevertheless, the attorney should inform the client of the limitations of the attorney's representation and of the possible need for other counsel.

This case should not be read to impose a duty on lawyers to reach beyond the terms of the limited scope representation to provide advice on matters outside the defined scope. Rather, the case cautions lawyers to at least advise a client of possible other claims, defenses or avenues of relief when such are readily apparent.

d. A Local Counsel Example

In many instances, the role of local counsel will be limited by the client's primary counsel.

e. A Litigation Example

On October 8, 2014, the Minnesota Supreme Court held that the Office of Lawyers Professional Responsibility had no basis for finding that a lawyer engaged in misconduct by not attending hearings that a client asked him not to attend in light of the terms of their limited-scope representation agreement. The court noted that the judge in the underlying proceedings - a marital dissolution case - issued an order dismissing the lawyer as attorney of record three weeks after his one and only appearance in the matter.

f. A Transactional Example

In a September 2014 New Jersey malpractice case, the appellate court reversed summary judgment in favor of the lawyer, concluding that a transactional lawyer may have violated his duty of competency by failing to explain unambiguous business terms in a written agreement, even though the client was a sophisticated businessperson who negotiated the terms of the agreement himself and even though the lawyer asserted that he was "primarily a scrivener" for the transaction.

- Even when the client is a sophisticated businessperson, it may not be reasonable in a complex transaction involving significant financial issues to limit the representation to that of a scrivener.

- Without ascertaining the client’s objectives, discussing various legal and strategic issues, and determining whether the client understood all the terms of the agreement, the lawyer may be unable to assess whether the writing reflects and effectuates the terms negotiated by the client. Moreover, in such circumstances, the lawyer may also violate his or her duty of competency under SCR 20:1.1.

## **B. Client’s Consent Must Be in Writing**

The current version of the Rule, unlike the prior version, requires that the client’s consent be in writing.

### **1. Exceptions to the Writing Requirement under SCR 20:1.2(c)(1)**

The client’s informed consent need not be given in writing if:

- a. the representation of the client consists solely of telephone consultation under SCR 20:1.2(c)(1)(a);
- b. representation is by the lawyer is in a program sponsored by a nonprofit organization, a bar association, an accredited law school, or court, and the lawyer’s representation consists solely of providing information and advice or the preparation of court-approved legal forms under SCR 20:1.2(c)(1)(b);
- c. the court appoints the lawyer for a limited purpose that is set forth in the appointment order under SCR 20:1.2(c)(1)(c); or
- d. representation is provided by the state public defender pursuant to Wis. Stat. Ch. 977, including a private attorney pursuant to appointment under SCR 20:1.2(c)(1)(d).

### **2. Informed consent, as defined by SCR 20:1.0(f) requires the agreement by the client to the “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.” Consequently, the informed consent requires the lawyer to include in the writing the limited scope of the representation, which is the proposed course of conduct, as well as adequate information and explanation about the material risks of and reasonably available alternatives to the limited scope representation.**

Consequently, obtaining informed consent should include three elements:

- a. an explanation of facts and circumstances,
- b. an explanation of the material advantages and disadvantages of a proposed course of conduct, and
- c. an explanation of available options and alternatives.

3. The current version of the Rule does not require that the consent be signed by the client. But consider SCR 20:1.2(c)(2), which creates a presumption.

#### **C. A Presumption Created**

Under SCR 20:1.2(c)(2), if the client gives informed consent in writing signed by the client, there “shall” be a presumption that

1. the representation is limited to the services described in the writing, and
2. the lawyer does not represent the client generally or in matters other than those identified in the writing.

#### **D. Competence**

Wisconsin Committee Comment to SCR 20:1.1: Competence states:

When a lawyer is providing limited scope representation, competence means the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the limited scope representation.

#### **E. Fees and Expenses**

Wisconsin Committee Comment to SCR 20:1.2(c) states:

A lawyer providing limited scope representation in court should consult SCR 20:1.5(b) regarding fees and expenses.

#### **F. The Relationship between SCR 20:1.5(b) and SCR 20:1.2(c)**

Under SCR 20:1.5(b)(1), when the total cost of representation is under \$1,000, the scope of representation and the basis or rate of the fee is not required to be in writing. However, under SCR 20:1.2(c), if the representation is a limited scope representation, the client’s informed consent must be in writing even though the total cost of the representation is under \$1,000. For consent to be informed under SCR 20:1.0(f), the client must agree to the limited scope, which is the proposed course of conduct, after the lawyer has communicated adequate information and explanation about the material risks of and the reasonably available alternatives to the limited scope of the representation.

#### **G. A Carefully Drafted Limited Scope Engagement Agreement: *Lerner v. Laufer*, 359 N.J. Super. 201, 819 A.2d 471 (2003)**

1. SCR 20:1.2(c) requires that the limitation be reasonable under the circumstances and that the client’s informed consent be in writing. For consent to be informed under SCR 20:1.0(f), the lawyer must communicate adequate information and explanation about the material risks of and the reasonably available alternatives to the limited scope of the representation. A lawyer who has the client sign a letter or agreement

carefully explaining how the lawyer is offering limited services and the risks of those limited services may protect himself or herself from later claims of liability.

2. In *Lerner v. Laufer*, the husband and wife decided to divorce and agreed to a mediated property settlement agreement. After the mediated property settlement agreement was reached, the wife hired the lawyer to review the agreement. The lawyer asked the wife to sign a two-page letter that acknowledged the circumstances of the engagement and the limited scope of the services that he would provide. In that letter, the lawyer confirms that he has not conducted any discovery, has not reviewed income tax returns or other financial documentation of the husband's income, has no information concerning the value of several properties and the value of stock, and is not in a position to make a recommendation or determination that property settlement agreement as prepared represents a fair and reasonable compromise of the issues of equitable distribution. The wife later claimed that she was defrauded because she was not told that the corporation in the marital estate was about to proceed to a public offering. She later sued the lawyer claiming that he was negligent in representing her in failing to conduct discovery and in preparing the property settlement, especially when the marital estate was a multi-million dollar estate and when she was not represented at the mediation. The lawyer testified that his role "was not to negotiate a new agreement for her, not to create litigation, not to go into the valuation of assets, but simply to make sure that this agreement was clear and concise, and if there was any interpretation problems, that I should take care of those for her, basically to revise the agreement only when necessary to make sure that things were clarified." The appellate court, relying on Rule 1.2(c) concluded that the lawyer did not commit malpractice because "it is not a breach of the standard of care for an attorney under a signed precisely drafted consent agreement to limit the scope of representation to not perform such services in the court of representing a matrimonial client that he or she might otherwise perform absent such consent."

#### **H. Communication with Person Represented by Counsel**

If the lawyer providing limited scope representation does not notify the opposing lawyer of his or her role, then the client is considered unrepresented.

SCR 20:4.2(b) states:

An otherwise unrepresented party to whom limited scope representation is being provided or has been provided pursuant to SCR 20:1.2(c) is considered unrepresented (for the purposes of this rule) unless the lawyer providing the limited scope representation notifies the opposing lawyer otherwise.

#### **I. Dealing with Unrepresented Person**

If the lawyer providing limited scope representation does not notify the opposing lawyer of his or her role, then the client is considered unrepresented.

SCR 20:4.3(b) states:

An otherwise unrepresented party to whom limited scope representation is being provided or has been provided pursuant to SCR 20:1.2(c) is considered

unrepresented (for the purposes of this rule) unless the lawyer providing the limited scope representation notifies the opposing lawyer otherwise.

### III. Ghostwriting

Ghostwriting refers to the practice of a lawyer drafting pleadings, briefs, or other documents that a pro se litigant files with a court without disclosing the lawyer's role in drafting the documents. The following Supreme Court Rules and Wisconsin Statutes set forth the requirements for ghostwriting.

#### A. SCR 20:1.2(cm) provides:

1. A lawyer may prepare pleadings, briefs, and other documents to be filed with the court as long as such filings clearly indicate on the document the statement: **"This document was prepared with the assistance of a lawyer."**
2. The lawyer must advise the client that the document must contain that statement.

#### B. Wisconsin Committee Comment to SCR 20:1.2(cm) states:

A lawyer may prepare pleadings, briefs, and other documents to be filed with the court as long as such filings clearly indicate that the filings are "prepared with the assistance of a lawyer." Such actions by the lawyer shall not be deemed an appearance by the lawyer in the case.

#### C. SCR 20:3.1(am) provides that:

1. a lawyer providing limited scope representation pursuant to SCR 20:1.2(c) may rely on the otherwise self-represented person's representation of the facts,
2. unless the lawyer has reason to believe that such representations are false, or materially insufficient, in which instance the lawyer shall make an independent inquiry into the facts.

#### D. Wis. Stat. § 802.05(2m) [Additional Representations to Court as to Preparation of Pleadings or Other Documents] provides:

1. A lawyer may draft or assist in drafting a pleading, motion, or document filed by an otherwise self-represented person.
2. The attorney is not required to sign the document.
3. The document must contain a statement immediately adjacent to the person's signature that, "This document was prepared with the assistance of a lawyer."
4. **Important Note:** In 2018, the legislature amended Wis. Stat. § 802.05(2m) through an omnibus landlord-tenant bill. The amendment required lawyers to include their names and bar numbers in addition to the statement that, "This document was

prepared with the assistance of a lawyer.” On April 17, 2020, the Wisconsin Supreme Court ordered that Wis. Stat. § 802.05(2m) be amended, effective July 1, 2020, to delete the previous version requiring lawyers to include their names and bar numbers.

**E. Wis. Stat. § 809.19(1)(h) [Rules of Appellate Procedure - Signatures] states:**

If the brief was prepared with the drafting assistance of an attorney under §802.05(2m), the brief must contain a statement that “This document was prepared with the assistance of a lawyer.”

**IV. Limited Appearances**

**A. SCR 20:4.2 Communication with Person Represented by Counsel**

1. Current SCR 20:4.2 is renumbered SCR 20:4.2(a).
2. SCR 20:4.2(b) states:  
An otherwise unrepresented party to whom limited scope representation is being provided or has been provided pursuant to SCR 20:1.2(c) is considered unrepresented (for the purposes of this rule) unless the lawyer providing the limited scope representation notifies the opposing lawyer otherwise.

**B. SCR 20:4.3 Dealing with Unrepresented Person**

1. Current SCR 20:4.3 is renumbered SCR 20:4.3(a).
2. SCR 20:4.3(b) states:  
An otherwise unrepresented party to whom limited scope representation is being provided or has been provided pursuant to SCR 20:1.2(c) is considered unrepresented (for the purposes of this rule) unless the lawyer providing the limited scope representation notifies the opposing lawyer otherwise.

**C. Wisconsin Committee Comments Referring to the Wisconsin Statutes Section 802.045 [Limited Scope Representation in Court and Limited Appearance]**

1. Wisconsin Committee Comment to SCR 20:1.2(c) states:  
A lawyer providing limited scope representation in court should consult Wis. Stat. § 802.045 regarding notice and withdrawal requirements.
2. Wisconsin Committee Comment to SCR 20:1.16(c) states:  
A lawyer providing limited scope representation in court should consult Wis. Stat. § 802.045 regarding notice and withdrawal requirements.
3. Wisconsin Committee Comment to SCR 11.02 [Appearance by Attorney] states:

Lawyers should consult Wis. Stat. § 802.045 for guidance in limited scope representation situations.

**D. Wis. Stat. § 800.035(1m) [Initial Court Appearance - Municipal Court Procedure] states:**

An attorney may provide limited scope representation to a person involved in a municipal court action as provided in §§ 802.045 and 802.05.

**E. Wis. Stat. § 801.14(2m) [Service and Filing of Pleadings and Other Papers] provides:**

1. When an attorney has filed a limited appearance under § 802.045(2) on behalf of an otherwise self-represented person, anything required to be served under subsection (1) shall be served on both the otherwise self-represented person (who is receiving the limited scope representation) and on the attorney who filed the limited appearance.
2. After the limited scope representation attorney files the notice of termination form, as provided in §802.045(4), no further service on that attorney is required.

**F. Wis. Stat. § 802.045 [Limited Scope Representation Permitted – Process] provides:**

1. An attorney may provide limited scope representation in a court action.
2. An attorney's role may be limited to one or more individual proceedings or issues in an action if specifically stated in the notice of limited appearance filed and served on the parties prior to or simultaneous with the proceeding. Providing limited scope does not constitute a general appearance by the attorney.
3. The notice of limited appearance must contain the following information:
  - a. the name and party designation of the client;
  - b. the specific proceedings or issues within the scope of the limited representation;
  - c. a statement that the attorney will file a notice of termination upon the completion of the services;
  - d. a statement that the attorney providing the limited scope representation shall be served with all matters while providing limited scope representation; and
  - e. contact information for the client including current address and phone number.
4. Service shall be made under § 801.14(2m).
5. Upon conclusion of the representation for which a notice of limited appearance has been filed, the attorney's role terminates without further order of the court upon the attorney filing with the court and serving upon the parties, a notice of termination of limited appearance.

The notice must contain the following information:

- a. a statement that the attorney has completed all services within the scope of the notice of limited appearance;

- b. a statement that the attorney has completed all acts ordered by the court;
  - c. a statement that the attorney has served the notice of termination of limited appearance on all parties, including the client; and
  - d. the contact information for the client, including the current address and phone number.
6. The director of state courts shall provide the forms for use in filing notices required by this section.

**G. Wis. Stat. § 809.80(2)(a) [Filing and Service of Papers] states:**

A person shall serve and file a copy of any paper required or authorized under these rules (to be filed in trial or appellate court) as provided in § 801.14(1), (2),(2m) and (4).

**APPENDIX A to the Memorandum In Support of Rule Petition 13-10, In re amendment of Supreme Court Rule Chapter 20 and Wisconsin Statute Chapters 800, 801, 802, and 809 relating to Limited Scope Representation <https://www.wicourts.gov/scrules/1310.htm>**

*Note: PPAC developed this sample form regarding consent to a limited scope representation. This sample form is not intended to be included in a supreme court rule or serve as a court form but may be further developed or distributed by the State Bar of Wisconsin at continuing legal education sessions on limited scope representation.*

**Notice and Consent to Limited Scope Representation**

To help you with your legal matters, you, the client, and \_\_\_\_\_, the lawyer, agree that the lawyer will limit the representation to helping you with a certain legal matter for a short time or for a particular purpose.

The lawyer must act in your best interest and give you competent help. When a lawyer and you agree that the lawyer will provide limited help:

- the lawyer does not have to give more help than the lawyer and you agreed; and
- the lawyer does not have to help with any other part of your legal matter.

While performing the limited legal services, the lawyer:

- is not promising any particular outcome; and
- is relying entirely on your disclosure of facts and will not make any independent

investigation unless expressly agreed to in writing in this document.

If short-term limited scope representation is not reasonable, a lawyer may give advice, but will also tell you of the need to get more or other legal counsel.

I, the lawyer, agree to help you by performing the following limited services listed below and no other service, unless we revise this agreement in writing.

[INSTRUCTIONS: Check every item either Yes or No - do not leave any item blank. Delete all text that does not apply.]:

YES NO

- a)   Give legal advice through office visits, telephone calls, facsimile (fax), mail or e-mail
- b)   Advise about alternate means of resolving the matter including mediation and arbitration
- c)   Evaluate the client's self-diagnosis of the case and advise about legal rights and responsibilities.
- d)   Review pleadings and other documents prepared by you, the client
- e)   Provide guidance and procedural information regarding filing and serving documents
- f)   Suggest documents to be prepared
- g)   Draft pleadings, motions and other documents

- h)   Perform factual investigation including contacting witnesses, public record searches, in-depth interview of you, the client
- i)   Perform legal research and analysis
- j)   Evaluate settlement options
- k)   Perform discovery by interrogatories, deposition and requests for admissions and requests for production of documents
- l)   Plan for negotiations
- m)   Plan for court appearances
- n)   Provide standby telephone assistance during negotiations or settlement conferences
- o)   Refer you, the client, to expert witnesses, special masters or other attorneys
- p)   Provide Counseling about an appeal
- q)   Provide procedural assistance with an appeal
- r)   Provide substantive legal arguments in an appeal
- s)   Appear in court for the limited purpose of \_\_\_\_\_
- t)   Provide preventative planning and/or schedule legal check-ups
- u)   Other: \_\_\_\_\_

I will charge to the Client the following costs: \_\_\_\_\_.

I will charge to the Client the following fee for my limited legal representation:  
\_\_\_\_\_.

Date: \_\_\_\_\_ (Type Lawyer's name)  
\_\_\_\_\_ (Lawyer's Signature)

**CLIENT'S CONSENT**

I have read this Notice and Consent form and I understand it. I agree that the legal services listed above are the only legal services to be provided by the lawyer. I understand and agree that the lawyer who is helping me with these services is not my lawyer for any other purpose and does not have to give me more legal help. If the lawyer is giving me advice or is helping me with legal or other documents, I understand the lawyer will stop helping me when the services listed above have been completed. The address I give below is my permanent address where I can be reached. I understand that it is important that the court handling my case and other parties to the case be able to reach me at the address after the lawyer ends the limited scope representation. I therefore agree that I will inform the Court and other parties of any change in my permanent address.

In exchange for the lawyer's limited scope representation, I agree to pay the attorney's fee and costs described above.

Sign your name: \_\_\_\_\_  
 Print your name: \_\_\_\_\_  
 Print your address: \_\_\_\_\_  
 Phone number: \_\_\_\_\_ FAX: \_\_\_\_\_  
 Email address: \_\_\_\_\_