



Tip of the Month February 2011

Meeting Your Professional Responsibilities When Providing Limited Scope Services

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Limited scope legal services for pro bono clients, including making a phone call, drafting a pleading, or writing a letter, provide access to justice to many struggling families and individuals in our community. Studies show that limited scope services can, with a limited amount of attorney time, provide clients with concrete outcomes to their legal matters. However, limited scope services are not right for every situation. Below is a checklist to ensure that a given limited scope service complies with the Minnesota Rules of Professional Conduct (MRPC) and can genuinely advance the client's case.¹

1. Keep an eye out for conflicts. The standard for pro bono limited scope services is “actual knowledge.”² If you *know* that you or someone in your firm represents the client's adverse party, do not give any legal advice to the client.
2. Assess the extent to which the client's issue is both legal and has merit.³ If not, consider other alternatives for problem solving, including moral, economic, and social factors that may be relevant to the client's situation.⁴ Consider litigation alternatives (neighborhood dispute resolution resources, mediation, informal requests for relief, etc.), if appropriate and likely to assist the client. If the client simply does not have a legitimate grievance or is unlikely to obtain any relief, you should be clear in advising the client that there is no merit to their position and you will not be assisting them.
3. Communicate clearly to the client about the scope of your representation, including:⁵
 - a. What services you will provide
 - b. What services you will not provide⁶.
 - c. What the client must accomplish on their own in order to achieve objectives.

At VLN clinics, (a) and (b) are handled in the Client Acknowledgement on the Clinic Data Sheet, although it may be necessary to also orally tell the client that you will not be representing them in court or help them on an ongoing basis. (C) is best provided on the Attorney Suggestion Form.

4. Evaluate whether the circumstances for unbundled services are reasonable, including the following criteria:⁷
 - a. Whether the client will be better off with limited services than without.
 - b. The nature of the matter in substantive law⁸ and complexity.⁹ Cases with a high level of complexity are probably inappropriate for limited scope services.
 - c. The sophistication and abilities of the client to continue pro se. For example, assess whether the client can understand what is being asked for in the pleading, whether the client could represent herself at a hearing on this matter and answer questions stemming from the pleading. The client does not need to have the same

depth of understanding as a lawyer might, but should be able to understand and articulate the basic arguments.

- d. Whether there is sufficient time to complete the brief services contemplated.
5. Ensure pleadings are brought in good faith, and have reasonable basis in both law and facts.¹⁰ The obligation to the client and the court to investigate whether the pleadings are well founded in law and facts requires a reasonable inquiry under the circumstances and is not substantially less than in full representation. One practical suggestion to prevent frivolous claims is to discuss potential allegations and counsel the client to not sign the pleadings until and unless he or she can gather more factual support for a particular allegation.
6. If at LAP, use the “Assisted at VLN’s Legal Access Point Clinic” stamp on each pleading.¹¹ This gives transparency to the court about the circumstances of the drafting of the pleading, addressing potential concerns about ghostwriting.
7. Keep a copy of what you have done. At LAP, ask a clinic assistant to scan a hard copy and/or save electronic copy on the VLN flashdrive.
8. Maintain client confidentiality. Your obligation in limited scope services is the same as required in more traditional attorney-client relationships.¹²

For questions regarding applying the Rules of Professional Conduct to limited scope services, please call Pat Burns at the Office of Professional Responsibility at 651-296-3952.

¹¹ This information is compiled from the webinar *Unbundled Legal Services – Professional Responsibilities* presented by Patrick R. Burns, First Assistant Director, Office of Lawyers Professional Responsibility. This webinar may be viewed at: <http://www.projusticemn.org/civillaw/library/attachment.183075> .

² Rule 6.5, MRPC. This applies to pro bono representation only.

³ Rule 3.1, MRPC.

⁴ Rule 2.1, MRPC.

⁵ Rule 1.2(c), MRPC: A lawyer may limit the scope of representation if the limitation is reasonable under the circumstances and the client gives informed consent. If it is reasonably foreseeable that the person receiving the advice will rely on the advice, an attorney-client relationship is formed. *Pine Island Farmers Coop v. Erstad & Riemer*, 694 N.W.2d 444, 448 (Minn. 2002), *Togstad v. Vesely, Otto, Miller & Keeffe*, 291 N.W.2d 686, 693 (Minn. 1980).

⁶ Rule 1.2, MRPC.

⁷ Rule 1.2, MRPC, only permits limiting the scope of representation if it is reasonable under the circumstances.

⁸ *Id.*

⁹ Rules 1.2, MRPC, Comment [2]: If a short-term limited representation would not be reasonable under the circumstances, the lawyer may offer advice to the client but must also advise the client of the need for further assistance of counsel. See also Rule 6.5, MRPC.

¹⁰ Rules 3.1, 3.3, and 11.02, MRPC.

¹¹ The MRPC do not directly address ghostwriting pleadings and, around the country, there is split authority on the propriety of ghostwriting.

¹² Rule 1.6, MRPC.