To fulfill ethical requirements and best practices for avoiding malpractice claims, attorneys need systems for organizing the essential procedural parts of their services. While many different lists may be adequate, below is a list approved by VLN's ethics advisor, Pat Burns (First Assistant Director, Office of Lawyers Professional Responsibility) and VLN's malpractice carrier. It also incorporates some steps that can be helpful when representing clients from poverty.

## Preliminary matters in all levels of service:

☐ Check for conflicts per the Minnesota Rules of Professional Conduct (MRPC).

☐ If a conflict is later discovered, appropriate consent (from the client and/or adverse party) should be obtained to provide representation despite the conflict or, if appropriate consent cannot be obtained, determine whether withdrawal is necessary.

☐ Ensure that the scope of representation is clear to the client by using one of VLN's forms and including specific language regarding the legal issue that is the subject of the representation and what is NOT the subject of the representation. Include any limiting language (e.g., "writing letters to creditors to the following creditors: ABC loans").

- o Full representation cases: signed retainer agreement
- o Workshop cases: signed brief services acknowledgement.
- o In-person legal services: signed clinic data sheet.
- o Phone advice: review the phone limited scope script with the client after providing legal advice: Before we hang up, I need to make sure you understand that I will not be able to provide you with any follow up service. You are still responsible for (*specify any follow up actions recommended*). Do you have any questions about that or anything else we discussed today?
- o Ensure that the party(ies) are clearly identified.

☐ In any service beyond legal advice alone, check to ensure that the client wishes to proceed with the service after you have informed him or her about the steps involved.

☐ If ongoing contact with the client is anticipated, establish up front numerous ways to contact the client and the consequences if the client is not able to be contacted.

☐ Create and maintain a comprehensive client list and tickle (reminder) system to ensure you meet all case deadlines, as well as have contact with the client at least once every 90 days.

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Review the VLN attorney/client understanding, including establishing expectations with the client regarding:

- o when and why you will be in touch

- o when and why you expect him or her to be in touch

- o how often he or she can expect updates from you

- o how often/when you would like updates from the client

- o whether the client prefers that you mail him or her copies of all correspondence and court documents immediately or hold them for the next time you see each other

## **Prior to providing brief services:**

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 MRPC and can genuinely advance the client's case.

☐ Keep an eye out for conflicts. The standard for pro bono limited scope services is "actual knowledge." (Rule 6.5 of the Minnesota Rules of Professional Conduct. This applies to pro bono representation only.)  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.

☐ Assess the extent to which the client's issue is both legal and has merit (Rule 3.1).  If not, consider other alternatives for problem solving, including moral, economic, and social factors that may be relevant to the client's situation (Rule 2.1).  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.

☐ Communicate clearly to the client about the scope of your representation.  Note:  per Rule 1.2(c): 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 & Keefe*, 291 N.W.2d 686, 693 (Minn. 1980). When limiting the scope of representation, specify:

- a. What services you will provide

- b. What services you will not provide (Rule 1.2)

- c. What the client must accomplish on their own in order to achieve objectives.

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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.

☐ Evaluate whether the circumstances for unbundled services are reasonable under the circumstances (Rule 1.2), including the following criteria:

a. Whether the client will be better off with limited services than without.

b. The nature of the matter in substantive law and complexity. Cases with a high level of complexity are probably inappropriate for limited scope services. Per Rule 1.2, 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.

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.

☐ Ensure pleadings are brought in good faith, and have reasonable basis in both law and facts (Rules 3.1, 3.3, 4.4(a) (Minnesota Rules of Professional Conduct) and 11.02 (Rules of Civil Procedure)). 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.

☐ If at LAP, use the "Assisted at VLN's Legal Access Point Clinic" stamp on each pleading. This gives transparency to the court about the circumstances of the drafting of the pleading, addressing potential concerns about ghostwriting.

☐ Keep a copy of what you have done. At the Legal Access Point (LAP) clinic, for example, ask a clinic assistant to scan a hard copy and/or save electronic copy on the VLN flashdrive.

☐ Maintain client confidentiality. Your obligation in limited scope services is the same as required in more traditional attorney-client relationships (Rule 1.6)

☐ Additional considerations may apply to immigration cases.


## Ongoing Case matters

☐ Determine whether there are any issues directly related to their legal issue and provide the client with advice, guidance and/or referral for those issues.

- ☐ Review and send a case acceptance letter, including consequences if the client can't be located at a future date

- ☐ Create a case file and keep a copy of all documents, including:
    - o The retainers
    - o The VLN attorney client agreement
    - o The case acceptance letter
    - o Copies (not originals) of any paperwork the client provides
    - o Copies of any other paperwork relevant to the case
    - o Copies of any letters sent on behalf of or to the client
    - o Copies of any paperwork served on other parties
    - o Copies of any paperwork filed with the court or received from the court

- ☐ Include notes of all work done on the case (and next steps to be done).

- ☐ Return client calls promptly

- ☐ Meet all court and other deadlines

- ☐ Immediately notify clients of all settlement offers

- ☐ Provide clients with timely, adequate notice of pending court appearances, meetings and/or depositions, as well as the consequences if he or she misses them

- ☐ Follow the expectations you set in the initial meeting

- ☐ When needed, consult with other attorneys regarding areas of law you may not know, collateral consequences of any settlement agreements, etc.

- ☐ Take steps to ensure that disclosure of confidential information does not take place in the presence of non-clients. In the alternative, ensure that the clients are warned of potential waiver of privilege or take other steps to protect confidentiality.

## Case conclusion

- ☐ When a full representation case is concluded (either by resolution of the matter or by withdrawal), let the client know that both orally and in writing. See VLN's sample closing letter, attached. The letter should include:
    - o That the legal proceedings are concluded or, if they are not concluded, the stage of the legal proceedings, any next steps the client should take, and all upcoming deadlines (and consequences of missing them).
    - o Any helpful referral sources
    - o A list of any documents that are being returned.

## Other

Included in general supervision duties, all attorneys are ethically required to ensure that support staff are complying with the Minnesota Rules of Professional Conduct (MRPC), including:

- ☐ Not engaging in the unauthorized practice of law by giving legal advice to others.

- ☐ Complying with the MRPC sections on conflicts.

- ☐ Ensuring that confidentiality is maintained.


If you have questions regarding any of this, you may call the Lawyers Professional Responsibility Board Office of Lawyers Professional Responsibility for an advisory opinion at 651-296-3952 or submit a question online here.

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**Termination of Representation**
**Case Concluded (Sample Letter)**

Date

Client Name
Address
City, State, Zip

Re:  Termination of Representation

File No:_____

Dear [*insert client name*]

I am writing you today to inform you that my representation of you in connection with your [*insert matter type*] is now concluded.  I have completed my legal work on your case and I am closing your file.

Enclosed are the documents from your file which are being returned to you.  I suggest that you keep these legal documents and other important paperwork from your case in a safe place such as a fireproof box where you can easily find them.  Unless I hear from you to the contrary in writing, the file on this matter will destroyed based on the firm's regular schedule.

There is some follow-up required in this matter, specifically _____ (e.g. changing beneficiaries on life insurance policies, changing your name with social security, your banks and on your driver's license etc., recording the quit claim deed with the county recorder's office etc.).  My firm will not be doing those tasks, and you will need to take the further action as appropriate.  You may call me if you still have questions in this regard.

It has been my pleasure to represent you; however I will not be working on your case any longer.  If you still need further legal assistance, please call Volunteer Lawyers Network again at 612.752.6677.  They will re-interview you to see if you are eligible for additional pro bono assistance.  Thank you.

Sincerely,

[*Attorney Signature*}

*Attorney Name*

Enclosures: