

**In re amendment of Supreme Court
Rule Chapter 20 and
Wisconsin Statute Chapters 800, 801, 802, and 809
relating to Limited Scope Representation**

**MEMORANDUM
IN SUPPORT
13-____**

The Director of State Courts, on the recommendation of the Planning and Policy Advisory Committee (PPAC), hereby petitions the court to amend Rules of Professional Conduct for Attorneys, Rules of Civil Procedure, and Rules of Appellate Procedure to support and expand limited scope representation.

Limited scope representation is a relationship between a lawyer and a person seeking legal services in which it is agreed that the scope of the legal services will be limited to specific tasks that the person asks the lawyer to perform. This form of representation allows clients and lawyers to enter into an agreement where the lawyer does some work for a particular case but does not take on the entire case. This is also called "unbundling of legal services" and "discrete task representation."

Limited scope representation is allowed under the Wisconsin Supreme Court Chapter 20, Rules of Professional Conduct for Attorneys. Supreme Court Rule 20:1.2(c) requires lawyers who limit the scope of their representation to do so only in those cases where the limitation is reasonable under the circumstances and the client gives informed consent to the limitation.¹ This rule mirrors the American Bar Association's (ABA) Model Rule of Professional Conduct 1.2(c).²

PPAC proposes procedures on how a lawyer can provide limited legal services. The proposed rules provide guidance on how limited scope representation should take place including the service of court documents, communications from opposing counsel, and drafting of court documents. The rules are intended to provide guidance and help to ensure that limited scope representation supports and protects the interests of the client and the lawyer, both procedurally and ethically.

¹ Wisconsin Supreme Court Rule 20:1.2(c) states "A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent."

² ABA Model Rules of Professional Conduct R. 1.2(c) (2002). The court amended rule 1.2(c) in 2007. Wisconsin Supreme Court Order in Rule Petition 04-07, In the matter of the Petition for Amendment to Supreme Court Chapter 20, Rules of Professional Conduct for Attorneys, 2007 WI 4 (Jan. 5, 2007, effective July 1, 2007).

PPAC has identified self-represented litigants or access to justice as a top priority in each of its biennial reports for the past five planning cycles (2004-06, 2006-08, 2008-10, 2010-12, and 2012-14). PPAC explained that the increasing population of self-represented litigants places an added burden on judges, court commissioners, court staff, and court processes that stresses available resources to handle this population. In a position paper published in 2000 the Conference of State Court Administrators noted self-represented litigants affect access to justice, staffing and resources, case management, court efficiency and the administration of justice, and public confidence in the courts.³ A State Bar of Wisconsin comprehensive study examined unmet legal needs in our state and concluded more than 500,000 residents face serious civil legal problems without legal assistance.⁴ The 2007 study noted this lack of access raises concerns with the appearance of fairness, timely resolution of legal disputes, and public confidence in the judicial system.⁵

Limited scope representation is seen by many as a means to assist with the challenges of an ever-increasing self-represented population in the courts, and the need to improve access to legal services and the courts. In the 2007 study the State Bar of Wisconsin Access to Justice Committee supported the expansion of limited scope representation. The committee stated that "[l]imited representation is a key aspect of an efficient program of improving access to justice for the poor by enabling clients with some ability to pay to purchase only those services they need or can afford."⁶ Typically limited scope representation occurs in one or more forms:

- Consultation and advice - the lawyer provides advice to the client in an office setting;
- Document preparation - the lawyer conducts some form of document preparation for the client (a brief, motion or financial information for the marital settlement agreement); or
- In court - the lawyer limits the scope of his or her representation of the client in a court proceeding.

Limited scope representation also occurs in collaborative family law practice.

Support for and information about limited scope representation is growing. The Wisconsin Judicial Conference in 2009 included a panel presentation on limited scope representation and the State Bar of Wisconsin publications have featured several articles on the

³ Conference of State Court Administrators, Position Paper on Self-Represented Litigation, 1 (Gov't Rel. Office ed. 2000).

⁴ State Bar of Wisconsin Access to Justice Committee, Bridging the Justice Gap: Wisconsin's Unmet Legal Needs, 1, 7 (March 2007), available at [http://www.wisbar.org/formembers/probono/documents/bridgingthegap\[1\].pdf](http://www.wisbar.org/formembers/probono/documents/bridgingthegap[1].pdf).

⁵ Id. at 8-9.

⁶ Id. at 16.

topic.⁷ The Wisconsin Access to Justice Commission endorsed the resolution and views limited scope representation as an access to justice tool.⁸ At the 2013 ABA Midyear Meeting in February the ABA House of Delegates passed a resolution calling for the expanded use of limited scope legal services and encouraging lawyers to limit the scope of their representation as a means of increasing access to justice.⁹

In response to these developments and the need to address access to legal services and the court system, PPAC created in 2010 a subcommittee to focus on a limited scope representation initiative. In the first phase, the subcommittee conducted a feasibility study to identify initiatives for implementation in Wisconsin. The subcommittee researched publications from the ABA and the State Bar of Wisconsin, the ABA Model Rules of Professional Conduct and procedural and ethics rules adopted by other courts, ethics opinions issued in other states, and reports¹⁰ and program materials from other state courts. The subcommittee collaborated with the Appellate Procedure Committee of the Wisconsin Judicial Council; discussed the limited scope representation initiative with several sections and committees of the State Bar; and conducted surveys of circuit court judges, administrative law judges, and court commissioners about limited scope representation.

The ABA Standing Committee on the Delivery of Legal Services compiled a list of the states that have adopted ABA Model Rule of Professional Conduct 1.2(c).¹¹ At least forty-two states have authorized limited scope representation through their attorney ethics rules by adopting ABA Model Rule 1.2(c) or a version substantially similar.¹² Most of those states that have varied from the model rule require the client's consent to be in writing.¹³ Similarly, PPAC proposes modifying Wisconsin SCR 20:1.2(c) to require the client's consent in writing.

⁷ 2009 Annual Meeting of the Wisconsin Judicial Conference; Timothy J. Pierce & Dean Dietrich, Wisconsin's New Rules of Professional Conduct for Attorneys, 80 Wis. Law. 13 (Feb. 2007); Timothy J. Pierce, New Rules of Conduct Limiting Representation, 80 Wis. Law. 22 (March 2007); Thomas J. Watson, 10 Tips to Unbundle Legal Services, 83 Wis. Law. 41 (March 2010).

⁸ Wisconsin Access to Justice Commission. Meeting of the Wisconsin Access to Justice Commission (Nov. 15, 2012).

⁹ ABA Standing Committee on the Delivery of Legal Services Report to the House of Delegates, Resolution 108, available at http://www.americanbar.org/content/dam/aba/administrative/delivery_legal_services/unbundling_policy_resolution_report.authcheckdam.pdf.

¹⁰ California, Illinois, Florida, New Hampshire, Massachusetts, and Missouri.

¹¹ See the spreadsheet of states that have adopted ABA Model Rule of Professional Conduct 1.2(c) at http://www.americanbar.org/content/dam/aba/migrated/legalservices/delivery/downloads/aba_model_rule_1_2c_authcheckdam.authcheckdam.pdf (last updated April 15, 2011), and Alabama (3/26/12).

¹² ABA Model Rules of Prof'l Conduct R. 1.2(c) (2002).

¹³ Alabama, Iowa, Florida, Missouri, Montana, and Tennessee ("informed consent, preferably in writing").

In addition, at least twenty-four states have adopted rules related to limited scope representation that address issues of limited appearances and withdrawal, service, communication, and ghostwriting.¹⁴ These issues are discussed in a white paper published by the ABA's Standing Committee on the Delivery of Legal Services and updated in a version issued in 2009 entitled An Analysis of Rules that enable Lawyers to Serve Pro Se Litigants.¹⁵ The white paper provides information on how various states have addressed policy considerations and the necessary rule changes relating to limited scope representation. Following reviews of limited scope representation issues, several state task forces and commissions reported that existing procedural and ethics rules do not support limited scope representation and may discourage its practice.¹⁶ The task forces and commissions recognized the value of limited scope representation and emphasized the need to amend procedural and ethics rules to govern and guide the conduct of lawyers who agree with clients to provide limited scope representation. The reports "express a common need to address the changes in the delivery of legal services, most often with rules that give a greater certainty to the process."¹⁷

In a survey of Wisconsin circuit court judges and court commissioners, the PPAC subcommittee discovered a similar need for rules. The following list reflects the judges' and

¹⁴ Alabama, Alaska, Arizona, California, Colorado, Florida, Illinois, Indiana, Iowa, Kansas, Louisiana (notice of limited appearance and withdrawal), Maine, Massachusetts, Missouri, Montana, Nebraska, New Hampshire, New Mexico, North Dakota, Tennessee, Utah, Vermont, Washington, Wyoming. See court rules at http://www.americanbar.org/groups/delivery_legal_services/resources/pro_se_unbundling_resource_center/court_rules.html. In December 2012 the Arizona Supreme Court adopted on an emergency basis amendments to rules of professional conduct, rules of the supreme court, and rules of civil procedure to facilitate limited scope representation. Ariz. R-12-0027 (12/05/12), available at <http://azdnn.dnnmax.com/AZSupremeCourtMain/AZCourtRulesMain/CourtRulesForumMain/CourtRulesForum/tabid/91/forumid/7/postid/1797/view/topic/Default.aspx>. In June 2013 the Illinois Supreme Court adopted rules supporting limited scope representation. Illinois Supreme Court Rules 11, 13, 137 (06/14/13), available at <http://www.state.il.us/court/SupremeCourt/Rules/Amend/2013/061413.pdf>.

¹⁵ Standing Comm. on the Delivery of Legal Services, An Analysis of Rules that Enable Lawyers to Serve Pro se Litigants, (Nov. 2009), available at http://apps.americanbar.org/legalservices/delivery/downloads/prose_white_paper.pdf [hereinafter ABA Analysis].

¹⁶ See Illinois Joint Task Force on Limited Scope Legal Representation, Limited Scope Legal Representation: Final Report, Findings & Recommendations 5 (May 19, 2011), available at <http://www.isba.org/committees/limitedscopelegalrepresentation> [hereinafter Illinois Report]; Supreme Court of Missouri & Missouri Bar, Pro Se Litigation Interim Feasibility Committee Report, 7, 10, 15 (2004), available at http://www.courts.mo.gov/file/FINALReportUSE%20_3_.pdf [hereinafter Missouri Report].

¹⁷ ABA Analysis, *supra* note 15, at 7.

court commissioners' responses:

<i>What procedural or ethical rules would you like to see enacted with respect to the following types of limited scope representation?</i>	<i>Response Percent</i>
Disclosure of attorney's involvement if ghostwriting	71%
Disclosure of specific attorney's name if ghostwriting	57%
Filing of notice describing scope of attorney's limited representation	78%
Filing of notice of limited appearance	77%
Filing of notice of termination of limited scope representation	65%
Communication with represented parties	42%
Service on limited scope representation attorney	27%
Extent/nature of client consent	58%

The subcommittee received one hundred and fifty responses. Ninety-four were received from judges and 56 were from court commissioners.

In August 2011 the subcommittee submitted its report recommending that PPAC convene a subcommittee to draft a rule petition proposing rules that support limited scope representation. The subcommittee's study is available on the court system's web site.¹⁸ PPAC approved moving forward with phase II of the project. In November 2012 the subcommittee submitted to PPAC for its consideration a proposed rule petition and memorandum in support. PPAC reviewed and requested additional information. In April 2013 the subcommittee submitted to PPAC a revised rule petition and memorandum in support. PPAC approved the rule petition for submission to the supreme court.

PPAC proposes creating and amending supreme court rules and statutes to provide more guidance and support for limited scope representation. The proposed amendments establish procedures on how to limit legal services. The guidance can benefit clients, lawyers, and judges. PPAC also proposes several comments to provide guidance regarding limited scope representation. PPAC recognizes the supreme court does not typically adopt comments but PPAC requests the comments be published as informational. PPAC's proposed amendments may be summarized as follows:

Informed consent in writing. The proposed amendment requires a client's informed consent to limited scope representation be in writing. The petition sets forth several proposed exceptions to the writing requirement.

¹⁸ PPAC Subcommittee on Limited Scope Representation, Feasibility Study and Recommendations (August 2011), available at <http://wicourts.gov/courts/committees/docs/ppaclimitedscopereport.pdf>.

Limited appearances and withdrawals. Proposed amendments would allow lawyers to make limited appearances and provide procedures for lawyers to withdraw upon completion of the representation.

Service guidelines. The proposed amendment provides for service upon both the lawyer and the client during the period of limited scope representation.

Communications guidelines. Proposed amendments to supreme court rules clarify communications with a party represented under a limited scope representation.

Document preparation. Proposed amendments allow a lawyer to prepare court papers to be filed by self-represented litigants and set parameters for the lawyer's role in document preparation. The rules require disclosure when a document is prepared with the assistance of a lawyer but does not require identification of the lawyer who provided assistance.

I. Limited Scope Representation – Informed Consent in Writing

SCR 20:1.2(c) already provides that a lawyer may limit the scope of legal representation, provided that the limitation is reasonable under the circumstances and the client gives informed consent to the limitations. PPAC proposes amending SCR 20:1.2(c) to require that a client's informed consent to limited scope representation be given in writing with certain exceptions. Other states have modified their version of ABA Model Rule 1.2(c) to do this.

PPAC's proposed exceptions to the requirement that informed consent be in writing are substantively similar to Iowa Rule of Professional Conduct 32.1(c) and Montana Rule of Professional Conduct 1.2(c). Exceptions adopted by other states include:

- representation that consists solely of telephone consultation;
- representation provided by a lawyer employed by or participating in a nonprofit or court-annexed legal services program that consists solely of information, advice or the preparation of court forms; and
- representation that occurs as the result of court appointment for a limited purpose.

The Iowa Supreme Court and Montana Supreme Court have adopted rules that exempt lawyers providing brief, limited scope legal services in a clinical or similar program from the requirement that informed consent be in writing. PPAC proposes a similar exemption in SCR 20:1.2(c)(1)b. Current SCR 20:6.5 already exempts lawyers participating in a program sponsored by a nonprofit organization or similar institutions from the restrictions of conflicts rules, unless the lawyer is aware of the conflict. Both rules respond to concerns that

requirements such as conflicts checking or written consent may deter lawyers from serving as volunteers in settings where limited legal services are provided to clients in a program sponsored by a nonprofit organization, bar association, law school, or court.

Under SCR 20:1.2(c)(1)d. PPAC proposes exempting state public defenders and lawyers appointed by the state public defender from the requirement that informed consent be in writing. The Office of the State Public Defender raised concerns that the writing requirement could adversely affect its representation in intake and bail hearings and requested an exemption. Following lengthy discussions with staff of the state public defender's office and additional research, including discussions with the state public defenders in Iowa and Montana, the subcommittee drafted an exemption in collaboration with staff of the state public defender's office.

II. Limited Scope Representation – Process

The subcommittee's proposed Wisconsin Statute section 802.045(1) reflects the fact that the ethics rules allow limited scope representation. The new statute notes that a lawyer may provide limited scope representation whether in a courtroom setting or not. The additional procedures in subsections (2) through (4) are intended to serve as a how-to guide for a lawyer who is going to appear and provide assistance to an otherwise self-represented litigant in a proceeding.

A. Limited appearances.

Proposed statute 802.045 sets forth a process for limited scope representation by detailing procedures governing a notice of limited appearance, service, and notice of termination of limited appearance. Most courts that require informed consent in writing have adopted similar rules requiring notices of appearance and withdrawal.¹⁹

Proposed Wisconsin Statute section 802.045 requires a lawyer to file a notice of limited appearance when providing limited assistance and a notice of withdrawal upon completion of the representation. The filing of a notice of limited appearance would be required in limited scope situations only. The proposal is not intended to imply that a lawyer is required to file a notice of

¹⁹ See ABA Analysis, *supra* note 15, at 19-21.

general appearance where a lawyer is providing full representation. Under the proposed rule, a limited appearance must specify the scope of services the lawyer will provide to the client as defined by proceeding or issue, provide a statement that the attorney providing limited scope representation shall be served with all matters while providing limited services, confirm the attorney will file a notice of termination upon completion of services, and include the name, party designation and contact information for the client.

When the lawyer fulfills the extent of the limited scope representation the lawyer files a notice of termination. The notice of termination must contain the name and current address and phone number of the former client. Under PPAC's proposed amendments, a lawyer's withdrawal from a limited scope representation would be automatic upon the filing of a notice if the conditions of Wisconsin Statute section 802.045(4) are met. PPAC recognizes that SCR 20:1.16(c), Declining or terminating representation, provides the court may order a lawyer to continue representation. There is significant concern that a judge may not permit a lawyer to withdraw from a matter after completing a limited scope representation. A lawyer's inability to withdraw could be a significant barrier to lawyers engaging in limited scope representation.

The subcommittee did not propose an amendment to SCR 20:1.16 similar to Maine's Rule of Professional Conduct, which provides in relevant part "This subsection (c) does not apply to the automatic withdrawal of a lawyer upon completion of a limited scope representation made pursuant to Rule 1.2." Rather the recommendation is that the automatic withdrawal procedure for limited scope representations be addressed in continuing legal education and judicial education sessions.

B. Service guidelines.

Proposed Wisconsin Statute section 801.14(2m) provides specifics about the service of pleadings and other papers in a limited scope representation. The section requires documents be served upon the attorney who has filed a notice of limited appearance and his client during the period of limited scope representation. By requiring service on both the party and the limited scope representation attorney, the service obligations are clear and the proper person receives notice of papers filed with the court. The requirement of service upon the attorney ceases when the attorney files a notice of termination of limited scope representation.

C. Communications guidelines.

Supreme Court Rule 20:4.2, Communication with a person represented by counsel, and Supreme Court Rule 20:4.3, Dealing with unrepresented person, govern communications of parties and counsel. Our rules do not appear to effectively address communications with a self-represented litigant who is receiving limited legal services from a lawyer. An addition to each of these rules clarifying obligations related to communications in a limited scope representation is necessary to avoid confusion. The proposed addition to both rules states "An otherwise unrepresented party to whom limited scope representation is being provided or has been provided in accordance with Rule 20:1.2(c) is considered to be unrepresented for purposes of this rule unless the lawyer providing limited scope representation notifies the opposing lawyer otherwise." This amendment mirrors rules of professional conduct adopted in Maine and Montana.

III. Document Preparation

Ghostwriting is a practice in which a lawyer assists in preparing pleadings, briefs, or other documents to be signed and filed with a court by a pro se party without disclosing the lawyer's involvement or identity. Courts have taken different approaches to ghostwriting: (1) no disclosure of the lawyer's assistance or identity, (2) disclosure without identifying the lawyer ("document prepared with assistance of an attorney"), (3) disclosure of the lawyer assisting with full contact information. The trend is to allow ghostwriting without disclosure or require disclosure without identifying the lawyer.²⁰ The report of the Modest Means Task Force of the ABA's Litigation Section recommended state rules that require no disclosure, or if disclosure is required, it should be anonymous.²¹

In a formal opinion, *Undisclosed Legal Assistance to Pro Se Litigants*, the ABA Committee on Ethics and Professional Responsibility interpreted Model Rule 1.2(c) to permit ghostwriting by lawyers.²² The committee concluded that "there is no prohibition in the Model Rules of Professional Conduct against *undisclosed* assistance to pro se litigants, as long as the lawyer does not do so in a manner that violates rules that otherwise would apply to the lawyer's

²⁰ See ABA Sec. Litig., Handbook on LSR Legal Assistance: A Report of the Modest Means Task Force 93, at 104 (2003) [hereinafter ABA Handbook].

²¹ Id. at 144-45.

²² ABA Comm. on Ethics & Prof'l Responsibility, Formal Op. 446 (2007).

conduct."²³ The committee stated that "[l]itigants ordinarily have the right to proceed without representation and may do so without revealing that they have received legal assistance in the absence of a law or rule requiring disclosure."²⁴ This opinion superseded a 1978 opinion in which the committee stated that "disclosure of at least the fact of legal assistance must be made to avoid misleading the court and other parties, but that the lawyer providing the assistance need not be identified."²⁵

Several state courts have adopted document preparation rules that require disclosure without identifying the lawyer.²⁶ Other states have adopted provisions that require the court to be notified of a lawyer's role in drafting and identify the lawyer providing assistance.²⁷ Several federal courts prohibit ghostwriting because the judges concluded that the practice violates ethics rules and Federal Rule of Civil Procedure 11.

Opponents of ghostwriting are concerned that anonymous assistance to a self-represented litigant misleads the court into believing that the party has had no assistance and this practice may lead to special latitude for the party. In contrast, the 2007 ABA ethics opinion concluded lawyer-prepared papers would be evident to the court, therefore it is likely no special treatment will be afforded the self-represented party.²⁸ In addition, if the lawyer-prepared filing is not persuasive, no unfair advantage would be gained.²⁹ Supporters of a disclosure rule that does not require the identity of the assisting lawyer argue that a rule requiring disclosure of both the assistance and the lawyer is likely to discourage lawyers from ghostwriting, leave more litigants without attorney assistance in drafting, require courts to decipher pleadings by unassisted self-represented litigants, and cause delays to allow time to complete filings.³⁰ Some clients may not be able to afford to hire a lawyer to represent them fully throughout the course of a case but might be able to afford to hire a lawyer to represent them in discrete parts of the case. The preparation of pleadings, motions, or other documents is one of those parts most amenable to

²³ Id. (emphasis added).

²⁴ Id.

²⁵ ABA Comm. on Ethics & Prof'l Responsibility, Informal Op. 1414 (1978).

²⁶ California, Florida, Kansas, Massachusetts, Missouri, Montana, New Hampshire.

²⁷ Colorado, Iowa, Nebraska, Maine, Washington, Wyoming.

²⁸ ABA Comm. on Ethics & Prof'l Responsibility, Formal Op. 446 (2007).

²⁹ Id.

³⁰ Limited Representation Committee of the California Commission on Access to Justice, Report on Limited Scope Legal Assistance with Initial Recommendations, 2 (October 2001).

limited scope representation. This limited legal assistance can benefit parties and the court by focusing the legal issues and more clearly stating the facts.

There is no specific supreme court rule or Wisconsin statute that prohibits a lawyer from assisting a self-represented litigant in the preparation of pleadings or documents to be filed with the court, without disclosing the lawyer's role. PPAC proposes that document preparation should be addressed in the rules of professional conduct and rules of civil procedure. Surveys of judges and lawyers confirm that ghostwriting is taking place in the legal community. The PPAC subcommittee reported that its survey indicated that ghostwriting was the most prevalent form of limited scope representation.³¹

The proposed rules require disclosure when a document is prepared with the assistance of a lawyer but does not require identification of the lawyer who provided assistance. Specifically, PPAC adds a new section to Supreme Court Rule 20:1.2 that requires that a pleading, brief or other document filed with the court includes a statement "This document was prepared with the assistance of a lawyer" where a lawyer has assisted in the preparation of the document. The proposed comment to this new section states this action shall not be deemed an appearance by the lawyer in the case.

In addition, a lawyer providing drafting assistance should be given guidance as to the lawyer's responsibilities, yet, in recognition of the lawyer's limited role, should be allowed to rely on the client's representations. To protect against abuse to the system, a lawyer must be obligated to make independent inquiry where the lawyer has reason to believe the client's representations are false. The proposed amendments to SCR 20:1.2(cm), Wis. Stat. § 802.05(2m), and SCR 20:3.1(am) provide the guidance needed by a lawyer providing drafting assistance. The proposed revision to SCR 20:3.1 allows a lawyer who provides "drafting assistance" to "rely on the client's representation of facts, unless the lawyer has reason to believe the representations are false, or materially insufficient, in which case the lawyer shall make an independent reasonable inquiry into the facts."³² The proposed rule is the same as the rule adopted in Montana and substantially similar to the rule adopted in Missouri.³³ Both jurisdictions have also adopted rules that permit a lawyer to draft documents for a self-represented person by disclosing the assistance

³¹ PPAC Subcommittee on Limited Scope Representation, Feasibility Study and Recommendations (August 2011), available at <http://wicourts.gov/courts/committees/docs/ppaclimitedscopereport.pdf>.

³² Proposed Wisconsin SCR 20:3.1(am).

³³ Montana R. Civ. P. 11(e); Missouri R. Civ. P. 55.03(c).

but not their identity. The Modest Means Task Force of the litigation section of the ABA recommended adoption of a rule that allows a lawyer who provides drafting assistance to an otherwise pro se litigant to rely on that person's representation of facts, unless the attorney has reason to believe that such representations are false or materially insufficient, in which instance the attorney should make an independent reasonable inquiry into the facts.³⁴

SCR 20:3.1 does not reduce a lawyer's obligation to provide competent representation, but makes clear the preparation for the legal matter is limited along with the scope of the representation. The new provision recognizes the lawyer's limited role, and, therefore, allows the lawyer to rely on the client's representations as well as protects against persons seeking to abuse the system. When a lawyer has reason to believe the client's representations are false, the lawyer then must make independent inquiry. A lawyer has an ethical responsibility to "provide competent representation to a client."³⁵ This mandate applies to all forms of representation, including limited scope representation. A limited scope representation agreement does not exempt a lawyer's duty to comply with ethical responsibilities. An agreement on the scope of representation may limit the matters for which the lawyer is responsible;³⁶ however, a lawyer must still possess the sufficient level of legal knowledge³⁷ and understanding of the facts³⁸ for a limitation on representation to be reasonable,³⁹ and must provide competent representation within the limits on the representation.⁴⁰

PPAC recommends that a lawyer should be able to rely upon the factual representation of the client unless the lawyer knows those facts are false. Colorado, Iowa, Missouri, Maine, and Washington courts have adopted similar rules that permit a lawyer to rely on the party's representation of facts in most situations.⁴¹ Limited scope representation would be supported by this elimination for a comprehensive factual investigation of factual claims. In addition, the court has recourse where non-meritorious claims are pursued because the self-represented

³⁴ ABA Handbook, *supra* note 20, at 145.

³⁵ Wis. SCR 20:1.1.

³⁶ ABA Model Rules of Prof'l Conduct R. 1.1 cmt. 5 (2002).

³⁷ ABA Model Rules of Prof'l Conduct R. 1.1 (2002).

³⁸ ABA Model Rules of Prof'l Conduct R. 1.1 cmt. 5 ("Competent handling of a particular matter includes *inquiry into and analysis of the factual and legal elements of the problem.*") (emphasis added).

³⁹ ABA Model Rules of Prof'l Conduct R. 1.1 and comments (2002); Timothy J. Pierce, *New Rules of Conduct for Limiting Representation*, 80 Wis. Law. 22, 23 (March 2007).

⁴⁰ See ABA Handbook, *supra* note 20, at 93; Pierce, *supra* note 5, at 23 (March 2007).

⁴¹ ABA Analysis, *supra* note 15, at 15-16.

litigant who files the lawyer drafted papers must certify their factual legitimacy and may be held accountable by the court.

IV. Forms

Proposed amendment to SCR 20:1.2(c)(5) states the Office of the Director of State Courts shall provide forms for the use in filing a notice of limited appearances and notice of termination of limited appearance. The proposed rule amendments governing the process of conducting limited scope representations set forth the necessary contents of the two forms. If the supreme court adopts these rule amendments, these criteria would assist the Wisconsin Court Records Management Committee in its development of the court forms.

PPAC has developed a sample form regarding consent to a limited scope representation. This 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. The form is a modified version of similar consent forms developed in Wyoming and Missouri and is attached in Appendix A of this memorandum.

V. Education

PPAC recommends training and educational seminars be developed and presented by the Wisconsin Court System Office of Judicial Education and the State Bar of Wisconsin regarding limited scope representation. Annual conferences or regular meetings of judges, commissioners, circuit court clerks, and state bar sections provide an opportunity to disseminate information about this form of representation and any rule amendments adopted by the supreme court. Educational resources including State Bar practice books and desk reference, judicial benchbooks, and other manuals or guides could be updated to include procedural guidelines and ethical rules governing limited scope representation. Informational brochures and materials could help heighten the public's awareness of limited scope representation. Other states have made these materials available online as well as in print.

PPAC proposes an effective date of January 1, 2015 for these amendments in order to allow adequate time for the Wisconsin Court Records Management Committee⁴² to develop the forms, for the State Bar and Wisconsin Courts Office of Judicial Education to organize continuing education and judicial training sessions, and for staffs of the State Bar and the courts to compile and distribute informational materials on limited scope representation.

VI. Conclusion

Limited scope representation is an effective means of expanding access to legal representation for self-represented litigants and promoting the effective administration of justice. The proposed rules support limited scope legal assistance, establish ground rules for appearances and withdrawals in limited scope representations, provide guidance to lawyers who appear in court for discrete proceedings, clarify obligations for service and communication between partially-represented litigants and opposing lawyers, allow lawyers to prepare pleadings for otherwise self-represented litigants without disclosing their identity, and authorize those lawyers to rely on the client's representations, unless the attorney has reason to believe the representations are false or materially insufficient.

⁴² This committee recommends guidelines for the retention of court records and necessary statutory or rule changes relating to records management. It devises new forms, reviews new and existing forms for their legal sufficiency, and establishes standards and guidelines for effective management of court records.

APPENDIX A

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: _____

Message Phone: _____ Name: _____

Email address: _____