

PPAC Subcommittee on Limited Scope Representation

Executive Summary

Phase I: Feasibility Study and Recommendations August 2011

**Planning and Policy Advisory Committee (PPAC)
of the
Wisconsin Supreme Court**

Limited scope representation allows clients and attorneys to enter into an agreement where the attorney does some work for a particular case but does not take on the entire case. Wisconsin Rule of Professional Conduct for Attorneys 20:1.2(c) authorizes limited scope representation. This is also called “unbundling of legal services” and “discrete task representation.” Typically limited scope representation occurs in one of three forms:

- The attorney provides advice to the client in an office setting;
- The attorney conducts some form of document preparation for the client (a brief, motion or perhaps financial information for the Marital Settlement Agreement); or
- The attorney provides limited representation of the client in a court proceeding.

Self-represented litigants have been identified as a top priority in the Planning and Policy Advisory Committee’s (PPAC) biennial report for the past four planning cycles (2004-06, 2006-08, 2008-10, and 2010-12). The court system has undertaken several initiatives in an effort to meet the legal services needs of self-represented litigants.

In 2010 PPAC created a subcommittee to focus on a limited scope representation initiative. Work of the subcommittee was split into two phases. In the first phase, the goal was to conduct a feasibility study to determine appropriate programming or initiatives for implementation in Wisconsin. Upon the completion of the feasibility study, phase two of the initiative would include detailed recommendations for implementing limited scope representation programming.

In Phase I the subcommittee’s responsibilities included all of the following:

- Identification of efforts currently underway both nationally and locally.
- Review of key elements in successful program models for potential replication in Wisconsin.
- Review of existing resources within Wisconsin to identify gaps or duplication of efforts.
- Identification of potential collaborations with the State Bar of Wisconsin, Wisconsin Access to Justice Commission, Milwaukee County, and the Tenth Judicial District Self-Represented Litigant Committee and how their efforts fit into the statewide strategy.

The subcommittee researched publications from the American Bar Association (ABA) and the State Bar of Wisconsin, the ABA Model Rules of Professional Conduct and procedural and ethics rules adopted in other states, and reports and program materials from court systems around the country. The subcommittee collaborated with the Appellate Procedure Committee of the Wisconsin Judicial Council, conducted surveys of circuit court judges, administrative law judges, and court commissioners about limited scope representation.

Forty one states have authorized limited scope representation through their attorney ethics rules. At least nineteen states have adopted additional rules addressing limited appearances and withdrawal, service, communication, and ghostwriting. Courts determined the amendments were necessary because existing procedural and ethics rules did not support limited scope representation and there was a need for more certainty in such representations.

The subcommittee recommends that PPAC initiate Phase II of this initiative by convening a subcommittee to implement recommendations of this feasibility study. This report proposes a subcommittee:

- Study and draft proposed amendments to the Rules of Civil and Appellate Procedure and Rules of Professional Conduct for Attorneys.
- Collaborate with justice system stakeholders to identify educational programs and training materials for judges, court staff, and lawyers.
- Create forms that support limited scope representation.
- Develop strategies for statewide implementation of limited scope representation.

Rules addressing limited scope representation

The subcommittee proposes the scope of limited representation under Wisconsin Supreme Court Rule 20:1.2(c) should be expanded.

Rules addressing limited appearances and withdrawal

The subcommittee recommends the drafting of rule amendments to require that a lawyer file a notice of limited appearance when providing limited assistance and a notice of withdrawal when the lawyer has completed the agreed upon representation.

Rules addressing filing and service

The subcommittee recommends the drafting of rule amendments to require notice to both the party and the lawyer during the period of limited scope representation.

Rules addressing communication between counsel and party

The subcommittee advises that rules should be proposed that provide guidance regarding whom the opposing lawyer should contact and serve in a limited scope representation situation.

Rules addressing ghostwriting

The subcommittee recommends the drafting of a ghostwriting rule that requires disclosure when a legal document is prepared with the assistance of a licensed lawyer but does not require identification of the lawyer who provided assistance.

Other Rules

The subcommittee proposes that limited scope representation can be incorporated into areas of family law, small claims, and guardianships. The subcommittee did not include the areas of juvenile, criminal, probate, and administrative law in the scope of this feasibility study.

Education

In determining the feasibility of a statewide implementation of limited scope representation, the subcommittee concluded that education and training are critical and recommends that any educational programming be researched by a collaborative group of justice system stakeholders.

Forms

The subcommittee proposes the development of forms including a notice of limited appearance, a notice of withdrawal of limited appearance, and an agreement of limited scope representation.