

# Limited Scope Representation in Alabama

*How to Expand Your Practice Using  
Alabama's New Limited Scope Representation  
Rules*

# The Rules At a Glance

- **Rule 1.1** Competence
- **Rule 1.2 (c)** Scope of Representation
- **Rule 4.2** Communication
- **Rule 4.3** Dealing with Unrepresented
- **Rule 11** Signing Pleadings, etc.
- **Rule 8.7** (new rule) Limited Scope

# Where to find rules...

- [http://www.alabar.org/media/03272012\\_LimitedScopeRepresentationRules.cfm](http://www.alabar.org/media/03272012_LimitedScopeRepresentationRules.cfm)
- This link includes text of rules, forms, checklists, sample client agreements, and risk management material.

# What is Limited Scope Representation?

A relationship between a lawyer and a client where the lawyer provides *some* but not *all* of the services traditionally associated with full-service practice.

# What Limited Scope Representation is NOT:

Limited Scope Representation does not alter an attorney's ethical obligations to the client. The limitation is simply as to the scope of work to be performed.

# Rule 1.1 Ala. R. Prof. Conduct

## Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation. **A lawyer and a client may agree, pursuant to Rule 1.2(c) to limit the scope of the representation, with respect to a matter. In such circumstances, competence means the knowledge, skill, thoroughness, and preparation reasonably necessary for such limited representation.**

# Is Limited Scope Representation New?

No. Many lawyers have been engaging in this practice for years.

But, the Alabama Supreme Court recently adopted new rules to clarify the Limited Scope Representation landscape. These new rules help protect lawyers and clients.

# Where did the new rule come from?

An Alabama State Bar Committee undertook to research LSR rules in other states and modify our existing rules.

The movement to change our rules started with the Alabama Access to Justice Commission in an attempt to increase opportunities to help indigent clients.

The Access to Justice Commission worked with LSR expert and pioneer Sue Talia.



# Limited Scope in Other States

- About 40 states have some form of LSR.
- LSR began in California around 20 years ago.
- Alabama had the benefit of learning from what has worked well in the other 40 states and creating what is widely considered to be the best set of LSR rules in the country.

# Why Limited Scope?

- Responds to economic demands of cost-conscious clients.
- Clients are increasingly turning to alternative methods for legal assistance.
- Most of the work done on a limited scope basis is work that would not otherwise be done by ANY attorney, so LSR fees are fees that no one is currently earning.
- Allows greater assistance to indigent clients.

# Percentage of Cases with Pro Se Litigants in 2009-2011

- Child Support: 49%
- Circuit Civil: 45%
- Domestic Relations: 50%
- District Civil: 77%
- Small Claims: 85%

## Rule 1.2(c) Alabama R. of Prof. Conduct

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances **and** the client gives informed consent.

(1) The client's informed consent **must** be confirmed in writing unless:

# Rule 1.2 (c) continued

The representation of the client consists solely of telephone consultation;

- the representation is provided by a lawyer employed by a non-profit legal services program or participating in a pro bono program approved by the Alabama State Bar pursuant to Rule 6.6 **and** the lawyer's representation consists solely of providing information and advice or the preparation of legal documents; or
- the court appoints the attorney for a limited purpose that is set forth in the appointment order.

# Rule 1.2(c)

(2) If the client gives informed consent in writing signed by the client, there shall be a presumption that:

(i) the representation is limited to the attorney and the services described in the writing; and

(ii) the attorney does not represent the client generally or in matters other than those identified in the writing.

# Rule 4.2 Communication with Person Represented by Counsel

- (a) In representing a client, a lawyer shall not communicate about the subject of the representation with a party the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so.
  
- (b) A person to whom limited-scope representation is being provided or has been provided in accordance with Rule 1.2(c) is considered to be unrepresented for purposes of this rule **unless** the opposing lawyer has been provided with a written notice of the limited-scope representation. If such notice is provided, the opposing lawyer shall not communicate with the person regarding matters designated in the notice of limited-scope representation without consent or authorization as provided by Rule 4.2(a).

# Rule 11. Signing of Pleadings, Motions & Other Papers

- (b) Limited-scope representation: An attorney may draft or help to draft a pleading, motion, or other paper filed by an otherwise self-represented person. The attorney need not sign that pleading....but **shall include** a notation at the end stating:



# Rule 11 “Magic Language”

*“This document was prepared with the assistance of a licensed Alabama lawyer pursuant to Rule 1.2(c), Alabama Rules of Professional Conduct.”*

# Ala. R. of Civ. Proc. 87 (a) Limited-Scope Representation

## Permitted

In accordance with Rule 1.2(c) of the Alabama Rules of Professional Conduct, an attorney may provide limited-scope representation to a person involved in a court proceeding.

# Ala. R. of Civ. Proc. 87

## Limited-Scope Representation

### Notice

(b) If specifically so stated in a notice of limited-scope representation **and** served prior to or simultaneously with the initiation of a proceeding, an attorney's role may be limited as set forth in the notice.

# Ala. R. of Civ. Proc. 87 (c) Limited-Scope Representation

## Termination

The attorney's role terminates **without the necessity of leave of court** upon the attorney's filing a notice of completion of limited-scope representation with a certification of service on the client.

# Ala. R. of Civ. Proc. 87 (d) Limited-Scope Representation

## Service

Service on an attorney providing limited-scope representation is required only for matters within the scope of the representation as set forth in the notice.

# Best Practices:

## Deciding whether to take the case

- Work within your expertise.
- Don't be unduly pressured by emergencies.
- Be wary of clients who have already had several previous lawyers.
- Be careful of clients with unrealistic expectations.
- Clients with limited capacity or language barriers *may* not be good candidates.
- Identify those with hidden motives.
- Be sure the limited scope is reasonable.
- Develop and use an intake form.
- Advise client of right to seek advice on issues *outside* the scope of the limited scope arrangement.

# Best Practices:

## After you take the case

- Use checklists
- Use a clear fee agreement detailing the scope.
- Document all decisions.
- Memorialize any changes in scope of LSR as they occur. Do not do any work outside scope without new agreement.
- Use prepared handouts to explain LSR.
- File Notice of Limited Scope with court if you make an appearance.

# Best Practices: Ending the Relationship

- Let the client know in writing when the relationship has ended.
- If you have entered an appearance, serve and file a Notice of Completion.