



Limited Scope Representation

METHODS FOR ETHICAL LIMITATION OF SCOPE

The Scope of Legal Representations

- ▶ Almost all legal representations are limited in some way.
- ▶ Every time a lawyer agrees to represent a client in a divorce case and does not represent the client in an eviction case, that is a limitation on scope of representation.
- ▶ Legal representations can be limited in scope to both the horizontal axis (what substantive legal matter the lawyer will handle) and the vertical axis (what steps the lawyer will take for the client).
- ▶ A limited scope representation can be limited in either or both dimensions.

Two Essential Requirements

- ▶ The limitation on scope must be reasonable.
- ▶ The client must give informed consent.
- ▶ What is informed consent?
 - ▶ It is an agreement made after the lawyer has communicated adequate information, an explanation of pros and cons, and reasonable alternatives before the client makes a decision. See Prof. Cond. R. 1.0(e).

Unreasonable Limitations

- ▶ Examples:
 - ▶ Limits that placing responsibility on the client to take actions the client cannot be expected to adequately perform.
 - ▶ Charging for a consultation that is so brief the client cannot be reasonably expected to make effective use of the information.
 - ▶ Acting behind the scenes and ghost-writing all papers in a litigation without entering an appearance.

The Engagement Agreement: The Key Document

- ▶ Must be written in a way that is calibrated to the sophistication of the client.
- ▶ Avoid words like “calibrated” and “sophistication.”
- ▶ The agreement should describe the limited scope in terms of both the steps the lawyer will and will not take (e.g., negotiation, not litigation) and the legal matters the lawyer will handle (e.g., defending an eviction, not suing for damages for housing conditions.)

Engagement Agreement Coverage

- ▶ Identify when lawyer's responsibilities begin.
- ▶ Identify when lawyer's responsibilities end.
- ▶ Identify what the lawyer will or will not do in between.
- ▶ Discuss the comparative advantages and disadvantages to full service representation.
- ▶ E.g., Advantages of limited scope include making the representation affordable; disadvantages of limited scope include not taking full advantage of the lawyer's skill and knowledge.

Additional Matters

- ▶ The client should sign the engagement letter to document informed consent.
- ▶ When the representation is concluded (especially in limited scope matters), the lawyer should send a disengagement letter.
- ▶ This cuts off a current A-C relationship for professional liability purposes. It starts the statute of limitations running.
- ▶ For conflict-of-interest purposes the client becomes a former client (Rule 1.9, not 1.7 applies).

Questions?



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