Limited Representation Revisited

In a previous article, we discussed the ethical considerations concerning what is known as “limited representation”—the providing of legal services by a lawyer to a client for a specific set of tasks, outside of which the client is on his own. This includes what is commonly known as “ghost writing” of pleadings for people who want to appear in court pro se. Since that article was written, several things have happened:

1. The concept of “unbundling” of legal services has become more widely understood and used by the legal profession.
2. Certain practices involving limited representation have been more widely questioned.
3. Arizona’s ethical rules have been amended and will now affect every lawyer who attempts to undertake a limited representation for a client.

First, you should understand that the unbundling of legal services and the providing of limited representation for a given client is ethically permissible in Arizona. The new ER 1.2(c), like the former version, specifically allows lawyers to limit the scope of their representation. Though the new rule now specifically states that the limitation must be “reasonable under the circumstances” and that the client must give informed consent, these are requirements that existed under the prior rule by implication.

What has really changed is the requirement set forth in new ER 1.5(b) that requires the scope of the representation, limited or otherwise, to be set forth and communicated to the client in writing.

The practical effect of the new changes concerning limited representation is that the limits that you place on the scope of what you undertake to do for your client and upon which he has given his “informed consent” will be there in a written fee agreement for all to see should there be a disagreement later about what you were supposed to do. In view of this, it is probably a good idea to be as specific as possible about what you are going to do for the client and what you are not going to do for the client, and the fees you are going to charge accordingly.

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endnotes

2. The State of Washington is in the process of amending both its ethical rules and its rules of civil procedure to provide for limited lawyer involvement in the litigation process. See McCauley, Unbundling Legal Services: The Ethics of Ghost Writing Pleadings for Pro Se Litigants, 2004 Symposium issue of THE PROFESSIONAL LAWYER, at 59 et seq.
3. Some courts have held that ghost writing of pleadings can in certain circumstances be a fraud on the court. See the cases collected in McCauley, id.
5. Rule 42, ARIZ. R.S.C. RT.
6. See note 4, Opinion 05-06, supra.
7. ER 1.5(b) provides that the scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client in writing, before or within a reasonable time after commencing the representation.