



## Limited Representation Revisited

In a previous article,<sup>1</sup> 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.<sup>2</sup>
2. Certain practices involving limited representation have been more widely questioned.<sup>3</sup>
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.<sup>4</sup> The new ER 1.2(c),<sup>5</sup> 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.<sup>6</sup>

What has really changed is the requirement set forth in new ER 1.5(b)<sup>7</sup> 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.

Remember, limited representation does not mean limited liability. Lawyers will still be charged with the same degree of competence, diligence and communication expected of them, just as though they had not limited their representation at all. This means that, in order to assure yourself that the limitation is reasonable under the circumstances, you need to understand the client’s entire case and to explain to the client any and all dangers to the client in not having a lawyer represent him in

all of the aspects concerning his case. You are still responsible for counseling the client about the advisability of the actions that the client contemplates taking on his or her own behalf.

Unbundling of legal services has been heralded as a means by which more people will be able to afford legal services. Unbundling comes with certain dangers for the lawyers involved, most of which can be avoided with a written fee agreement specifying the tasks to be undertaken for a client who has also had the dangers of limited representation fully and clearly explained to him. [AZ](#)

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### endnotes

1. *Uncovering Opportunities by Unbundling Services* (Eye on Ethics column), ARIZ. ATT’Y, Feb. 2003, at 10.
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.*
4. Op. No. 05-06 (July 2005), Committee on the Rules of Professional Conduct, State Bar of Arizona.
5. Rule 42, ARIZ.R.S.C.T.
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.

**Ethics Opinions can be found on page 42. Opinions and the Rules of Professional Conduct are available at [www.myazbar.org/Ethics](http://www.myazbar.org/Ethics)**



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