

Considering Limited Scope Representation? Don't Play Fast and Loose with the RPCs.

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Let's review the basics. ABA Model Rule 1.2 (c) allows a lawyer to limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent. In those jurisdictions that have adopted similar language, many have added a requirement that informed consent be confirmed in writing. As an aside, I like that writing requirement regardless because documentation is a good thing. There are just too many word against word disputes in the world of malpractice and discipline.

Speaking personally, I'm one who believes that the evolution of limited scope representation has been a good thing and long overdue. Speaking professionally, however, I need to share a caution. While the rules of professional conduct now allow you to limit your scope of representation, this doesn't mean you have permission to do so in whatever fashion you desire. All of the other Rules of Professional Conduct remain in play and that's important to remember. Yes, you may limit your scope; but doing so doesn't exempt you from your duty to provide competent representation under ABA Model Rule 1.1 Competence. For example, estate planners will sometimes limit their scope. Perhaps a client just wants to pay to have a trust setup and the client will take care of funding it. After all, it's a way to save a little cash. But what if the client doesn't follow through? That's what concerns me.

Here's a story that further underscores the problem. Several lawyers each individually came up with a limited scope business model and they all happened to practice in the bankruptcy arena. Interestingly enough, these guys each decided they would limit their scope to helping clients fill out and file the appropriate paperwork, at which point each would take their leave. In time, various bankruptcy judges had had enough. The long and short of it was this. The clients who had received the limited scope service were woefully unprepared to move through the process and were being harmed as a result. The judges apparently felt they had no alternative other than to put a stop to what these attorneys were doing.

When I think about the language found in our Rules, I can appreciate how the phrase "reasonable under the circumstances" anticipates there may be times where limiting your scope rather significantly may be entirely appropriate. However, even in those rare situations, the duty to provide competent representation remains in effect. Here's what I'm getting at. A lawyer may limit scope of representation; but that doesn't mean the lawyer can skip making certain the client is fully informed. You are the lawyer in the relationship and you have knowledge that the limited scope client does not. Knowledge that the client often must know in order to make informed decisions about how to proceed post your involvement.

For instance, thinking again about estate planning, a lawyer may limit scope to preparing documents, but when doing so the client should still be informed of the legal consequences if the funding never occurs or isn't done correctly. By the same token, the

mistake the bankruptcy guys made was in not informing their clients about the process that was to come. At a minimum, those clients should have been made aware of the importance of the creditors meeting and perhaps instructed as to the basics of how to prepare for that.

Finally, let's pull ABA Model Rule 1.4 Communication into this discussion. How can a limited scope client make informed decisions about their legal matter, even one as simple as should I try to find a way to hire you or another attorney to go a bit further, if they have no idea about the legal ramifications of their messing something up down the road? You have the law degree. You know what's coming and often times many limited scope clients haven't a clue. What they do have is a very real legal issue and limited funds to deal with it. Limited scope representation may be their only hope.

If and when the opportunity to provide limited scope representation arises, feel free to jump in. Just know that once you agree to go down this road, Rule 1.1 Competence and Rule 1.4 Communication will be in play. Limiting your role is fine as long as you make certain to not similarly limit your advice. And because that's where potential trouble lies, as I shared at the beginning of this article, whatever advice you do end up giving, making sure that advice is always confirmed in writing would be a really good idea.