

**ETHICS OPINION NUMBER 261  
OF THE MISSISSIPPI BAR  
RENDERED JUNE 21, 2018**

The Ethics Committee has asked to respond to two questions:

- (1) Is it ethical for a lawyer to prepare documents for *pro se* litigants?
- (2) If the answer to question 1 is yes, is the preparing lawyer required to disclose either the name of the preparer or that the document was prepared by a lawyer?

**APPLICABLE RULES**

Rules 1.2 and 8.4(c) of Professional Conduct are applicable to this opinion. The relevant portion of these Rules provide:

Rule 1.2 Scope of Representation

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

Comment

Services Limited in Objectives or Means. The objectives or scope of services provided by a lawyer may be limited by agreement with the client or by the terms under which the lawyer's services are made available to the client. For example, a retainer may be for a specifically defined purpose. Representation provided through a legal aid agency may be subject to limitations on the types of cases the agency handles. When a lawyer has been retained by an insurer to represent an insured, the representation may be limited to matters related to the insurance coverage.

A limited representation may be appropriate because the client has limited objectives for the representation. In addition, the terms upon which representation is undertaken may exclude specific means that might otherwise be used to accomplish the client's objectives. Such limitations may exclude actions that the client thinks are too costly or that the lawyer regards as repugnant or imprudent.

Limited scope representation is an important means of providing access to justice for all persons regardless of financial resources. Lawyers are encouraged to offer limited services when appropriate, particularly when

a client's financial resources are insufficient to secure full scope of services. For example, lawyers may provide counsel and advice and may draft letters or pleadings. Lawyers may assist clients in preparation for litigation with or without appearing as counsel of record. Within litigation, lawyers may limit representation to attend a hearing on a discrete matter, such as a deposition or hearing, or to a specific issue in litigation.

Although this Rule affords the lawyer and client substantial latitude to limit the representation, the limitation must be reasonable under the circumstances. If, for example, a client's objective is limited to securing general information about the law the client needs in order to handle a common and typically uncomplicated legal problem, the lawyer and client may agree that the lawyer's services will be limited to a brief telephone consultation. Such a limitation, however, would not be reasonable if the time allotted was not sufficient to yield advice upon which the client could rely. Although an agreement for a limited representation does not exempt a lawyer from the duty to provide competent representation, the limitation is a factor to be considered when determining the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. See Rule 1.1

And,

Rule 8.4 Misconduct

It is professional misconduct for a lawyer to:

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

## ANALYSIS

### **(1) Is it ethical for lawyers to limit the scope of their representation to discrete aspects of a matter?**

Yes. The 2011 amendments to the comments to Rule 1.2, set out above, expressly provide that a lawyer may provide limited scope representation on behalf of a client. Such limits can involve merely drafting a document or advising a client on how to proceed in a matter without undertaking a full representation. This is commonly referred to as unbundled legal services. It is important for lawyers to remember two important aspects of this type of limited scope representation. First, is that the lawyer does represent the client to the extent of the limited scope representation, and the full

panoply of ethical obligations (including the obligation of confidentiality under Rule 1.6) apply to the representation. Second, a lawyer's ethical obligations under Rule 1.4 require that the lawyer ensure that the client fully understands what it means to limit the scope of representation to discrete aspects of the representation and the consequences of the limited representation. For example, if the lawyer only drafts a motion for summary judgment but does not appear at the hearing, the client will have to present the motion and respond to questions from the court that the client may be unable to answer.

**(2) If the answer to question 1 is yes, is the preparing lawyer required to disclose either the name of the preparer or that the document was prepared by a lawyer?**

No. The issue is whether a lawyer who has prepared a document to be filed with the court, but who does not enter a general appearance, must indicate on the document either the lawyer's name or that the document was prepared by a lawyer. Some federal courts and some ethics opinions have found the lawyer's failure to disclose his/her involvement to be misleading or dishonest to the court in violation of Rule 8.4(c).<sup>1</sup> The deception here is that the tribunal or opposing counsel could believe that the party has received no professional help at all, when in reality a lawyer has provided some assistance. As a result of this failure to disclose the client may receive more lenient treatment by a court who believes the party is proceeding pro se – unaware of the limited representation provided.

While sensitive to these concerns, the Committee does not believe that a lawyer's undisclosed limited representation is a deception as contemplated by Rule 8.4(c). A court presented with a lawyer-drafted document and a pro se litigant appearing to defend or argue that document, would be aware of the nature of a lawyer's involvement. If not, the court can always inquire from the litigant whether a lawyer assisted in preparing the document. The unlikely event that a court will be misled into providing leniency to a pro se litigant under these circumstances does not outweigh the strong public policy set out in the Comment to Rule 1.2, encouraging lawyers to provide limited scope representation without having to enter an appearance. The Committee is concerned that lawyers will be dissuaded from providing limited representation if required to disclose their involvement.

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<sup>1</sup> N.Y. Bar Assoc. Op. 1987-2 (1987); Kentucky Ethics Op. KBA E-343 (Jan. 1991); *Auto Parts Mfg. Mississippi, Inc. v. King Const. of Houston, LLC*, 2014 WL 1217766, \*7 (N.D. Miss. 2014) (“[T]he Court cautions that an attorney who ghostwrites motion briefs and pleadings is acting unethically and is subject to sanctions”).

There are two additional points to make about this opinion. The first is that a lawyer cannot utilize the limited scope representation to actively and substantially participate in a matter without disclosure. This opinion contemplates that the lawyer is performing discrete aspects of representation. On-going representation of a client without disclosure would be misleading and a violation of Rule 8.4(c). Second, this opinion is based solely on the Rules of Professional Conduct and a lawyer's ethical obligation and does not address any questions of law.