

# WHAT YOU NEED TO KNOW ABOUT LIMITED SCOPE REPRESENTATION

## RULES HANDOUT

### **Colorado Rules of Civil Procedure Rule 11(b)**

Limited Representation. An attorney may undertake to provide limited representation in accordance with Colo. RPC 1.2 to a pro se party involved in a court proceeding.

Pleadings or papers filed by the pro se party that were prepared with the drafting assistance of the attorney shall include the attorney's name, address, telephone number and registration number.

The attorney shall advise the pro se party that such pleading or other paper must contain this statement.

In helping to draft the pleading or paper filed by the pro se party, the attorney certifies that, to the best of the attorney's knowledge, information and belief, this pleading or paper is:

- (1) Well-grounded in fact based upon a reasonable inquiry of the pro se party by the attorney,
- (2) Is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law, and
- (3) Is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

The attorney in providing such drafting assistance may rely on the pro se party's representation of facts, unless the attorney has reason to believe that such representations are false or materially insufficient, in which instance the attorney shall make an independent reasonable inquiry into the facts.

Assistance by an attorney to a pro se party in filling out pre-printed and electronically published forms that are issued through the judicial branch for use in court are not subject to the certification and attorney name disclosure requirements of this Rule 11(b).

Limited representation of a pro se party under this Rule 11(b) shall not constitute an entry of appearance by the attorney for purposes of C.R.C.P. 121, section 1-1 or C.R.C.P. 5(b), and does not authorize or require the service of papers upon the attorney.

Representation of the pro se party by the attorney at any proceeding before a judge, magistrate, or other judicial officer on behalf of the pro se party constitutes an entry of an appearance pursuant to C.R.C.P. 121, section 1-1. The attorney's violation of this Rule 11(b) may subject the attorney to the sanctions provided in C.R.C.P. 11(a).

### **Colorado Rules of County Court Civil Procedure Rule 311(b)**

Limited representation. An attorney may undertake to provide limited representation in accordance with Colo. RPC 1.2 to a pro se party involved in a court proceeding.

Pleadings or papers filed by the pro se party that were prepared with the drafting assistance of the attorney shall include the attorney's name, address, telephone number and registration number.

The attorney shall advise the pro se party that such pleading or other paper must contain this statement. In helping to draft the pleading or paper filed by the pro se party, the attorney certifies that to the best of the attorney's knowledge, information and belief, this pleading or paper is:

- (1) Well-grounded in fact based upon a reasonable inquiry of the pro se party by the attorney,
- (2) Is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law, and
- (3) Is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

The attorney in providing such drafting assistance may rely on the pro se party's representation of facts, unless the attorney has reason to believe that such representations are false or materially insufficient, in which instance the attorney shall make an independent reasonable inquiry into the facts. Assistance by an attorney to a pro se party in filling out pre-printed and electronically published forms that are issued through the judicial branch for use in court are not subject to the certification and attorney name disclosure requirements of this Rule 311(b).

Limited representation of a pro se party under this Rule 311(b) shall not constitute an entry of appearance by the attorney for purposes of C.R.C.P. 121, section 1-1 or C.R.C.P. 305, and does not authorize or require the service of papers upon the attorney. Representation of the pro se party by the attorney at any proceeding before a judge, magistrate, or other judicial officer on behalf of the pro se party constitutes an entry of an

appearance pursuant to C.R.C.P. 121, section 1-1. The attorney's violation of this Rule 311(b) may subject the attorney to the sanctions provided in C.R.C.P. 311(a).

### **Colorado Rules of Civil Procedure 121 § 1-1(5):**

In accordance with C.R.C.P. 11(b) and C.R.C.P. Rule 311(b), an attorney may undertake to provide limited representation to a pro se party involved in a court proceeding. Upon the request and with the consent of a pro se party, an attorney may make a limited appearance for the pro se party in one or more specified proceedings, if the attorney files and serves with the court and the other parties and attorneys (if any) a notice of the limited appearance prior to or simultaneous with the proceeding(s) for which the attorney appears. At the conclusion of such proceeding(s), the attorney's appearance terminates without the necessity of leave of court, upon the attorney filing a notice of completion of limited appearance. Service on an attorney who makes a limited appearance for a party shall be valid only in connection with the specific proceeding(s) for which the attorney appears.

### **Colorado Appellate Rules 5(e) and (f)**

(e) Notice of Limited Representation Entry of Appearance and Withdrawal. An attorney may undertake to provide limited representation to a pro se party involved in a civil appellate proceeding. Upon the request and with the consent of a pro se party, an attorney may make a limited appearance for the pro se party to file a notice of appeal and designation of record in the court of appeals or the supreme court, to file or oppose a petition or cross-petition for a writ of certiorari in the supreme court, to respond to an order to show cause issued by the supreme court or the court of appeals, or to participate in one or more specified motion proceedings in either court, if the attorney files and serves with the court and the other parties and attorneys (if any) a notice of the limited appearance prior to or simultaneous with the proceeding(s) for which the attorney appears. At the conclusion of such proceeding(s), the attorney's appearance terminates without the necessity of leave of court, upon the attorney filing a notice of completion of limited appearance in the appellate court in which the attorney appeared, a copy of which may be filed in any other court, except that an attorney filing a notice of appeal or petition or cross-petition for writ of certiorari is obligated, absent leave of court, to respond to any issues regarding the appellate court's jurisdiction. Service on an attorney who makes a limited appearance for a party shall be valid only in connection with the specific proceedings(s) for which the attorney appears. The provisions of this C.A.R. 5(e) shall not apply to an attorney who has filed an opening or answer brief pursuant to C.A.R. 31.

(f) Termination of Representation. When an attorney has entered an appearance, other than a limited appearance pursuant to C.A.R. 5(e), on behalf of a party in an appellate court without having previously represented that party in the matter in any other court, the attorney's representation of the party shall terminate at the conclusion of the proceedings in the appellate court in which the attorney has appeared, unless otherwise

directed by the appellate court or agreed to by the attorney and the party represented. Counsel may file a notice of such termination of representation in any other court.

### **Colorado Rules of Professional Conduct 1.0(b), (e), (h), (n) and Comment 1**

(b) "Confirmed in writing," when used in reference to the informed consent of a person, denotes informed consent that is given in writing by the person or a writing that a lawyer promptly transmits to the person confirming an oral informed consent. See paragraph (e) for the definition of "informed consent." If it is not feasible to obtain or transmit the writing at the time the person gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter.

(e) "Informed consent" denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct.

(h) "Reasonable" or "reasonably" when used in relation to conduct by a lawyer denotes the conduct of a reasonably prudent and competent lawyer.

(n) "Writing" or "written" denotes a tangible or electronic record of a communication or representation, including handwriting, typewriting, printing, photostating, photography, audio or videorecording and e-mail. A "signed" writing includes an electronic sound, symbol or process attached to or logically associated with a writing and executed or adopted by a person with the intent to sign the writing.

**COMMENT [1]** If it is not feasible to obtain or transmit a written confirmation at the time the client gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter. If a lawyer has obtained a client's informed consent, the lawyer may act in reliance on that consent so long as it is confirmed in writing within a reasonable time thereafter.

### **Colorado Rules of Professional Conduct 1.1**

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

### **Colorado Rules of Professional Conduct 1.2(c) and Comment 7**

A lawyer may limit the scope or objectives, or both, of the representation if the limitation is reasonable under the circumstances and the client gives informed consent. A lawyer may provide limited representation to pro se parties as permitted by C.R.C.P. 11(b) and C.R.C.P. 311(b).

**COMMENT [7]** 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.

### **Colorado Rules of Professional Conduct 1.5(b)**

When the lawyer has not regularly represented the client, the basis or rate of the fee and expenses shall be communicated to the client, in writing, before or within a reasonable time after commencing the representation. Any changes in the basis or rate of the fee or expenses shall also be promptly communicated to the client, in writing.

### **Colorado Rules of Professional Conduct 1.5(b) Effective January 1, 2022**

Before or within a reasonable time after commencing the representation, the lawyer shall communicate to the client in writing:

- (1) the basis or rate of the fee and expenses for which the client will be responsible, except when the lawyer will continue to charge a regularly represented client on the same basis or rate; and
- (2) the scope of the representation, except when the lawyer will perform services that are of the same general kind as previously rendered to a regularly represented client.

The lawyer shall communicate promptly to the client in writing any changes in the basis or rate of the fee or expenses.

### **Colorado Rules of Professional Conduct 1.7**

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

- (1) the representation of one client will be directly adverse to another client; or
- (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

(2) the representation is not prohibited by law;

(3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and

(4) each affected client gives informed consent, confirmed in writing.