

**DRAFT**

BOARD OF PROFESSIONAL RESPONSIBILITY  
OF THE  
SUPREME COURT OF TENNESSEE

**FORMAL ETHICS OPINION 2024-F-172**

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The Board of Professional Responsibility has been requested to issue a Formal Ethics Opinion regarding the following questions regarding limited scope legal services for family law provided by a private attorney:

1. For a pro se litigant in a family law matter, wherein the pro se litigant (my client) and I have a written agreement that I will not appear in court, do I have to enter/file a Notice of Appearance or a Limited Notice of Appearance, if the extent of my involvement is to answer my client's questions about the process and provide advice, including helping the client prepare for court?
  2. For a pro se litigant in a family law matter, where the pro se litigant (my client) and I have a written agreement that I will not appear in court, do I have to enter/file a Notice of Appearance or a Limited Notice of Appearance, if my client has drafted his/her own court documents, and the extent of my involvement has been to help him/her by suggesting wording, corrections, additions and/or deletions to their own drafted court documents?
  3. For a pro se litigant in a family law matter, where the pro se litigant (my client) and I have a written agreement that I will not appear in court, do I have to enter/file a Notice of Appearance or a Limited Notice of Appearance, if I drafted my client's court documents.
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**OPINION**

Attorneys may engage in limited scope representation so long as it is reasonable under the circumstances and the client gives informed consent preferably in writing. Attorneys must follow the Tennessee Rules of Civil Procedure, specifically Rule 11.01(b) and (c) regarding disclosure of such limited scope representation, in cases before a tribunal.

**DISCUSSION**

“Litigants appearing before a tribunal “pro se” (representing themselves, without counsel) sometimes engage lawyers to help them in drafting or reviewing documents to be submitted in the proceeding. This is a form of “unbundling” of legal services, whereby a lawyer performs only

specific, limited tasks instead of handling all aspects of a matter.”<sup>1</sup> “Although limited scope representation is not restricted to low-income clients or small claims matters, the ABA Ethics 2000 Commission explained that the proposed amendments to Model Rule 1.2(c) and its Comments regarding limited-scope representations were in part ‘intended to provide a framework within which lawyers may expand access to legal services by providing limited but nonetheless valuable legal services to low- or moderate-income persons who otherwise would be unable to obtain counsel.’”<sup>2</sup>

Limited scope representation is ethical in Tennessee and is specifically addressed in Tennessee Rules of Professional Conduct 1.2(c) which is essentially the same as the Model Rule 1.2(c) and says, “A Lawyer may limit the scope of representation if the limitation is reasonable under the circumstances and the client gives informed consent, preferably in writing.”

Informed consent is defined in Tennessee Rule of Professional Conduct 1.0 (e) as “the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks or and reasonably available alternatives to the proposed course of conduct.”

“The Colorado Bar Association advised in Formal Ethics Opinion 101 that a lawyer providing limited-scope services to a client should clearly explain the limitations of the representation, including the types of services which are not being provided and the probable effect of limited representation on the client’s rights and interests.”<sup>3</sup> The D.C. Bar Legal Ethics Committee advised in its Opinion 330 (2005) that the client’s understanding of the scope of the services is fundamental to a limited-scope representation.” Opinion 330 sets out “Because the tasks excluded from a limited services agreement will typically fall to the client to perform or not get done at all, it is essential that clients clearly understand the division of responsibilities under a limited representation agreement...Particularly in the context of limited representation agreements, however, a writing clearly explaining what is and is not encompassed within the agreement to provided services will be helpful in ensuring the parties’ mutual understanding.”<sup>4</sup>

State and local ethics committees have reached different views on whether or not an attorney engaged in the limited scope representation is required to disclose the fact or the extent of such assistance to the tribunal or adverse parties.<sup>5</sup> Some have opined that no disclosure is required.<sup>6</sup>

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<sup>1</sup> ABA Formal Opinion 07-446, May 8, 2007.

<sup>2</sup> ABA Formal Opinion 472, November 30, 2015, citing A LEGISLATIVE HISTORY: THE DEVELOPMENT OF THE ABA RULES OF PROFESSIONAL CONDUCT, 1982-2013, at 59 (Art Garwin ed., 2013).

<sup>3</sup> ABA Formal Opinion 472, November 30, 2015, citing Colorado Bar Association Formal Op. 101 (1998 rev. by addendum 2006).

<sup>4</sup> ABA Formal Opinion 472, November 30, 2015, citing D.C. Bar Op. (2005).

<sup>5</sup> ABA Formal Opinion 07-446, May 8, 2007.

<sup>6</sup> ABA Formal Opinion 07-446, May 8, 2007, citing Arizona Eth. Op. 06-03 (July 2006); Illinois State Bar Association Op. 849 (Dec. 9, 1983); Maine State Bar Eth. Op. 89 (Aug. 31, 1988); Virginia Legal Eth. Op. 1761 (Jan.6, 2002) (Providing Forms to Pro Se litigants); Virginia Legal Eth. Op. 1592 (Sept. 14, 1994) (Conflict of Interest: Multiple Representation; Contact with Adverse Party; Representation of Insurance Carrier Against Pro Se Uninsured Motorist; Los Angeles County Bar Association Eth. Op. 483 (Mar.20, 1995) (Limited Representation of In Pro Se Litigants). But see Alaska Eth. Op. 93-1 (March 19, 1993) (Preparation of a Clinet’s Legal Pleadings in a Civil Action Without Filing an Entry of Appearance) (lawyer’s assistance must be disclosed unless the lawyer merely helped client fill out forms

Other jurisdictions have expressed the view that the identity of the lawyer providing assistance must be disclosed on the theory that failure to do so would both be misleading to the court and adversary counsel, and would allow the lawyer to evade responsibility for frivolous litigation under applicable court rules.<sup>7</sup>

Limited scope representation is specifically addressed in Rule 11.01(b) of the Tennessee Rules of Civil Procedure, which says “An attorney providing limited scope representation to an otherwise unrepresented party shall file at the beginning of the representation an initial notice of limited scope representation with the court, simply stating that the representation is subject to a written limited scope representation agreement, without disclosing the terms of the agreement.”

Tennessee has made clear through its Rules of Civil Procedure that disclosure of limited scope representation must be made to the tribunal.

The following questions were asked by the attorney requesting the formal ethics opinion:

1. For a pro se litigant in a family law matter, wherein the pro se litigant (my client) and I have a written agreement that I will not appear in court, do I have to enter/file a Notice of Appearance or a Limited Notice of Appearance, if the extent of my involvement is to answer my client's questions about the process and provide advice, including helping the client prepare for court?

Tennessee Rule of Civil Procedure 11.01(b) requires “An attorney providing limited scope representation to an otherwise unrepresented party shall file at the beginning of the representation an initial notice of limited scope representation with the court, simply stating that the representation is subject to a written limited scope representation agreement, without disclosing the terms of the agreement.” Therefore, lawyers who are representing a pro se client on a limited scope basis must file notice of that limited scope representation with the court. This rule does not require the lawyer to disclose the terms of the limited scope representation agreement.

2. For a pro se litigant in a family law matter, where the pro se litigant (my client) and I have a written agreement that I will not appear in court, do I have to enter/file a Notice of Appearance or a Limited Notice of Appearance, if my client has drafted his/her own court documents, and the extent of my involvement has been to help him/her by suggesting wording, corrections, additions and/or deletions to their own drafted court documents?

The answer here remains the same as for question 1. Regardless of the extent of the limited scope representation before a tribunal, a lawyer must file a notice of limited scope representation at the beginning of such limited scope representation under Tennessee Rule of Civil Procedure 11.01(b).

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designed for pro se litigants); Virginia Legal Eth. Op. 1127 (Nov. 21, 1988) (Attorney-client Relationship-Pro Se Litigant: Rendering Legal Advice) (failure to disclose that lawyer provided active or substantial assistance, including the drafting of pleadings, may be misrepresentation).

<sup>7</sup> ABA Formal Opinion 07-446, May 8, 2007.

3. For a pro se litigant in a family law matter, where the pro se litigant (my client) and I have a written agreement that I will not appear in court, do I have to enter/file a Notice of Appearance or a Limited Notice of Appearance, if I drafted my client's court documents.

Regardless of the type of limited scope representation, in a matter before a tribunal, that the lawyer provides to the client, the lawyer is required to file an initial notice of limited scope representation with the court at the beginning of the limited scope representation under Tennessee Rule of Civil Procedure 11.01(b).

The Tennessee Supreme Court through its Rule of Civil Procedure 11.01(c) has addressed the issue of disclosure of the extent of limited scope representation.

“In addition to the initial notice of limited scope representation, when provided notice by another party, attorney or the court of a motion, pleading, discovery, hearing or other proceeding that is outside the scope of the services provided pursuant to the limited scope representation agreement, an attorney shall promptly file a notice of limited appearance that the attorney does not represent the otherwise unrepresented party for the purposes of the motion, pleading, discovery, hearing or other proceeding. The notice of limited scope appearance shall simply state that the limited scope representation does not include representation for the purposes of the motion, pleading, discovery, hearing or other proceeding noticed and shall not otherwise disclose the terms of the limited scope representation agreement. The notice of limited appearance shall provide the otherwise unrepresented client with the deadline(s), if any, for responding to the motion, pleading, discovery, hearing or other proceeding and shall state the date, place and time of any hearing or other proceeding. If an initial notice of limited scope representation or a notice of limited appearance is filed, service shall be as provided in Rule 5.02.”<sup>8</sup>

When the limited scope representation of a client has concluded, the attorney must notify the court. Tennessee Rule of Civil Procedure 11.01 (c) requires an attorney to notify the court when the limited scope representation of the client has concluded. “Upon the filing of a notice of completion of limited scope representation that is accompanied by a declaration from the attorney indicating that the attorney's obligations under a limited scope representation agreement have been satisfied, and that the attorney provided the otherwise unrepresented person at least fourteen (14) days advance written notice of the filing of the notice of completion of limited scope representation, the attorney shall have withdrawn from representation in the case.”<sup>9</sup>

## **CONCLUSION**

Limited scope representation is sanctioned by the Tennessee Supreme Court through its Rules of Professional Conduct and Rules of Civil Procedure. Attorneys providing limited scope representation should confirm the scope of the representation in writing provided to the client that clearly sets out the services that the attorney will provide and those for which the client is responsible. Attorneys providing continuing limited scope representation before a tribunal shall comply with all of the provisions of Tennessee Rule of Civil Procedure 11.01.

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<sup>8</sup> Tennessee Rules of Civil Procedure, Rule 11.01 (b).

<sup>9</sup> Tennessee Rules of Civil Procedure, Rule 11.01 (c).

This \_\_\_\_\_ day of \_\_\_\_\_, 2024.

ETHICS COMMITTEE

\_\_\_\_\_  
Ginger Buchanan, Chair

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Jimmy Dunn

APPROVED AND ADOPTED BY THE BOARD

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Senator Richard Briggs