

Stages of Limited Scope Representation¹

Authority

- ❑ A lawyer licensed to practice in the State may limit the scope of their representation in a civil action by filing a limited appearance and acting as counsel of record for the limited purposes identified in that appearance (such as depositions, hearings, discovery, and motion practice). [MRPC 1.2\(b\)](#); [MCR 2.117\(B\)\(2\)\(c\)](#).
- ❑ “[T]he duty imposed on the attorney for purposes of a legal malpractice action is limited to the agreed-upon scope of representation” “where an attorney and a client expressly limit terms of the attorney’s representation.” *Patel v Fisherbroyles, LLP*, ___ Mich App ___, ___ (2022).
- ❑ Limited appearances are not permitted in criminal actions. [MCR 6.001\(D\)\(4\)](#).

Prerequisites to Filing a Limited Appearance

- ❑ The limitation must be reasonable under the circumstances. [MRPC 1.2\(b\)](#). In determining whether the limitation is reasonable, the court should consider (among other factors) “the apparent capacity of the person to proceed effectively with the limited scope assistance given the complexity and type of matter and other self-help resources available.” See Comments to [MRPC 1.2](#).²
- ❑ The client must give informed consent, preferably in writing. [MRPC 1.2\(b\)](#).

Requirements of a Limited Appearance

¹ See the Michigan Judicial Institute’s *Civil Proceedings Benchbook*, for information on civil procedure.

² “The text of each rule is authoritative. The comment that accompanies each rule does not expand or limit the scope of the obligations, prohibitions, and counsel found in the text of the rule.” [MRPC 1.0\(c\)](#).

- ❑ The attorney must file and serve a notice of limited appearance with the court before or during the relevant action or proceeding, and all parties of record must also be served with the limited entry appearance. [MCR 2.117\(B\)\(2\)\(c\)\(i\)](#). The notice of limited appearance must identify the scope of the limited representation by date, time period, and/or subject matter. [MCR 2.117\(B\)\(2\)\(c\)\(ii\)](#).

Service Following the Filing of a Limited Appearance

- ❑ Once an attorney has filed a notice of limited appearance under [MCR 2.117](#) on behalf of a self-represented party, service of all papers later filed in the action must be made on the party, and also, on the attorney (for the duration of the limited appearance). [MCR 2.107\(B\)\(1\)\(e\)](#). Upon request of the limited scope attorney, and if circumstances warrant, the court may order that service be made only on the party. *Id.*

Communication with the Client of a Limited Appearance Attorney

- ❑ “An otherwise self-represented person receiving limited representation in accordance with [MRPC 1.2\(b\)](#) [and [MCR 2.117](#)] is considered self-represented for purposes of [[MRPC 4.2](#) (communication with a person represented by counsel)] unless the opposing lawyer knows of, or has been provided with, a written notice of limited appearance comporting with [MCR 2.117\(B\)\(2\)\(c\)](#) or other written communication advising of the limited scope representation.” [MRPC 4.2\(b\)](#).
- ❑ Any oral communication must first be directed to the limited scope representation lawyer. *Id.* The limited scope representation lawyer may, after consultation with the client, authorize opposing counsel to have oral communications directly with the client as agreed. *Id.*
- ❑ All written communication (court filings and otherwise) must be served upon both the client and the limited scope representation lawyer until a notice of termination of limited scope representation is filed, or other written communication terminating the limited scope representation is provided. [MRPC 4.2\(c\)](#)
- ❑ “Clients receiving representation under a notice of limited appearance comporting with [MCR 2.117\(B\)\(2\)\(c\)](#) or other written communication advising of the limited scope representation are not self-represented persons for matters within the scope of the limited appearance [for purposes of [MRPC 4.3](#) (dealing with a self-represented person)], until a notice of termination of limited appearance representation . . . is filed or other written communication

terminating the limited scope representation is in effect.”
[MRPC 4.3\(b\)](#).

Preparation of Documents

- ❑ “A lawyer licensed to practice in the State of Michigan may draft or partially draft pleadings, briefs, and other papers to be filed with the court.” [MRPC 1.2\(b\)\(1\)](#). “Such assistance does not require the signature or identification of the lawyer[.]” *Id.* However, the document must contain the following statement: “This document was drafted or partially drafted with the assistance of a lawyer licensed to practice in the State of Michigan, pursuant to Michigan Rule of Professional Conduct 1.2(b).” [MRPC 1.2\(b\)\(1\)](#).
- ❑ Any filing prepared pursuant to [MRPC 1.2](#) must be signed by the party designated as “self-represented,” and cannot be signed by the lawyer who provided drafting assistance. [MRPC 1.2\(b\)\(2\)](#).
- ❑ The filing of such documents is not an appearance by the lawyer in the case, and must not be deemed an appearance. *Id.*

Exceeding the Scope of the Limited Appearance

- ❑ An attorney who has filed a notice of limited appearance must restrict their activities to those set forth in the notice or any amended limited appearance. [MCR 2.117\(B\)\(2\)\(d\)](#).
- ❑ If the attorney’s representation exceeds the scope of the limited appearance, opposing counsel (by motion), or the court (by order to show cause), may set a hearing to establish the actual scope of representation. *Id.*

Duration of Limited Scope Appearance (Withdrawal/Termination)

- ❑ “An attorney who has filed a notice of limited appearance . . . may withdraw by filing a notice of withdrawal from limited appearance with the court[.]” [MCR 2.117\(C\)\(4\)](#). The notice of withdrawal must be served on all parties of record and state that the attorney’s limited representation has concluded. *Id.* The attorney must also provide the court with a current service address and telephone number for the self-represented litigant. *Id.*
- ❑ The notice of withdrawal is effective immediately upon filing and service if it is signed by the client. *Id.* If the notice is not signed by the client, it becomes effective 14 days after filing and service, unless the self-represented client files and serves a written objection to the withdrawal on the

grounds that the attorney did not complete the agreed upon services. *Id.*