

TO: THE BAR AND THE BENCH OF VIRGINIA

**FROM: Advisory Committee on Rules of Court
Judicial Council of Virginia**

April 16, 2018

LIMITED-SCOPE REPRESENTATION DRAFT RULE

Under Virginia Rule of Professional Conduct 1.2 and Legal Ethics Opinion 1874, an attorney may undertake to provide limited-scope representation of a client (after proper explanation, consultation and agreement). Such representation may be limited to specific proceedings or issues, for example.

Months ago, the Advisory Committee on Rules of Court published a large number of example draft court rule provisions illustrating many of the practical considerations involved in this process. Numerous lawyers and organizations provided comments at that stage, which the Committee has studied in detail.

The Advisory Committee has tentatively resolved to recommend to the Judicial Council of Virginia and the Supreme Court of Virginia that – in order to gather experience on the operation of this process – a pilot rule should be adopted substantially in the form set forth below. The draft rule provisions apply in civil cases only.

Before the Committee moves forward with such a recommendation, the draft below is being circulated to provide a further opportunity for consideration and comment by the bench and bar of Virginia. This draft is intended to encourage making available legal services to as many Virginians as possible.

In consideration of the comments received on the initially published lengthy roster of potential rule provisions, the revised draft is much shorter and simpler. It authorizes any Legal Aid Society attorney and any private attorney providing pro bono legal representation on referral from a Legal Aid Society office to file a simple notice identifying the issues or proceedings on which the attorney will provide limited-scope representation. Any other attorney wishing to provide limited-scope representation to a client in a civil action may also obtain leave to do so. Post-appearance service of papers under this revised draft will be made on both the attorney and the client who is receiving limited scope representation, a system which will protect adversaries from uncertainties in dealing with the party who is represented on some issues, but not others, and the party is deemed unrepresented for purposes of contacts by the adversary.

The Advisory Committee considered specific comments it has received regarding withdrawal as counsel from a limited-scope representation. The Committee has concluded that for a number of reasons there should be a court order granting withdrawal, but that – on the other hand – such approval should be automatic when the obligations an attorney has undertaken in the agreement to provide limited representation have been completed. Thus the present draft rule declares that a motion for leave to withdraw *shall be granted* where counsel's duties under the limited scope representation agreement have been completed. Having a court order for withdrawal will protect the client, the withdrawing attorney, and the court

system by providing clear approval for cessation of the limited-scope representation. This will reduce the chance that uncertainties over the continuing role of counsel will arise unexpectedly during court proceedings, and it will minimize client bar complaints.

The practical considerations raised by the practice of limited-scope representation fall generally within the ambit of existing Rule 1:5, which deals with appearance and withdrawal by counsel, and pro se litigant participation in court proceedings. The Rule language below sets forth provisions which – when finalized for recommendation by the Advisory Committee – would become a new subpart (f) of Rule 1:5.

These provisions have not been considered or approved by the Judicial Council of Virginia, or the Supreme Court of Virginia. They are being circulated to invite comments and suggestions from the bench and bar in the Commonwealth, which will be considered by the Advisory Committee on Rules of Court before it makes a recommendation regarding adoption of any such rule language.

Comments on the revised draft rule below should be sent by August 1, 2018 to

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Rule 1:5. Counsel and Parties Appearing Without Counsel.

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- (d) (1) Counsel of record shall not withdraw from a case except (i) by leave of court after notice to the client of the time and place of a motion for leave to withdraw, or (ii) pursuant to the provisions in subpart (f)(3) of this Rule.
- (2) Any order permitting withdrawal shall state the name, Virginia State Bar number, office address and telephone number of the attorney or law firm being substituted as counsel of record for the party, along with any electronic mail (email) address and any facsimile number regularly used for business purposes by such counsel; or
- (3) if replacement counsel is not being designated at the time of withdrawal by an attorney or law firm, the order permitting withdrawal shall state the address and telephone number of the formerly represented party for use in subsequent mailings or service of papers and notices, and the pro se party shall be deemed counsel of record.

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(f) Limited-Scope Representation; Notice; Service; Withdrawal.

(1) **Notice of Limited Scope Representation.** In any civil court proceeding an attorney may file and serve on all parties a notice of limited-scope representation:

(A) certifying that the attorney is employed by a Virginia Legal Aid Society – or attaching a direct referral letter from a Virginia Legal Aid Society to the attorney regarding provision of pro bono legal services;

(B) stating that the attorney and the party have a written agreement that the attorney will provide limited-scope representation in such action; and

(C) specifying the matters, hearings, or issues on which the attorney will represent the party.

(2) **Limited Scope Representation by Leave of Court.** Any attorney not proceeding under subpart (f)(1)(A) of this Rule may seek leave of court to enter an appearance to provide limited-scope representation in any civil case. If such leave is granted, the representation shall be governed by the notice requirements of subparts (f)(1)(B) and (C) of this Rule, the service and unrepresented party provisions of subpart (f)(3), and the withdrawal provisions of subpart (f)(4).

(3) **Service of Papers After Notice.** Service of all papers after the filing of a notice of limited-scope appearance as provided in this Rule shall be made upon both the attorney providing such limited-scope representation and the party so represented, who shall be considered an unrepresented party during the limited-scope representation.

(4) **Withdrawal of Counsel.**

(A) **Motion.** An attorney seeking to withdraw as counsel under a notice of limited-scope representation shall file a motion to be relieved as counsel, providing at least seven (7) days' notice to the party represented. The motion shall be accompanied by (i) a declaration by the attorney that counsel's obligations under the limited scope representation agreement have been satisfied, and (ii) a draft order finding that the attorney's obligations under the limited-scope agreement have been satisfied and approving withdrawal. If made upon consent of the party receiving limited-scope representation, the motion shall include a signed consent of the represented party.

(B) **Court Action on Withdrawal Motion.** Whether or not the represented party has given consent for withdrawal of counsel, if the court finds that the attorney's obligations under the limited-scope representation agreement have been completed, it shall grant the motion for leave to withdraw.

(C) **Replacement Counsel or the Party Acting Pro Se.** If replacement counsel is not being designated at the time of withdrawal by the attorney, the order permitting withdrawal shall state the address and telephone number of the formerly represented party for use in subsequent mailings or service of papers and notices, and the pro se party shall be deemed counsel of record after the withdrawal of counsel.

(5) **Pilot Project.** The provisions of this subpart (f) shall remain in effect until December 31, 2021, unless by Order of the Supreme Court operation of these provisions is ended earlier, modified, or extended.

(6) **Local Counsel or Covering Docket Calls.** Nothing in this subpart (f) shall apply where a party is represented for all purposes by counsel of record and another attorney appears in lieu of counsel of record for a particular proceeding or docket call.