

STATE OF MAINE
SUPREME JUDICIAL COURT
AMENDMENTS TO THE MAINE BAR RULES

Effective July 1, 2001

Docket No. SJC-51

All of the Justices concurring therein, the following amendments to the Maine Bar Rules are hereby adopted, prescribed, promulgated, and amended to be effective on July 1, 2001, as follows:

The specific rules amendments are set forth below. To aid in understanding of the amendments, an Advisory Note appears after the text of each amendment. The Advisory Note states the reason for recommending the amendment, but it is not part of the amendment adopted by the Court.

1. Maine Bar Rule 3.4(i) is added to read as follows:

(i) Limited Representation. A lawyer may limit the scope of representation if the limitation is reasonable under the circumstances and the client provides informed consent after consultation. If, after consultation, the client consents in writing (the general form of which is attached to these Rules), an attorney may enter a limited appearance on behalf of an otherwise unrepresented party involved in a court proceeding. A lawyer who signs a complaint, counterclaim, cross-claim or any amendment thereto which is filed with the court, may not thereafter limit representation as provided in this rule.

Advisory Notes

Both lawyer and client have authority and responsibility to determine the objectives and means of representation. The scope of services to be provided by a lawyer may be limited by agreement with the client. In situations where the lawyer will not be providing limited representation in court, the limited representation agreement need not be in writing, but must be reasonable under the circumstances. If, for example, a client's objective is limited to securing general information about the law and the client's needs in order to handle a common and typically uncomplicated legal problem, the lawyer and the client may agree that the lawyer's services will be limited to a brief telephone consultation or office visit. Such a limitation, however, will not be reasonable if the time allotted was not sufficient to yield advice upon which the client can rely. Although an agreement for 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. A lawyer's advice may be based upon the scope of the representation agreed upon by the lawyer and client, and the client's representation of the facts.

The reasons a writing memorializing the agreement is not required in all contexts include (by way of example) the problem non-profit and court annexed legal services programs face in securing such a writing from their clients, and the time entering into the agreement takes in proportion to the time consumed by the limited representation itself. Nevertheless, to the extent a writing may be obtained, it is a better practice to do so for both the lawyer and the client.

In situations involving limited representation in court of an otherwise unrepresented party, a written memorandum of the scope of representation is required. A lawyer providing limited representation in court proceedings should include in the consultation with the client an explanation of the risks and benefits of the limited representation. The general form of the agreement is attached to the Code of Professional Responsibility.

Limited representation may not be provided by a lawyer who signs a complaint, counterclaim, cross-claim or any amendment thereto, which is filed with the court.

2. Maine Bar Rule 3.5(a)(4) is added to read as follows:

(4) It shall not be a violation of 3.5(a) to cease or limit representation in accordance with Rule 3.4(i).

Advisory Notes

This Rule allows the client and lawyer to agree to the parameters, including time limitations, on the scope of representation, and allows the attorney to withdraw from pending litigation or otherwise terminate representation in accordance with the agreement with the client and Rule 89.

3. Maine Bar Rule 3.6(a)(2) is amended to read as follows:

(2) handle a legal matter without preparation adequate in the circumstances, provided that, with respect to the provision of limited representation, the lawyer may rely on the representations of the client and the preparation shall be adequate within the scope of the limited representation; or

Advisory Notes

An attorney reasonably may rely on the information provided by the limited representation client. This rule does not reduce an attorney's obligation to provide competent representation, but makes clear the preparation for the legal matter is limited along with the scope of the representation. See, generally, comment to Rule 3.4(i).

4. Maine Bar Rule 3.6(f) is amended to read as follows:

- (f) Communicating With Adverse Party.** During the course of representation of a client, a lawyer shall not communicate or cause another to communicate on the subject of the representation with a party the lawyer knows to be represented by another lawyer in that matter unless the lawyer has the prior consent of the lawyer representing such other party or is authorized by law to do so. An otherwise unrepresented party to whom limited representation is being provided or has been provided in accordance with Rule 3.4(i) is considered to be unrepresented for purposes of this rule, except to the extent the limited representation attorney provides other counsel written notice of a time period within which other counsel shall communicate only with the limited representation attorney.

Advisory Notes

This Rule change allows lawyers to communicate directly with a party to whom limited representation is being or has been provided. Such lawyers contacting the otherwise unrepresented party may not give legal advice to them but do not have to proceed through the lawyer who has provided the limited representation.

5. Maine Bar Rule 3.4(j) is added to read as follows:

- (j) Non-Profit and Court-Annexed Limited Legal Service Programs.** A lawyer who, under the auspices of a non-profit organization or a court-annexed program, provides limited representation to a client without expectation of either the lawyer or the client that the lawyer will provide continuing representation in the matter is subject to the requirements of Rules 3.4(a)-(e) only if the lawyer knows that the representation of the client involves a conflict of interest.

Advisory Notes

[1] Legal service organizations, courts, and various non-profit organizations have established programs through which lawyers provide limited legal services - typically advice - that will assist persons with limited means to address their legal problems without further representation by a lawyer. In these programs, such as legal advice hotlines, advice-only clinics, lawyer for the day programs in criminal or civil matters, or unrepresented party counseling programs, an attorney-client relationship is established, but there is no expectation that the lawyer representation of the client will continue beyond the limited consultation. It is the purpose of this Rule to provide guidance to lawyers about their professional responsibilities when serving a client in this capacity.

[2] Because a lawyer who is representing a client in the circumstances addressed by this Rule is not able to check systematically for conflicts of interest, paragraph (j) only requires compliance with Rules 3.4(a)-(e) if the lawyer knows, based on reasonable recollection and information provided by the client in the ordinary course of the consultation, that the representation presents a conflict of interest. A conflict of interest that would otherwise be imputed to a lawyer because of the lawyer association with a firm will not preclude the lawyer from representing a client in a limited services program. Nor will the lawyer participation in such a program preclude the lawyer's firm from undertaking or continuing the representation of clients with interests adverse to a client being represented under the program's auspices.

6. The form Limited Representation Agreement, attached hereto as Attachment A, shall be inserted after Maine Bar Rule 3.4(c)(i) and before Maine Bar Rule 3.5. Used in conjunction with Rule 3.4(i) it shall be sufficient to satisfy the rule. The authorization of this form shall not prevent the use of other forms consistent with this Rule.

Such rules as thus adopted and amended shall be recorded in the Maine Reporter.

Dated: May 16, 2001

Daniel E. Wathen, Chief Justice

Robert W. Clifford

Paul L. Rudman

Howard H. Dana, Jr.

Leigh I. Saufley

Donald G. Alexander

Susan Calkins

Associate Justices

ATTACHMENT A
Maine Bar Rule 3.4(i)
Promulgation Order of May 15, 2001

(Used in conjunction with Rule 3.4(i) the following form shall be sufficient to satisfy the rule. The authorization of this form shall not prevent the use of other forms consistent with this rule.)

LIMITED REPRESENTATION AGREEMENT

To Be Executed In Duplicate

Date: _____, 20_____

1. The client, _____, retains the attorney, _____, to perform limited legal services in the following matter: _____ v. _____.

2. The client seeks the following services from the attorney (indicate by writing "yes" or "no"):

- a. _____ Legal advice: office visits, telephone calls, fax, mail, e-mail;
- b. _____ Advice about availability of alternative means to resolving the dispute, including mediation and arbitration;
- c. _____ Evaluation of client self-diagnosis of the case and advising client about legal rights and responsibilities;
- d. _____ Guidance and procedural information for filing or serving documents;
- e. _____ Review pleadings and other documents prepared by client;
- f. _____ Suggest documents to be prepared;
- g. _____ Draft pleadings, motions, and other documents;
- h. _____ Factual investigation: contacting witnesses, public record searches, in-depth interview of client;
- i. _____ Assistance with computer support programs;
- j. _____ Legal research and analysis;
- k. _____ Evaluate settlement options;

- l. _____ Discovery: interrogatories, depositions, requests for document production;
- m. _____ Planning for negotiations;
- n. _____ Planning for court appearances;
- o. _____ Standby telephone assistance during negotiations or settlement conferences;
- p. _____ Referring client to expert witnesses, special masters, or other counsel;
- q. _____ Counseling client about an appeal;
- r. _____ Procedural assistance with an appeal and assisting with substantive legal argument in an appeal;
- s. _____ Provide preventive planning and/or schedule legal check-ups;
- t. _____ Other: _____

3. The client shall pay the attorney for those limited services as follows:

a. Hourly Fee:

The current hourly fee charged by the attorney or the attorney's law firm for services under this agreement are as follows:

- i. Attorney: \$ _____
- ii. Associate: \$ _____
- iii. Paralegal: \$ _____
- iv. Law Clerk: \$ _____

Unless a different fee arrangement is established in clause b.) of this paragraph, the hourly fee shall be payable at the time of the service. Time will be charged in increments of one-tenth of an hour, rounded off for each particular activity to the nearest one-tenth of an hour.

b. Payment from Deposit:

For a continuing consulting role, client will pay to attorney a deposit of \$ _____, to be received by attorney on or before _____, and to be applied against attorney fees and costs incurred by client. This amount

will be deposited by attorney in attorney trust account. Client authorizes attorney to withdraw funds from the trust account to pay attorney fees and costs as they are incurred by client. The deposit is refundable. If, at the termination of services under this agreement, the total amount incurred by client for attorney fees and costs is less than the amount of the deposit, the difference will be refunded to client. Any balance due shall be paid within thirty days of the termination of services.

c. Costs:

Client shall pay attorney out-of-pocket costs incurred in connection with this agreement, including long distance telephone and fax costs, photocopy expense and postage. All costs payable to third parties in connection with client case, including filing fees, investigation fees, deposition fees, and the like shall be paid directly by client. Attorney shall not advance costs to third parties on client behalf.

4. The client understands that the attorney will exercise his or her best judgment while performing the limited legal services set out above, but also recognizes:

a. the attorney is not promising any particular outcome,

b. the attorney has not made any independent investigation of the facts and is relying entirely on the client limited disclosure of the facts given the duration of the limited services provided, and

c. the attorney has no further obligation to the client after completing the above described limited legal services unless and until both attorney and client enter into another written representation agreement.

5. If any dispute between client and attorney arises under this agreement concerning the payment of fees, the client and attorney shall submit the dispute for fee arbitration in accordance with Rule 9(e)-(k) of the Maine Bar Rules. This arbitration shall be binding upon both parties to this agreement.

WE HAVE EACH READ THE ABOVE AGREEMENT BEFORE SIGNING IT.

Signature of client

Signature of attorney