

TO: THE BAR AND THE BENCH OF VIRGINIA

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

December 1, 2017

LIMITED-SCOPE REPRESENTATION ISSUES

Under Virginia Rule of Professional Conduct 1.2 and Legal Ethics Opinion 1874, as in a large number of other states today, an attorney's limited-scope representation of a client (if undertaken after proper explanation, consultation and agreement) is permitted by the Rules of Professional Conduct in the Commonwealth. Such representation may be limited to specific proceedings or issues, for example.

The Advisory Committee on Rules of Court has preliminarily concluded that – given the fact that limited-scope representation is now permitted ethically – it will be important to have Rule of Court provisions that address the practical issues that affect the parties, their counsel, and the administration of litigation in the courts as such limited appearances become more common. *At present consideration is being given to this process in civil litigation only.*

Numerous other states have enacted rules of court dealing with many aspects of this process. The Advisory Committee has studied the rules promulgated in other jurisdictions, and has also adapted suggestions of the Virginia Access to Justice Commission – which has concluded that expressly addressing this process in the Rules of Court will increase the availability of legal services to populations that need it.

A number of important practical considerations are raised by the practice of limited-scope representation. These fall generally in 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 under consideration for a new subpart (f) of Rule 1:5, to deal specifically with limited-scope appearances by counsel.

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 at its meetings in 2018, after which proposed Rule language – if any – may be recommended.

The Rule provisions below are being circulated in line-numbered form to make submission of comments easier. The Advisory Committee requests your help in considering logistical or policy issues limited-scope appearance by counsel may entail for proceedings in the courts of Virginia.

1 **Rule 1:5 – [new subpart (f)]:**

2 **(f) Limited Appearance.**

3 **(1) Generally.**

4 (A) When reasonable in the circumstances as provided in Virginia Rule of
5 Professional Conduct 1.2, in a civil action an attorney may undertake limited
6 representation of a party that has given informed consent.

7 (B) Limited scope representation of multiple parties in an action is not
8 permitted.

9 (C) An attorney may not appear solely for the purpose of making evidentiary
10 objections at a trial or hearing.

11 (D) A notice of limited scope representation is not required for (i) providing any
12 person with a legal form, or (ii) services performed by an attorney before any
13 litigation is pending.

14 (E) Counsel performing a limited scope
15 representation shall comply with the standards of
16 Code § 8.01-271.1.

ALTERNATIVE #1 for ¶ (E)

17 (E) Counsel performing a limited scope
18 representation may rely on client representations,
19 unless the attorney has specific reason to believe
20 that they are false or materially insufficient, in
21 which case the attorney must undertake an inquiry, reasonable in the
22 circumstances, to determine that every paper served or filed is well grounded in
23 fact and is warranted by existing law or a good faith argument for the extension,
24 modification, or reversal of existing law, and is not interposed for any improper
25 purpose, in compliance with the standards of Code § 8.01-271.1.

ALTERNATIVE #2 for ¶ (E)

26 (F) An attorney may prepare papers for submission
27 to a court by a pro se party without filing a notice of
28 appearance and without causing any indication of
29 such assistance to be reflected on the papers.

ALTERNATIVE #1 for ¶ (F)

30 (F) If an attorney prepares papers for submission to
31 a court by a pro se party it shall be indicated thereon
32 that an attorney assisted in their preparation. Such
33 assistance shall not be deemed appearance of record
34 in the action, and counsel need not be identified.

ALTERNATIVE #2 for ¶ (F)

35 (F) If an attorney prepares papers for submission to
36 a court by a pro se party the attorney shall be
37 identified on the papers by name and contact
38 information with a notation that the attorney has assisted in their preparation.

ALTERNATIVE #3 for ¶ (F)

39 Such assistance shall not be deemed appearance of record in the action, and no
40 notice of limited appearance is required.

41 (F) If an attorney prepares papers for submission
42 to a court by a pro se party the attorney shall be
43 identified on the papers by name and contact
44 information with a notation that the attorney has
45 assisted in their preparation. Such assistance shall be deemed appearance as
46 counsel of record in the action for all purposes, unless a notice of limited scope
47 representation is filed contemporaneously with such papers.

ALTERNATIVE #4 for ¶ (F)

48 (F)(i) Any attorney who prepares any document that
49 is to be filed in the court by a person who is known by
50 the attorney, or who is reasonably expected by the
51 attorney, to be proceeding pro se, shall be considered to have entered an
52 appearance in the proceeding for all purposes and shall be subject to all rules that
53 govern attorneys who have formally appeared in the proceeding.

ALTERNATIVE #5 for ¶ (F)

54 (ii) All litigants who are proceeding pro se shall certify in writing and under
55 penalty of perjury that each document filed with the court has not been prepared
56 by, or with the aid of, an attorney or shall identify any attorney who has prepared,
57 or assisted in preparing, the document.

58 **(2) Required Notice; Contents.** An attorney may make a limited appearance by
59 filing and serving on all parties a notice of limited scope representation. The notice
60 must:

61 (A) be co-signed by the attorney and the party, stating that the party has given
62 informed consent to the limited representation after adequate explanation;

63 (B) state that the attorney and the party have a written agreement that the
64 attorney will provide limited scope representation to the party in the action;

65 (C) specify with reasonable particularity the matters, proceedings, or issues with
66 regard to which the attorney will represent the party;

67 (D) acknowledge that – by signing the notice of limited scope appearance – the
68 party makes a general appearance on all matters outside the specified limited
69 scope representation of counsel and shall proceed pro se on such matters; and

70 (E) state that counsel and the party have agreed to the provisions of subpart
71 (f)(3) below regarding the manner and effect of service of papers upon counsel and
72 the party.

73 **(3) Service on Counsel and the Party.**

74 (A) Unless the court orders otherwise, upon the filing of a notice complying with
75 subpart (f)(2) of this Rule, during the period of such limited scope representation
76 service of all papers in the action shall be made upon both the attorney and the
77 represented party, whether or not the issues addressed in the papers are within

78 the stated scope of the limited representation. Such service shall not extend the
79 attorney's responsibility for representing the party beyond the specific matters,
80 proceedings, or issues identified in the notice of limited scope representation.

81 (B) Unless the certificate of service included in papers received by counsel
82 expressly represents that the represented party has also been served, the attorney
83 shall forward to the client all papers received that are outside the scope of the
84 limited scope representation, along with any available information concerning
85 response or court dates in connection therewith.

86 (C) If an attorney appearing for a limited purpose receives papers or notice of
87 proceedings outside the scope of the limited representation, the attorney must
88 notify the adversaries in writing of that fact and notify the client of the papers
89 relating to such other issues, providing the client – to the extent that the attorney
90 has knowledge – with client with the deadline(s), if any, for responding to the
91 motion, pleading, discovery, hearing or other proceeding outside the scope of
92 representation, and the date, place and time of any hearing or other proceeding.

93 (D) The signature block on every paper filed throughout the case by counsel
94 pursuant to a limited scope appearance shall recite that counsel is appearing
95 pursuant to a notice of limited appearance of a stated date.

96 **(4) Matters Outside the Limited Scope Appearance**

97 (A) The attorney appearing under a limited scope representation notice shall
98 not undertake services in the litigation outside the scope of such notice.

99 (B) The attorney and represented party may alter the scope of a limited
100 appearance by filing a revised or substitute notice of limited scope appearance
101 that complies with subpart (f)(2) of this Rule.

102 (C) An attorney who files a pleading, motion paper or other document outside
103 the scope of the limited appearance shall be deemed to have entered a general
104 appearance for the party unless a new or revised notice of limited scope
105 representation is filed contemporaneously with such pleading, motion paper, or
106 other document.

107 (D) Contacts by adversaries or co-parties on matters within the limited scope of
108 representation shall be with counsel making the limited appearance; contacts with
109 the represented party by adversaries or co-parties on matters outside the limited
110 scope of representation shall be in writing, with a copy served upon the attorney
111 making a limited scope appearance for the represented party.

112 (E) Any party may move for clarification of the purpose and scope of the limited
113 appearance.

114 **(5) Appearance and Participation at Court Proceedings**

115 (A) Both the represented party and the attorney providing services under a
116 notice of limited appearance must attend all court proceedings.

117 (B) The court shall be advised of counsel’s limited scope representation at the
118 outset of each court appearance.

119 (C) The represented party shall not conduct court proceedings on issues within
120 the scope of the limited appearance. Dual argument on a particular issue by the
121 attorney and the party shall not be permitted.

122 **(6) Withdrawal.**

123 (A) Counsel who has made a limited appearance may withdraw as provided in
124 subpart (d) of this Rule, after providing notice to the client 10 days in advance.

125 (B) Counsel shall submit a draft order granting leave to withdraw incorporating
126 the identification and service address information required by subparts (d)(2) and
127 (d)(3) of this Rule. If the client has consented in writing to the withdrawal, such
128 consent may be incorporated in the draft order or annexed thereto.

129 (C) Counsel shall advise the court in writing whether services within the scope
130 of the limited appearance agreement with the client have been completed.

Request for Input

PLEASE SEND YOUR COMMENTS ON THE DRAFT RULE AND ALTERNATIVES BY

March 1, 2018 TO

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Brandy S. Singleton, Staff Attorney
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Or via email: proposedrules@vacourts.gov

THANK YOU FOR TAKING THE TIME TO CONSIDER THESE IMPORTANT ISSUES.