

Title	Family Law: Limited Scope Representation (adopt forms FL-950 and FL-955, and Cal. Rules of Court, rule 5.170)
Summary	These forms and rule are adopted to facilitate attorneys providing limited scope representation as recommended in the <i>Report on Limited Scope Legal Assistance</i> that was prepared by the Commission on Access to Justice at the request of the State Bar.
Source	Family and Juvenile Law Advisory Committee
Staff	Bonnie Hough, 415-865-7668; Michael Fischer, 415-865-7685
Discussion	<p>Limited scope representation is a relationship between an attorney and a person seeking legal services in which it is agreed that the scope of the legal services will be limited to the defined tasks that the person asks the attorney to perform. This is also called “unbundling” and “discrete task representation.”</p> <p>At the request of the President of the State Bar of California, the Commission on Access to Justice established a Task Force on Limited Scope Representation. The task force was composed of representatives from the private bar and the judiciary, legal ethics specialists, and legal services representatives. Their work was informed by legal research and discussion as well as a series of focus groups composed of private attorneys, judicial officers, legal services representatives, insurance company representatives, lawyer referral service representatives, family law facilitators, and legal ethics specialists. Focus groups and individual interviews were also conducted with current and potential clients of limited scope services.</p> <p>In October 2001, the task force issued a <i>Report on Limited Scope Legal Assistance With Initial Recommendations</i>. Those initial recommendations were approved by the Board of Governors of the State Bar of California on July 28, 2001. A number of those recommendations, categorized by the task force as “court-related,” called for the task force to work with the Judicial Council to adopt rules and forms.</p> <p>This proposal contains the draft rules and forms called for in that report:</p> <ul style="list-style-type: none"> • forms to be filed with the court clarifying the scope of representation when the attorney and client have

contracted for limited scope legal assistance.

- a standard form of Notice of Withdrawal to formalize attorney withdrawal and notice at the conclusion of limited scope legal assistance.
- a rule of court that would allow attorneys to assist in the preparation of pleadings without disclosing that they assisted the litigant if they are not appearing as attorney of record.

This issue is of concern to the judiciary as it faces an increasing number of self-represented litigants.

Limited scope representation helps self-represented litigants:

- Prepare their documents legibly, completely, and with greater accuracy;
- Prepare their cases based on an improved understanding of the law and court procedures;
- Have representation for a portion of their cases, such as for one court hearing, even if they are unable to afford full representation; and
- Obtain assistance in preparing, understanding, and enforcing court orders.

This increased assistance can reduce the number of errors in documents; limit wasted court, litigant, and opposing attorney time due to procedural difficulties and mistakes by self-represented litigants; and decrease docket congestion and demands on court personnel. Judicial officers indicate a strong interest in assisting self-represented litigants obtain as much information and assistance from attorneys as possible. They point to the California courts' positive experience with self-help programs such as the Family Law Facilitator program, which provides assistance with paperwork and education to self-represented litigants. These programs, however, cannot meet the needs of all self-represented litigants and must, by nature of existing regulation of their operation, limit the scope of services that they can offer. The proposed forms and rules are designed to help facilitate attorneys providing this assistance.

Limited Representation Form (new form FL-950)

One of the key services that self-represented litigants in focus groups reported they would like to receive is an attorney to argue a motion, an evidentiary hearing, or a trial in court. This is generally in the best interest of the judiciary, as attorneys are aware of local rules and procedures, rules of evidence, and the scope of legally relevant issues. Judicial officers can direct counsel to prepare orders after hearing and otherwise receive counsel's assistance through a clear presentation of the case, saving significant court resources.

However, this is an area in which attorneys are often cautious about providing limited scope services. Lawyers need certainty that courts will abide by the limitations contained in the retainer agreement. In general, while the court may have a preference for an attorney to represent a litigant for the entire case, the court's desire for more litigants to be represented in court proceedings can effectively be met by allowing limited scope services.

This form is intended to clarify to the court and other party that an attorney is making an appearance for a limited issue or for only one hearing. This would provide notice to the court and the other party and would ensure a clear understanding between the client and lawyer regarding the scope of the service. It would also allow clerks and opposing counsel to know who the attorney of record is and to whom notice should be sent for various stages of a case.

Notice of Withdrawal (new form FL-955)

This form, similarly, is designed to provide the court and opposing party notice when the limited scope of the representation has been terminated.

Comment is particularly sought regarding how this form and form FL-950 will work with the courts' current automated systems to allow notice to be sent to all parties in a case.

Rule Regarding Nondisclosure of Attorney Assistance in Preparation of Pleadings (Cal. Rules of Court, rule 5.170)

The proposed rule provides that an attorney may assist in the preparation of pleadings without disclosing that they assisted the litigant if they are not the attorney of record.

Limiting the scope of representation to the preparation of pleadings is a widespread practice in California. Currently, there is no California statute or rule that prohibits attorneys from assisting clients in the

preparation of pleadings or other documents to be filed with the court without disclosing their role to the court.

Some courts in other jurisdictions have expressed concern that providing anonymous assistance to a self-represented litigant is defrauding the court by misrepresenting that the litigant has had no assistance. There is a concern that this might lead to special treatment for the litigant or allow the attorney to evade the court's authority. However, California's family law courts have been allowing (and encouraging) ghostwriting for many years. Family law facilitators, domestic violence advocates, family law clinics, law school clinics, and other programs and private attorneys serving low-income persons have often drafted pleadings on behalf of litigants. Judicial officers in the focus groups reported that it is generally possible to determine from the appearance of a pleading whether an attorney was involved in the drafting of the document. They also report that the benefits of having documents prepared by an attorney are substantial.

Focus groups with private attorneys who currently draft pleadings on behalf of their clients revealed that they would be much less willing to provide this service if they had to put their names on the pleadings.

Issues raised included:

- Increased liability;
- Worry that a judicial officer might make them appear in court despite a contractual arrangement with the client limiting the scope of representation;
- Belief that they are helping the client tell his or her story, and that the client has a right to say things that attorneys would not include if they were directing the case;
- Fear that the client might change the pleading between leaving the attorney's office and filing the pleading in court;
- Apprehension that their reputation might be damaged by a client's inartful or inappropriate arguing of a motion;
- Concern that they would be violating the client's right to a confidential relationship with his or her attorney; and
- Worry that they may not be able to verify the accuracy of all the statements in the pleading given the short time available with the client.

It does not appear that the filing of "ghostwritten" documents deprives the court of the ability to hold a party responsible for filing frivolous,

misleading or deceitful pleadings. A self-represented litigant makes representations to the court by filing a pleading or document about the accuracy and appropriateness of those pleadings. In the event that a court finds that CCP Section 128.7(b) has been violated, the court may sanction the self-represented litigant and also may lodge a complaint with the State Bar about the attorney's participation in the preparation of a frivolous or misleading document, whether his or her name is on the pleading or not. Given that the current practice is not to require ghostwriters to disclose their participation in a case, there seems to be no reason to require such a rule. Adoption of a rule requiring disclosure is likely to discourage access to the courts, leave more litigants without attorney assistance in the drafting of pleadings, require more courts to decipher pleadings by unassisted self-represented litigants, and cause continuances to allow time for filing and service of correct and complete pleadings.

Under the proposed rule, attorneys providing limited task representation must disclose their involvement if the litigant is requesting attorneys fees to pay for their services so that the court and opposing counsel can make an appropriate determination regarding fees. Awarding attorneys fees in cases where a litigant receives assistance with completing paperwork or preparing for a hearing may also help to encourage attorneys to provide this service. Family Code Section 2032 states that the court “. . . shall take into consideration the need for the award to enable each party, to the extent practical, to have sufficient financial resources to present the party's case adequately.” For many litigants, the only counsel they would be able to afford, even with attorney’s fees awards, is counsel willing to provide limited scope legal services. If through coaching or assistance with preparation of a pleading, a litigant were able to present their case “adequately,” an award of fees might also be appropriate.

Attachment

Effective January 1, 2003, rule 5.170 would be added to the California Rules of Court to read:

1 **Rule 5.170. Nondisclosure of attorney assistance in preparation of court documents**

2
3 **(a)** Except as provided in (b), an attorney who contracts with a client to draft or
4 assist in drafting legal documents to be filed with the court, but not to make an
5 appearance in the case, is not required to disclose his or her involvement in the
6 preparation of the documents within the text of the document.

7
8 **(b)** If a litigant seeks a court order for attorney fees incurred as a result of
9 document preparation, information required for a proper determination of
10 attorney fees – including the names of the attorney who assisted in the
11 preparation of the documents, the time involved, and the amount billed – must
12 be disclosed.

13
14 **(c)** This rule does not apply to an attorney who has made a general appearance or
15 has contracted with his or her client to make an appearance on any issue that is
16 the subject of the pleadings.

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT:	CASE NUMBER:
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PROOF OF SERVICE BY PERSONAL SERVICE MAIL

1. At the time of service I was at least 18 years of age and **not a party to this legal action.**
2. I served a copy of the *Notice of Limited Representation* as follows (check either a or b below):
 - a. **Personal service.** I personally delivered the *Notice of Limited Representation* as follows:
 - (1) Name of person served:
 - (2) Address where served:
 - (3) Date served:
 - (4) Time served:
 - b. **Mail.** I deposited the *Notice of Limited Representation* in the United States mail, in a sealed envelope with postage fully prepaid. The envelope was addressed and mailed as follows:
 - (1) Name of person served:
 - (2) Address:
 - (3) Date of mailing:
 - (4) Place of mailing (*city and state*):
 - (5) I am a resident of or employed in the county where the *Notice* was mailed.
 - c. My residence or business address is (*specify*):
 - d. My phone number is (*specify*):

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF PERSON SERVING NOTICE)

PETITIONER/PLAINTIFF:	CASE NUMBER:
RESPONDENT/DEFENDANT:	

PROOF OF SERVICE BY PERSONAL SERVICE MAIL

1. At the time of service I was at least 18 years of age and **not a party to this legal action.**
2. I served a copy of the *Notice of Withdrawal of Attorney of Record on Conclusion of Limited Representation* as follows (check either a or b below):
 - a. **Personal service.** I personally delivered the *Notice of Withdrawal of Attorney of Record on Conclusion of Limited Representation* as follows:
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(TYPE OR PRINT NAME)

▶ _____
(SIGNATURE OF PERSON SERVING NOTICE)