



BENCH & BAR

The newsletter of the Illinois State Bar Association's Bench & Bar Section

Why judges should embrace limited scope representation

By Justice Michael B. Hyman

Judges with experience hearing a call with a significant number of unrepresented parties know the story: the increasing number of *pro se* litigants appearing with little or no understanding of courtroom procedure and decorum, with pleadings that are nearly impossible to decipher, and with no clue how to articulate a coherent argument. Leaving aside the issue of arriving at a fair outcome under these circumstances (a challenge exacerbated when only one party has counsel), hearing these cases can strain a judge's ability to manage an efficient and expedient courtroom.

Now Illinois has a set of procedures established by court rule that allows a lawyer and client to agree on narrowing the lawyer's assistance to a particular task or issue in a litigated matter. This approach—known as limited scope representation or unbundling—has been gaining momentum throughout the country.

Limited scope rules have the real potential for improving procedural fairness for *pro se* litigants by enabling them to obtain legal representation regarding the most critical or daunting aspects

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Driver's licenses for undocumented immigrants: From enactment to enforcement, hurdles remain

By Juanita B. Rodríguez

On January 28, 2013, Governor Pat Quinn signed Illinois Senate Bill 957, authorizing temporary driver's licenses for undocumented immigrants, or "temporary visitors"—a Temporary Visitor Driver's License ("TVDL"). The law became effective in October 2013 and evidence regarding its effects is thus far only anecdotal. However, nearly six months into the law's application, it is time to consider whether law enforcement agencies, specifically those dealing with traffic enforcement, have modified their practices. Or, as anecdotal evidence suggests, are undocumented immigrants still being charged with traffic violations stemming from their inability to obtain a valid license are judges refusing to show any deference to the recent legislation?

Specifically, the law:

- Authorizes the Secretary of State to issue a 3 year, temporary visitor's driver's license to an individual who has lived in Illinois for at least 1 year; is ineligible to obtain a social security number; and is unable to provide proof that he or she is lawfully present in the United States;
- Prohibits a temporary driver's license from being used as proof of the license holder's identity (despite the burden of proof needed to obtain one); and,
- Requires the holder to have legally sufficient automobile liability insurance. See, 625 ILCS 5/6-105.1.

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Why judges should embrace limited scope representation

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of their cases. Conversely, the surest way for judges to discourage lawyers from assisting litigants in this manner is to ignore the principles underlying limited scope and foster suspicion that a lawyer will be held in a case despite a carefully constructed agreement with the litigant.

Judges owe it to themselves—and the litigants and counsel appearing before them—to fully understand and follow the rules which the Supreme Court established principally as a response to the growing needs of self-represented parties.

What is Limited Scope Representation?

Some background—unbundling is not new.

For years, transactional lawyers, among others, have provided services limited to discrete tasks. But, for some lawyers, its propriety was an unsettled issue until the Supreme Court amended Rule 1.2(c) of the Rules of Professional Conduct explicitly permitting lawyers to “limit the scope of representation if the limitation is reasonable under the circumstances and the client gives informed consent.”

A system based solely on the paradigm of full representation means either a litigant has the resources or luck to obtain beginning-to-end assistance from a lawyer, or is left alone to languish in the inexorable demands of the legal system. Unbundling offers flexibility that benefits the great majority of the public.

For instance, a litigant unable to front a \$5,000 retainer required for traditional representation can pay, say, \$750, for a lawyer to argue just a complex motion. The litigant gets the benefit of legal assistance, the lawyer gets some paid work, and the judge hears a presentation that serves the ends of justice.

Not until after scrutiny by the bench and bar and Supreme Court Committees did the Supreme Court, in 2013, amend Supreme Court Rules 11, 13 and 137 and Rules of Professional Conduct 1.2(c), 4.2 and 5.5 to guide limited scope practice in civil courtrooms. The major changes were (i) a lawyer can agree to appear for a client once or multiple times, including a trial, a hearing on a motion, or just a status call, with the assurance that he or she can withdraw from the matter

without leave of court when the lawyer completes the agreed representation. (Rule 13(c) (6) and (c) (7)); and (ii) that a lawyer may assist a litigant in document preparation without filing an appearance or placing his or her name on the document (Rule 137(e)).

For an unrepresented litigant with limited financial resources to pay for legal help or for an overstretched legal aid agency, the ability of a lawyer to limit involvement to one or two aspects of a case, whether critical or common, means the availability of representation that otherwise would have not been there.

Resistance to limited scope representation seems to be rooted in long-standing practices of the bench and bar. Generations of lawyers have been trained to believe that

their ethical duty to clients requires an all-inclusive approach, pursuing everything that can possibly be done (and never mind the expense). Traditionally, procedural rules have enforced a categorical approach to attorney involvement: either a lawyer is “in” for all aspects or none at all. By design, Rules 13(c) (6-7) and 137(e) blur these categories. In unbundling, a written agreement with an informed client demarcates the lawyer’s involvement before vanishing from the matter when he or she completes the defined task(s). And, a lawyer can make multiple limited scope appearances in the same matter. Or, under Rule 137(e), a lawyer can provide material assistance to a litigant through document preparation or review without ever setting foot in the courtroom or revealing his

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or her identity.

Because these new practices blur traditional lines, it is easy to imagine a parade of horrors: confused clients abandoned in front of the bench, complex issues left dangling, less than scrupulous lawyers exploiting new procedures for dubious ends. The temptation, then, may be for a judge to hold the new rules and procedures at arm's length. For instance, letting a lawyer make a limited appearance, but then bringing pressure on the lawyer to attend the next hearing because the litigant (and the court) could really use the help. Or, by insisting the lawyer who authored a set of pleadings accompany a litigant to court because the litigant won't be able to explain them well.

We judges must take a deep breath, and recognize that, by design, the rules contain several provisions that should quell concerns. Rule 13, for example, requires a lawyer making a limited scope appearance to (i) fully explain limited representation and prepare a written agreement specifying its scope, (ii) file a notice of limited scope appearance, also specifying its scope, and (iii) formally withdraw with due notice to the client and opportunity for the client to formally object and for the court to hold a hearing. The comments to Rule 13 give judges latitude in addressing the rare situations involving an abuse of procedure.

Moreover, these rules are not a slapdash experiment. They came about following a lengthy process that included recommendations prepared by the board of the Lawyers Trust Fund of Illinois, study and public hearings convened by a joint task force (comprised of representatives from the Illinois Judges Association, the Chicago Bar Association, and the Illinois Bar Association), review by the Illinois Supreme Court Committee on Professional Responsibility, and vetting through public comment to the Supreme Court Rules Committee.

The Importance of Liberal Withdrawal of Appearances

Finally, judges owe it to themselves to consider the consequential objectives that limited scope rules were meant to address and how they operate in the interests of justice in terms of both the litigant standing before the bench, and the judge's own management of his or her courtroom. This issue is squarely addressed in the amended comments to Rule 13:

A court's refusal to permit withdrawal of a completed limited scope representation, or even its encouragement of the attorney to extend the representation, would disserve the interests of justice by discouraging attorneys from undertaking limited scope representations out of concern that agreements with clients for such representations would not be enforced.

Without a doubt, the ability to automatically withdraw from a limited scope appearance is *the* question of singular importance to lawyers who might offer limited scope services. Judges who want to see the litigants in their courtrooms benefit from limited assistance need to understand and respect the boundaries established by the rules and limited scope representation agreements.

This is not to suggest that limited scope representation is a panacea. The mismatch between the legal needs of vulnerable or limited means individuals and the resources available to meet their needs are so varied that no single strategy will solve the problem. To start, we desperately need additional legal aid and pro bono lawyers providing full representation to the indigent, unsophisticated, and abandoned. Simultaneously, the justice system needs to become less intimidating and more approachable and responsive to litigants who, for whatever reason, appear in court without a lawyer. And, the limit ("where reasonable under the circumstances") established under RPC 1.2(c) recognizes that some matters may not be appropriate for limited representation.

Nonetheless, limited scope representation provides a potent new tool for helping otherwise unrepresented litigants pursue their cases more effectively. While, like anything new, hiccups may arise, the success of unbundling depends on the bench recognizing that these rules extend the essential role of lawyers as advocates to individuals who cannot afford traditional legal representation. ■

Justice Michael B. Hyman, who sits on the First Appellate District Court, is a member of the Bench and Bar Section Council and from 2010-11, served on the Joint Task Force on Limited Scope Representation which forwarded its recommendations to the Illinois Supreme Court. The recommendations became the basis for the rule changes. Justice Hyman thanks Lawyers Trust Fund General Counsel, David Holterman, for his input in the preparation of this article.

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Summary of Limited Scope Rule Changes¹

- **Supreme Court Rule 11:** New paragraph (e) clarifies the requirements regarding service of documents after an attorney files a Notice of Limited Scope Appearance. The amended rule specifies that service of all documents must on both the attorney making the limited scope appearance and the party, until the attorney's appearance has ended under the provisions of Rule 13(c)(7).
- **Supreme Court Rule 13:** New paragraph (c)(6), establishes the limited scope appearance as a new type of appearance in civil proceedings to allow an attorney to provide in-court representation for a litigant regarding a discrete aspect of a case or a specific proceeding within a case. Paragraph (c) (6) spells out the requirements for doing so: the attorney must memorialize the agreement to provide limited scope representation in a written representation agreement with the litigant, and the attorney must complete and file the form Notice of Limited Scope Representation attached to Rule 13. That form requires the attorney to state that a written agreement has been made, and to identify the scope of the appearance being entered. The form contains a short checklist that suggests the types of situations in which an attorney might make a limited scope appearance: a court proceeding on a particular date, a trial, a deposition, various aspects of family law matters, or on a discrete issue within a proceeding or proceedings covered by the appearance. This list is illustrative but not comprehensive. The form allows attorneys to identify "other" aspects in which they are appearing.

New paragraph (c) (7) addresses the end of a limited scope appearance. An attorney's withdrawal on completion of the specified representation can be accomplished by oral motion under Paragraph (c) (7) (i) or by written notice under Paragraph (c) (7) (ii). (Withdrawal for any other reason is subject to the requirements of Paragraph (c) (2) and (c) (3).) An oral motion under (c) (7) (i) is appropriate if made at a proceeding attended by the party represented by the attorney. The rule specifies that the court *must* grant the motion unless the party objects that the agreed scope of representation has not been completed. In the event of an objection, the rule provides for an evidentiary hearing on the objection. The rule states that the motion to withdraw must be granted unless the court "expressly finds" that the scope of representation specified in the Notice of Limited Appearance has not been completed.

Paragraph (c) (7) (ii) details an alternative method of withdrawal, which requires the attorney to provide written notice to the represented party, the other parties and counsel, and the judge. The represented party has 21 days from the date of service to file an objection using the form notice attached to Rule 13. If an objection is filed, the attorney must notice a hearing, which will proceed along the same lines as a hearing under Paragraph (c) (7) (i). In the absence of an objection, the attorney's limited scope appearance automatically terminates after the 21 days.

- **Supreme Court Rule 137:** As amended, Rule 137 allows attorneys to provide assistance in drafting or reviewing documents to self-represented litigants. Neither an attorney appearance nor an attorney signature is required. The new paragraph (e) specifies that when assistance is provided in drafting or reviewing a pleading, motion or other paper, the self-represented party must sign the document. Paragraph (e) also states that an attorney may rely on the self-represented party's representation of facts without further investigation, unless the attorney knows the representations are false. The comment added to Rule 137 reiterates that an attorney providing assistance under paragraph (e) is not required to sign or note his or her involvement in the matter. The comment also emphasizes that even if an attorney is identified as assisting under the rule, he or she will not be deemed to have made a general or limited scope appearance.
- **Rule of Professional Conduct 1.2:** Rule 1.2 states that lawyer may limit the scope of representation. Comment [8] to this rule was amended to add a cross reference to Supreme Court Rules 13(c) (6) and 137(e) (concerning limited scope appearances and assistance in drafting and reviewing documents).
- **Rule of Professional Conduct 4.2:** There were two amendments to the comments to Rule 4.2 concerning communication with represented persons were amended. Comment [2] clarifies that Rule 4.2 applies to communications with a person represented by counsel providing limited services under Rule 1.2(c). Comment [8A] was added to clarify when a lawyer is deemed to know when a person is represented by counsel on a limited scope basis. The comment specifies a Notice of Limited Scope Appearance or other written notice as the bases for such knowledge.
- **Rule of Professional Conduct 5.5:** Comment [3] to Rule 5.5, concerning the unauthorized practice of law, was amended to add a reference to assistance provided under Rule 137(e) and Rule 13(c)(6) to nonlawyers proceeding *pro se*. The comment clarifies that assistance is permitted under Rule 5.5.

¹ The rule changes were adopted by the Supreme Court on June 14, 2013 and took effect July 1, 2013: <<https://www.state.il.us/court/SupremeCourt/Rules/Amend/2013/061413.pdf>>.