



SUPREME COURT OF MISSOURI

en banc

December 21, 2007
Effective July 1, 2008

In re:

(1) Repeal of subdivision (c) of subdivision 4-1.2, entitled "Scope of Representation," the Comment to subdivision 4-1.2, and subdivision (c) of subdivision 4-1.16, entitled "Declining or Terminating Representation," of Rule 4, entitled "Rules of Professional Conduct," and in lieu thereof adoption of a new subdivision (c) of subdivision 4-1.2, entitled "Scope of Representation," a new Comment to subdivision 4-1.2, including a "Notice and Consent to Limited Representation," and a new subdivision (c) of subdivision 4-1.16, entitled "Declining or Terminating Representation."

(2) Repeal of subdivision 43.01(b), entitled "Service on Attorney," of Rule 43, entitled "Service of Pleadings and Other Papers," and in lieu thereof adoption of a new subdivision 43.01(b), entitled "Service on Attorney."

(3) Repeal of subdivision 55.03, entitled "Signing of Pleadings, Motions and Other Papers; Representations to Court; Sanctions," of Rule 55, entitled "Pleadings and Motions," and in lieu thereof adoption of a new subdivision 55.03, entitled "Signing of Pleadings, Motions and Other Papers; Appearance and Withdrawal of Counsel; Representations to Court; Sanctions."

(4) Adoption of a new subdivision 88.09, entitled "Parties not Represented by Counsel," of Rule 88, entitled "Dissolution, Legal Separation and Child Support."

O R D E R

1. It is ordered that effective July 1, 2008, subdivision 4-1.2(c), the Comment to subdivision 4-1.2, and subdivision 4-1.16(c) of Rule 4 be and the same are hereby repealed and a new subdivision 4-1.2(c), a new Comment to subdivision 4-1.2, including a "Notice and Consent to Limited Representation," and a new subdivision 4-1.16(c) adopted in lieu thereof to read as follows:

4-1.2 SCOPE OF REPRESENTATION

* * *

(c) A lawyer may limit the scope of representation if the client gives informed consent in a writing signed by the client to the essential terms of the representation and the lawyer's limited role. Use of a written notice and consent form substantially similar to that contained in the comment to this Rule 4-1.2 creates the presumptions:

(a) the representation is limited to the lawyer and the services described in the form, and

(b) the lawyer does not represent the client generally or in any matters other than those identified in the form.

An otherwise unrepresented party to whom limited representation is being provided or has been provided is considered to be unrepresented for

purposes of communication under Rule 4-4.2 and Rule 4-4.3 except to the extent the lawyer acting within the scope of limited representation provides other counsel with a written notice of a time period within which other counsel shall communicate only with the lawyer of the party who is otherwise self-represented.

* * *

COMMENT

Scope of Representation

[1] Both lawyer and client have authority and responsibility in the objectives and means of representation. The client has ultimate authority to determine the purposes to be served by legal representation, within the limits imposed by law and the lawyer's professional obligations. Within those limits, a client also has a right to consult with the lawyer about the means to be used in pursuing those objectives. At the same time, a lawyer is not required to pursue objectives or employ means simply because a client may wish that the lawyer do so. A clear distinction between objectives and means sometimes cannot be drawn, and in many cases the client-lawyer relationship partakes of a joint undertaking. In questions of means, the lawyer should assume responsibility for technical and legal tactical issues, but should defer to the client regarding such questions as the expense to be incurred and concern for third persons who might be

adversely affected. Law defining the lawyer's scope of authority in litigation varies among jurisdictions.

[2] A lawyer may assist a self-represented litigant on a limited basis without undertaking the full representation of the client on all issues related to the legal matter for which the lawyer is engaged. Any doubt about the scope of representation should be resolved in a manner that promotes the interests of justice and those of the client and opposing party. Use of a written agreement for limited representation is required. The lawyer shall explain to the client the risks and benefits of limited representation during consultation on limiting the scope of representation. An agreement for limited representation does not exempt a lawyer from the duty to provide competent representation; however, the limitation of the scope of representation is a factor to be considered when determining the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation as required in Rule 4-1.1.

The following is a notice and consent to limited representation form that is appropriate:

Notice and Consent to Limited Representation

To help you with your legal matters, you, the client, and _____, the lawyer, agree that the lawyer will limit the representation to helping you with a certain legal matter for a short time or for a particular purpose.

The lawyer must act in your best interest and give you competent help. When a lawyer and you agree that the lawyer will provide limited help:

- The lawyer DOES NOT HAVE TO GIVE MORE HELP than the lawyer and you agreed; and
- The lawyer DOES NOT HAVE TO HELP WITH ANY OTHER PART of your legal matter.

While performing the limited legal services, the lawyer:

- Is not promising any particular outcome; and
- Is relying entirely on your disclosure of facts and will not make any independent investigation unless expressly agreed to in writing in this document.

If short-term limited representation is not reasonable, a lawyer may give advice, but will also tell you of the need to get more or other legal counsel.

I, the lawyer, agree to help you by performing the following limited services listed below and no other service, unless we revise this agreement in writing.

[INSTRUCTIONS: Check every item either **Yes** or **No** - do not leave any item blank. Delete all text that does not apply.]:

Y N

- a) Give legal advice through office visits, telephone calls, facsimile (fax), mail or e-mail
- b) Advise about alternate means of resolving the matter including mediation and arbitration
- c) Evaluate the client's self-diagnosis of the case and advise about legal rights and responsibilities
- d) Review pleadings and other documents prepared by you, the client
- e) Provide guidance and procedural information regarding filing and serving documents
- f) Suggest documents to be prepared
- g) Draft pleadings, motions and other documents

- h) Perform factual investigation including contacting witnesses, public record searches, in-depth interview of you, the client
- i) Perform legal research and analysis
- j) Evaluate settlement options
- k) Perform discovery by interrogatories, deposition and requests for admissions
- l) Plan for negotiations
- m) Plan for court appearances
- n) Provide standby telephone assistance during negotiations or settlement conferences
- o) Refer you, the client, to expert witnesses, special masters or other attorneys
- p) Provide procedural assistance with an appeal
- q) Provide substantive legal arguments in an appeal
- r) Appear in court for the limited purpose of _____

- s) Other: _____

I will charge to the Client the following costs: _____

I will charge to the Client the following fee for my limited legal representation:

_____ Date: _____
[Type Lawyer's name)

CLIENT'S CONSENT

I have read this Notice and Consent form and I understand it. I agree that the legal services listed above are the ONLY legal services to be provided by the lawyer. I understand and agree that the lawyer who is helping me with these services is not my lawyer for any other purpose and does not have to give me more legal help. If the lawyer is giving me advice or is helping me with legal or other documents, I understand the lawyer will stop helping me when the services listed above have been completed. The address I give below is my permanent address where I can be reached. I understand that it is important that the court handling my case and other parties to the case be able to reach me at the address after the lawyer ends the limited representation. I therefore agree that I will inform the Court and other parties of any change in my permanent address.

In exchange for the Lawyer's limited representation, I agree to pay the attorney's fee and costs described above.

Sign your name: _____

Print your name: _____

Print your address: _____

Phone number: _____ FAX: _____

Message Phone: _____ Name: _____

Email address: _____

[3] In a case in which the client appears to be suffering a mental disability, the lawyer's duty to abide by the client's decisions is to be guided by reference to Rule 4-1.14.

Independence From Client's Views or Activities

[4] Legal representation should not be denied to people who are unable to afford legal services or whose cause is controversial or the subject of popular disapproval. By the same token, representing a client does not constitute approval of the client's views or activities.

Services Limited in Objectives or Means

[5] The objectives or scope of services provided by a lawyer may be limited by agreement with the client or by the terms under which the lawyer's services are made available to the client. For example, a retainer may be for a specifically defined purpose. Representation provided through a legal aid agency may be subject to limitations on the types of cases the agency handles. When a lawyer has been retained by an insurer to represent an insured, the representation may be limited to matters related to the insurance coverage. The terms upon which representation is undertaken may exclude specific objectives or means. Such limitations may exclude objectives or means that the lawyer regards as repugnant or imprudent.

[6] An agreement concerning the scope of representation must accord with the Rules of Professional Conduct and other law. Thus, the client may not be asked to agree to representation so limited in scope as to violate Rule 4-1.1 or to surrender the right to terminate the lawyer's services or the right to settle litigation that the lawyer might wish to continue.

Criminal, Fraudulent and Prohibited Transactions

[7] A lawyer is required to give an honest opinion about the actual consequences that appear likely to result from a client's conduct. The fact

that a client uses advice in a course of action that is criminal or fraudulent does not, of itself, make a lawyer a party to the course of action. However, a lawyer may not knowingly assist a client in criminal or fraudulent conduct. There is a critical distinction between presenting an analysis of legal aspects of questionable conduct and recommending the means by which a crime or fraud might be committed with impunity.

[8] When the client's course of action has already begun and is continuing, the lawyer's responsibility is especially delicate. The lawyer is not permitted to reveal the client's wrongdoing, except where permitted by Rule 4-1.6. However, the lawyer is required to avoid furthering the purpose, for example, by suggesting how it might be concealed. A lawyer may not continue assisting a client in conduct that the lawyer originally supposes is legally proper but then discovers is criminal or fraudulent. Withdrawal from the representation, therefore, may be required.

[9] Where the client is a fiduciary, the lawyer may be charged with special obligations in dealings with a beneficiary.

[10] Rule 4-1.2(d) applies whether or not the defrauded party is a party to the transaction. Hence, a lawyer should not participate in a sham transaction; for example, a transaction to effectuate criminal or fraudulent escape of tax liability. Rule 4-1.2(d) does not preclude undertaking a criminal defense incident to a general retainer for legal services to a lawful enterprise. The last clause of Rule 4-1.2(d) recognizes that determining the

validity or interpretation of a statute or regulation may require a course of action involving disobedience of the statute or regulation or of the interpretation placed upon it by governmental authorities.

4-1.16 DECLINING OR TERMINATING REPRESENTATION

* * *

(c) A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation unless the lawyer has filed a notice of termination of limited appearance. Except when such notice is filed, a lawyer shall continue representation when ordered to do so by a tribunal notwithstanding good cause for terminating the representation.

* * *

2. It is ordered that effective July 1, 2008, subdivision 43.01(b) of Rule 43 be and the same is hereby repealed and a new subdivision 43.01(b) adopted in lieu thereof to read as follows:

43.01 SERVICE OF PLEADINGS AND OTHER PAPERS

* * *

(b) Service on Attorney. Whenever under these rules or any of the statutes of this state service is required or permitted to be made upon a party represented by an attorney of record, the service shall be made upon the

attorney unless service upon the party is ordered by the court. When a party is represented by more than one attorney, service may be made upon any such attorney. If an attorney has filed a notice of limited appearance for an otherwise self-represented person, service of papers shall be made on the self-represented person and not on the attorney unless the attorney acting within the scope of limited representation serves the other party or the other party's attorney with a copy of the notice of limited appearance setting forth a time period within which service of papers shall be upon the attorney for the otherwise self-represented party.

* * *

3. It is ordered that effective July 1, 2008, subdivision 55.03 of Rule 55 be and the same is hereby repealed and a new subdivision 55.03 adopted in lieu thereof to read as follows:

**55.03 SIGNING OF PLEADINGS, MOTIONS AND OTHER PAPERS;
APPEARANCE AND WITHDRAWAL OF COUNSEL;
REPRESENTATIONS TO COURT; SANCTIONS**

(a) Signature Required. Every pleading, motion and other filing shall be signed by at least one attorney of record in the attorney's individual name or, if the party is not represented by an attorney, shall be signed by the party. Every filing made electronically must add a certificate verifying that the original was signed by the attorney or party shown as the filer. The original

signed filing must be maintained by the filer for a period of not less than the maximum allowable time to complete the appellate process.

Each filing shall state the filer's address, Missouri bar number, if applicable, telephone number, facsimile number, and electronic mail address, if any.

An unsigned filing or an electronic filing without the required certification shall be stricken unless the omission is corrected promptly after being called to the attention of the attorney or party filing same.

(b) Appearance and Withdrawal of Counsel. An attorney who appears in a case shall be considered as representing the parties for whom the attorney appears for all purposes, except as otherwise provided in a written notice of limited appearance. If a notice of limited appearance is filed, service shall be made as provided in Rule 43.01(b).

An attorney appears in a case by:

(1) Participating in any proceeding as counsel for any party unless limited by a notice of limited appearance;

(2) Signing the attorney's name on any pleading or motion, except that an attorney who assisted in the preparation of a pleading and whose name appears on the pleading solely in that limited capacity has not entered an appearance in the matter; or

(3) Making a written appearance. A written entry of appearance may be limited by its terms to a particular proceeding or matter

by filing a notice of limited appearance.

An attorney who files a notice of limited appearance withdraws when the attorney has fulfilled the duties as set forth in the notice and files a termination of limited appearance with the court.

(c) Representation to the Court. By presenting and maintaining a claim, defense, request, demand, objection, contention, or argument in a pleading, motion, or other paper filed with or submitted to the court, an attorney or party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, that:

(1) The claim, defense, request, demand, objection, contention, or argument is not presented or maintained for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(2) The claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(3) The allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery. An attorney providing drafting assistance may rely on the

otherwise self-represented person's representation of facts, unless the attorney knows that such representations are false; and

(4) The denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

(d) Sanctions. If after notice and a reasonable opportunity to respond the court finds that Rule 55.03(c) has been violated, the court, subject to the conditions below, may impose an appropriate sanction upon the lawyers, law firms, or parties that have committed or are responsible for the violation.

(1) *How Initiated.*

(A) By Motion. A motion for sanctions under this Rule 55.03 shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate Rule 55.03(c). The motion shall be served as provided in Rule 43.01. The motion shall not be filed with or presented to the court unless, within 30 days after service of the motion, the challenged claim, defense, request, demand, objection, contention, or argument is not withdrawn or appropriately corrected. If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in representing or opposing the motion. Absent exceptional circumstances a law firm shall be held jointly responsible for violations committed by its partners, associates, or employees.

(B) On Court's Initiative. On its own initiative the court

may enter an order describing the specific conduct that appears to violate Rule 55.03(c) and directing a lawyer, law firm or party to withdraw or correct the questioned claim, defense, request, demand, objection, contention or argument or to show cause why it has not violated the rule with respect thereto.

(2) *Nature of Sanction - Limitations.* A sanction imposed for violation of this Rule 55.03 shall be limited to that which is sufficient to deter repetition of the conduct or comparable conduct by others similarly situated. Subject to the limitations in Rule 55.03(d)(1), the sanction may consist of or include directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorney's fees and other expenses incurred as a direct result of the violation.

(A) Monetary sanctions shall not be awarded against a represented party for a violation of Rule 55.03(c)(2).

(B) Monetary sanctions shall not be awarded on the court's initiative unless the court issues its order to show cause before a voluntary dismissal or settlement of the claims made by or against the party that is, or whose lawyers are, to be sanctioned.

(3) *Order.* When imposing sanctions, the court shall describe the conduct determined to constitute a violation of this Rule 55.03 and

explain the basis for the sanction imposed.

(e) Inapplicability to Discovery. This Rule 55.03 does not apply to disclosures and discovery requests, responses, objections, and motions that are subject to the provisions of Rules 56 to 61.

(f) Sanctions for Conduct in Prior Action. If conduct constituting a violation of Rule 55.03(c) occurs but the civil action is dismissed and if a civil action based upon or including the same claim against the same party is thereafter filed, the court on its own motion or on motion of a party to the first action may impose an appropriate sanction in the second action for the violation of Rule 55.03(c). The sanction shall be imposed in the manner provided by Rule 55.03(d). In determining the sanction to impose, the court shall consider the costs and expenses incurred in the action previously dismissed, including the reasonable attorney's fees incurred in the first action.

4. It is ordered that effective July 1, 2008, subdivision 88.09 of Rule 88 be and the same is hereby adopted to read as follows:

88.09 PARTIES NOT REPRESENTED BY COUNSEL

Every party not represented by counsel who participates in a proceeding for dissolution of marriage, legal separation, parentage or the modification of a judgment in any such proceeding shall:

(a) Complete a litigant awareness program that includes an explanation of the risks and responsibilities of self-representation, unless waived by the circuit court. The awareness program shall be prepared by a committee designated by this Court, but each circuit may determine the manner and means by which the training shall be provided and the proof of compliance; and

(b) As approved by this Court, use the pleadings, forms, and proposed judgment prepared by a committee designated by this Court. These forms shall be accepted by the courts of this state, until disapproved or superseded by this Court.

5. It is ordered that notice of this order be published in the Journal of The Missouri Bar.

6. It is ordered that this order be published in the South Western Reporter.

Day – to – Day

MARY R. RUSSELL
Acting Chief Justice