

IN THE SUPREME COURT OF THE STATE OF MONTANA

Nos. AF 07-0157 and AF 09-0688

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IN RE PROPOSED RULE CHANGES TO THE )  
MONTANA RULES OF CIVIL PROCEDURE and )  
THE MONTANA RULES OF PROFESSIONAL ) ORDER  
CONDUCT to encourage limited scope representation )  
(LSR) in Montana. )

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The Montana Supreme Court Equal Justice Task Force, the Montana Supreme Court Commission on Self-Represented Litigants, and the State Bar Access to Justice Committee have petitioned the Court to adopt changes to the Montana Rules of Professional Conduct and the Montana Rules of Civil Procedure. The intent of the proposed rule changes is to encourage Limited Scope Representation (LSR) by Montana attorneys, as one means of addressing the unmet legal needs of low- to moderate-income Montanans.

The proposed rule changes are patterned after similar rules that have been implemented in the states of Wyoming, Washington, and Iowa. They involve amending Rules 1.1, 1.2, and 4.2 of the Montana Rules of Professional Conduct, and amending the Montana Rules of Civil Procedure by adopting new Rules 4.2 and 4.3 and adding language to Rule 11.

It is the Court's intention to adopt rules to encourage LSR. Before we do so, we invite public comment on the proposed new provisions, which are set forth in full below. In particular, we ask the Uniform District Court Rules Commission to suggest any changes to the Uniform District Court Rules that the Commission deems necessary to coordinate with adoption of the proposed new rules.

The provisions proposed to be added to the Montana Rules of Professional Conduct are highlighted and underlined below:

## Rule 1.1 -- Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation. A lawyer and client may agree, pursuant to Rule 1.2(c), to limit the scope of the representation. In such circumstances, competence means the knowledge, skill, thoroughness, and preparation reasonably necessary for the limited representation.

## Rule 1.2 -- Scope of Representation and Allocation of Authority Between Client and Lawyer

[existing subsections (a) and (b)]

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent in writing.

(1) The client's informed consent must be confirmed in writing unless:

(i) the representation of the client consists solely of telephone consultation;

(ii) the representation is provided by a lawyer employed by a nonprofit legal services program or participating in a nonprofit court-annexed legal services program and the lawyer's representation consists solely of providing information and advice or the preparation of court-approved legal forms; or

(iii) the court appoints the attorney for a limited purpose that is set forth in the appointment order.

(2) If the client gives informed consent in writing signed by the client, there shall be a presumption that:

(i) the representation is limited to the attorney and the services described in the writing; and

(ii) the attorney does not represent the client generally or in matters other than those identified in the writing.

[existing subsections (c) and (d) re-designated as (d) and (e)]

## Rule 4.2 -- Communication with Person Represented by Counsel

(a) [existing rule]

(b) An otherwise unrepresented person to whom limited representation is being provided or has been provided in accordance with Rule 1.2(c) is considered to be unrepresented for purposes of this Rule unless the opposing lawyer has been provided with a written notice of appearance under which, or a written notice of time period during which, he or she is to communicate only with the limited representation lawyer as to the subject matter within the limited scope of the representation.

#### **Rule 4.3 -- Dealing with Unrepresented Person**

(a) [existing rule]

(b) An otherwise unrepresented person to whom limited representation is being provided or has been provided in accordance with Rule 1.2(c) is considered to be unrepresented for purposes of this Rule unless the opposing lawyer has been provided with a written notice of appearance under which, or a written notice of time period during which, he or she is to communicate only with the limited representation lawyer as to the subject matter within the limited scope of representation.

The provisions proposed to be added to the Montana Rules of Civil Procedure are highlighted and underlined below:

#### **Rule 4.2 Limited Representation Permitted -- Process.**

(a) In accordance with Rule 1.2(c) of the Montana Rules of Professional Conduct, an attorney may undertake to provide limited representation to a person involved in a court proceeding.

(b) Providing limited representation of a person under these rules shall not constitute an entry of appearance by the attorney for purposes of Rule 5(b) and does not authorize or require the service or delivery of pleadings, papers, or other documents upon the attorney under Rule 5(b).

(c) Representation of the person by the attorney at any proceeding before a judge or other judicial officer on behalf of the person constitutes an entry of appearance pursuant to 25-3-401, except to the extent that a limited notice of appearance as provided for under Rule 4.3 is filed and served prior to or simultaneous with the actual appearance. Service on an attorney who has made a limited appearance for a party shall be valid only in connection with the specific proceedings for which the attorney appeared, including any hearing or

trial at which the attorney appeared and any subsequent motions for presentation of orders.

(d) The attorney's violation of this Rule may subject the attorney to sanctions provided in Rule 11.

**Rule 4.3. Notice of Limited Appearance and Withdrawal as Attorney.**

(a) Notice of limited appearance. If specifically so stated in a notice of limited appearance filed and served prior to or simultaneous with the proceeding, an attorney's role may be limited to one or more individual proceedings in the action.

(b) At the conclusion of such proceedings the attorney's role terminates without the necessity of leave of court, upon the attorney filing notice of completion of limited appearance.

**Rule 11. Signing of Pleadings, Motions, and other Papers -- Sanctions.**

(a) [existing rule]

(b) An attorney may help to draft a pleading, motion, or document filed by the otherwise self-represented person, and the attorney need not sign that pleading, motion, or document. The attorney in providing such drafting assistance may rely on the otherwise self-represented person's representation of facts, unless the attorney has reason to believe that such representations are false or materially insufficient, in which instance the attorney shall make an independent reasonable inquiry into the facts.

IT IS ORDERED that public comments will be accepted on the above proposed changes to the Montana Rules of Professional Conduct and the Montana Rules of Civil Procedure for 90 days following the date of this Order. Such comments shall be filed, in writing, with the Clerk of this Court.

IT IS FURTHER ORDERED that this Order shall be published on the Montana Supreme Court website and that notice of this Order shall be posted on the

website of the State Bar of Montana and in the next available issue of the *Montana Lawyer*.

The Clerk is directed to provide copies of this Order to the Montana State Law Library and the State Bar of Montana. The Clerk is further directed to provide copies of this Order to the Chairs of the Montana Supreme Court Equal Justice Task Force, the Montana Supreme Court Commission on Self-Represented Litigants, the State Bar of Montana Access to Justice Committee, and the Advisory Commission on Rules of Civil and Appellate Procedure. The Clerk is further directed to provide copies of this Order to each member of the Uniform District Court Rules Commission.

DATED this \_\_\_\_\_ day of October, 2010.

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Chief Justice

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Justices