Responsive Law
The Consumer's Voice in the Legal System

Comments on: Petition to Amend D.C. Rule of Professional Conduct 1.2 (Limited Scope Representation)

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Comments to the

D.C. Bar Rules of Professional Conduct Review Committee

April 14, 2015

Consumers for a Responsive Legal System ("Responsive Law") appreciates the opportunity to provide the following comments in response to the request for public comments on the proposed changes to D.C Rule of Professional Conduct 1.2. Responsive Law is a national, nonprofit organization working to make the civil legal system more affordable, accessible and accountable to the people. We support policies that expand the range of legal services available to meet consumers' legal needs.

Responsive Law generally endorses the Committee's proposed amendments to Rule 1.2, which will greatly facilitate limited scope representation in the District of Columbia. The proposed amendments to Rule 1.2 will provide low-and middle-income D.C. residents with greater access to affordable legal assistance, and will provide all D.C. residents with greater choice when selecting legal services.

Although we support the proposed changes in large part, we propose the following minor changes in order to better achieve the objective of facilitating limited scope representation:

1) Exempting telephone and online consultations from the requirement of a written agreement.

2) Amending Rule 1.2 to explicitly clarify that as a default, service of process in a limited scope matter shall be made on the party, rather than on the lawyer.

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Telephone and Online Consultations Should Be Exempt from the Requirement of a Written Agreement

Responsive Law strongly supports requiring that attorneys bear the responsibility at the outset of a representation of reaching a written agreement with a client about the scope and objectives of that representation. In fact, we recommend such a requirement for all new representations, not just for limited-scope representation.[1]

However, the proposed rules pose an unnecessary burden on legal service providers who provide modest means and low-income individuals access to quick legal consultations via an online or telephone consultation. We agree that it is best practice to obtain a client's informed consent. Procuring a written agreement, however, should not be an absolute requirement, as it imposes an unnecessary burden on attorneys who have provide limited scope services via a telephone hotline or online communication.

For example, consider legal aid and low-bono providers who host hotlines as a way to provide an easy and affordable access point to common legal problems faced by those of modest means. Requiring that a client sign a written agreement for a telephone interaction of this nature is counterintuitive and defeats the purpose of having quick, easily accessibly legal guidance available via a hotline.

Another example involves interactions that are partially or exclusively online.[2] Online providers, who form an essential part of the expansion of legal access to low-income and modest means clients, may find it difficult or impossible to obtain written client consent. Therefore, **we urge the Committee to clarify that written consent can be given electronically and to allow for a client's verbal consent for telephone-only programs like legal aid hotline programs**.

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[1] See our Clients' Bill of Rights, http://responsivelaw.org/index.php/resources/how-to-hire-and-use-a-lawyer#2

[2] For example, Avvo Advisor (https://advisor.avvo.com/) is a service that provides on-demand legal service for a fixed fee. Customers can enter their zipcode, the subject of their legal inquiry, their contact information and credit card information and within 15 minutes they will get a call from an attorney to discuss their matter for a rate of $39 for 15 minutes. Another service, JustAnswer (http://www.justanswer.com/), allows customers to pay lawyers by the question for online answers to their questions.

The Default for Service of Process in a Limited Scope Matter Should Be Service on the Party, Not the Lawyer

A risk to both clients and lawyers is that a lawyer is presumed to be the service agent for anything and everything potentially involved in the case, however unrelated it may be to the limited scope of her representation. Expanding the lawyer's duties beyond the scope of her limited representation undermines the basic purpose of limited-scope representation. This expanded service obligation can also potentially impose a considerable burden on a lawyer, especially if the underlying action is particularly complex—precisely the kind of action in which limited appearances are most likely to be the most helpful for litigants.

There is no mention of service of process in the existing Rule 1.2 or the amendments proposed by the Committee. Granted, there is mention of service of process on the Notice of Limited Appearance form. Effective limited scope rules, however, must clearly delineate acts that extend or do not extend the representation. Thus, we encourage the Committee to add a comment or a rule that explicitly state that service of process 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 a time period within which service shall be upon the attorney.

We also recommend that the language on the Notice of Limited Appearance be changed to language found on the Notice of Entry of Limited Appearance in Kansas, which states "service of process on this attorney for any issue not named above shall not be deemed service on the party. The party's name and address where service will be accepted and phone number are provided below for that purpose."[3] We believe that this language is more effective than the language found on the Notice of Limited Appearance established by Administrative Order 14-10 in 2014. The current notice, as put forth by the Superior Court of the District of Columbia states: "Notices and documents concerning the date, time period, activity, or subject matter described above must be served on me and my client. All

[3] http://www.kscourts.org/programs/self-help/Limited-Representation/Limited-Notice-of-Appearance.pdf

other notices and documents must be served only on my client and/or any counsel who has entered an appearance on my client's behalf."

The proposals mentioned above clarify that, absent action by a limited-representation attorney, the party (not the attorney) should always be served. This is an appropriate default position because the self-represented party plays a greater role in the overall litigation strategy than the limited-representation attorney. This rule would also create a simple mechanism for limited-representation attorneys, with client consent, to direct service towards themselves for a specified period of time.

Conclusion

In summary, we recommend that the Committee amend Rule 1.2 and provide an exception to the written requirement for telephone consultations and online consultations where written requirements would be impractical. While written consent does provide the greatest possible protection for limited-scope clients, requiring written consent for telephone consultations and online interactions imposes a more than modest burden upon limited-scope attorneys.

We also recommend that the Committee amend Rule 1.2 to explicitly clarify that, as a default, any and all documents and notices should be served on the client. We believe this rule would be clear and easy to follow for clients, opposing counsel and limited scope attorneys and that it is most appropriate given the usual division of responsibility between limited scope attorneys and clients.

Responsive Law hopes that the Committee will consider these amendments to further protect consumers and clients as they take advantage of the growing continuum of legal services available in the District of Columbia.