

## **Suggested Amendments for Limited Representation**

### **Rule 226 Kansas Rules of Professional Conduct**

#### **1.1 Client-Lawyer Relationship: 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.

#### **1.2 Client-Lawyer Relationship: Scope of Representation**

- (a) A lawyer shall abide by a client's decisions concerning the lawful objectives of representation, subject to paragraphs (c), (d), and (e), and shall consult with the client as to the means which the lawyer shall choose to pursue. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.
- (b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.
- (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.
- (d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.
- (e) When a lawyer knows that a client expects assistance not permitted by the rules of professional conduct or other law, the lawyer shall consult with the client regarding the relevant limitations on the lawyer's conduct.

#### **4.2 Transactions with Persons other than Clients: Communication with Person Represented by Counsel**

- (a) In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.
- (b) An otherwise unrepresented person to whom limited representation is being provided or has been provided under Rule 1.2(c) is considered to be unrepresented for purposes of this rule unless the lawyer representing another person has been provided with a written notice of appearance under which, or a written notice of time period during which, the lawyer is to communicate only with the limited representation lawyer as to the subject matter within the limited scope of the representation.

#### **4.3 Transactions with Persons other than Clients: Dealing with Unrepresented Person**

- (a) In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding.
- (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 lawyer representing another person has been provided with a written notice of appearance under which, or a written notice of time period during which, the lawyer is to communicate only with the limited representation lawyer as to the subject matter within the limited scope of the representation .

## Proposed NEW Supreme Court Rule

### Rule 115A Limited Representation

- (a) **Written Consent Required.** An attorney may limit the scope of representation if the limitation is reasonable under the circumstances, and the client gives informed written consent.
- (b) **Limited Appearance.** An attorney, pursuant to this rule, may make a limited appearance on behalf of an otherwise unrepresented party.
  - (1) **Notice of Limited Entry of Appearance Required.** An attorney making a limited appearance must file a notice of limited entry of appearance. The notice is sufficient if it is on the judicial council form. The notice must:
    - (A) state precisely the court proceeding to which the limited appearance pertains; and
    - (B) if the appearance does not extend to all issues to be considered at the proceeding, identify the specific issues covered by the appearance.
  - (2) **Scope and Number of Limited Appearances.** An attorney may file a notice of limited entry of appearance for one or more court proceedings in a case. At any time—including during a proceeding—an attorney may, with the client’s consent, file a new notice of limited entry of appearance.
  - (3) **A Paper Filed In a Limited Appearance.**
    - (A) **Statement Required on Signature Page.** A pleading, motion, or other paper filed by an attorney making a limited appearance must state in bold type on the signature page of the document: “Attorney for [party] for the limited purpose of court proceeding.”
    - (B) **Filing Outside Scope of Limited Appearance Constitutes General Appearance.** If an attorney files a pleading, motion, or other paper that is outside the scope of a limited appearance without filing a new notice of limited entry of appearance, the attorney will be deemed to have entered a general appearance in the case.
  - (4) **Service.** When service is required or permitted to be made on a party represented by an attorney making a limited appearance under this rule:

- (A) for all matters within the scope of the limited appearance, service must be made on both the attorney and the party;
- (B) the party must be served at the party's address stated in the notice of limited entry of appearance, but if the party's address has been made confidential by court order or rule, service on the party must be made in accordance with the court order or rule; and
- (C) service on the attorney is not required for matters outside the scope of the limited appearance.

(5) **Restrictions on Limited Appearances.**

- (A) An attorney may not enter a limited appearance for the sole purpose of making evidentiary objections.
- (B) An attorney making a limited appearance and the litigant for whom the attorney appears may not argue on the same legal issue during the period of the limited appearance.

(6) **Withdrawal.**

- (A) **On Completion of Limited Appearance.** On completion of a limited appearance—including completion and filing of an order or journal entry resolving the court proceeding for which the attorney was retained—an attorney must withdraw by filing a notice of withdrawal of limited appearance and serving the notice on the client and parties. The notice must state that the withdrawal is effective unless an objection is filed not later than 14 days after the notice is filed. The notice is sufficient if it is on the judicial council form and—unless otherwise provided by law—must include the client's name, address, and telephone number. The attorney must file a notice of withdrawal of limited entry of appearance for each court proceeding for which the attorney has filed a notice of limited appearance. The court may impose sanctions for failure to file a notice of withdrawal under this paragraph.
- (B) **Before Completion of Limited Appearance.** If an attorney wishes to withdraw from a limited appearance before it is completed—including before completion and filing of an order or journal entry documenting the court proceeding for which the attorney was retained—the attorney must comply with Rule 117.

- (c) **Document Preparation Assistance.** An attorney may help a party prepare a pleading, motion, or other paper to be signed and filed in court by the client. The following rules apply:

- (1) The attorney or party preparing a pleading, motion, or other paper under this rule must insert at the bottom of the paper the notation “prepared with assistance of a Kansas licensed attorney;”
- (2) The attorney is not required to sign the paper; and
- (3) The filing of a pleading, motion, or other paper prepared under this rule does not constitute an appearance by the preparing attorney.

[CAPTION]

**NOTICE OF LIMITED ENTRY OF APPEARANCE**

Pursuant to Supreme Court Rule 115A, the undersigned attorney hereby enters a limited appearance for  (name of client), (petitioner/respondent/plaintiff/defendant)  in this case.

1. This attorney,  (name)  and the  (petitioner/respondent/plaintiff/defendant)  have executed a written agreement whereby the attorney will provide limited representation to the  (petitioner/respondent/plaintiff/defendant) .

2. This attorney's appearance in this case is limited in scope to the following matter(s):

[Identify all matter(s) that are applicable and provide a detailed description of services, including any scheduled appearances, as needed.]

3. This attorney is Attorney of Record and available for service of a document ONLY for the court events described above. For all other matters, the party must be served directly, unless otherwise ordered by the court. Service on this attorney for any issue not named above shall not be deemed service on the party. **The party's name and, unless it is confidential, address where service will be accepted are provided below for that purpose.**

4. A party or the party's counsel may contact the party represented by this attorney directly regarding matters outside the scope of this limited representation without first consulting this attorney.

5. This attorney's representation of  (petitioner/respondent/plaintiff/defendant)  will terminate after an order or journal entry resolving the matter subject to limited representation has been filed and a Notice of Withdrawal of Limited Appearance has been filed and served on the client and parties.

(Attorney's Signature)   
Attorney's Name  
Supreme Court Number  
Address  
Telephone Number  
[Fax Number]  
[E-mail Address]

Party's Name  
\*Address  
\*Telephone Number  
\*[Fax Number]  
\*[E-mail Address]  
  
\*Provide if nonconfidential

**CERTIFICATE OF SERVICE**

The undersigned certifies that on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, a copy of the above Notice of Limited Entry of Appearance was served as follows:

*[List name and nonconfidential address of each person served].*

\_\_\_\_\_  
*(Signature)*

[CAPTION]

**NOTICE OF WITHDRAWAL OF ATTORNEY  
ON CONCLUSION OF LIMITED APPEARANCE**

In accordance with the agreement between the undersigned attorney and \_\_\_\_\_ (*name of client*), (*petitioner/respondent/plaintiff/defendant*) for limited representation, the undersigned attorney withdraws as an attorney of record in this case.

1. I was retained for the following limited scope services:

[Provide a detailed description as was included in the Notice(s) of Limited Entry of Appearance.]

2. I have completed all services within the scope of my representation.

3. The last known service address for \_\_\_\_\_ (*name of client*) is:

*[insert address unless confidential by court order or rule]*

4. The last known phone number for \_\_\_\_\_ (*name of client*) is:

*[insert address unless confidential by court order or rule]*

My withdrawal pursuant to this Notice will be effective unless an objection is filed not later than 14 days after this Notice is filed.

\_\_\_\_\_  
*(Attorney's Signature)*  
Attorney's Name  
Supreme Court Number  
Address  
Telephone Number  
[Fax Number]  
[E-mail Address]

**CERTIFICATE OF SERVICE**

The undersigned certifies that on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, a copy of the above Notice of Withdrawal of Attorney on Conclusion of Limited Appearance was served as follows:

*[List name and nonconfidential address of each person served].*

*(Signature)*

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