**Proposal 11-05**
**Amends certain Supreme Court Rules and Rules of Professional Conduct to allow lawyers to engage in limited scope representation of clients**

**Rule 13. Appearances--Time to Plead--Withdrawal**

**(a) Written Appearances.** If a written appearance is filed, copies of the appearance shall be served in the manner required for the service of copies of pleadings.

**(b) Time to Plead.** A party who appears without having been served with summons is required to plead within the same time as if served with summons on the day he appears.

**(c) Appearance and Withdrawal of Attorneys.**

(1) *Addressing the Court.* An attorney shall file his written appearance or other pleading before he addresses the court unless he is presenting a motion for leave to appear by intervention or otherwise.

(2) *Notice of Withdrawal.* An attorney may not withdraw his appearance for a party without leave of court and notice to all parties of record, and, unless another attorney is substituted, he must give reasonable notice of the time and place of the presentation of the motion for leave to withdraw, by personal service, certified mail or third-party carrier, directed to the party represented by him at his last known business or residence address. Such notice shall advise said party that to insure notice of any action in said cause, he should retain other counsel therein or file with the clerk of the court, within 21 days after entry of the order of withdrawal, his supplementary appearance stating therein an address at which service of notices or other documents may be had upon him.

(3) *Motion to Withdraw.* The motion for leave to withdraw shall be in writing and, unless another attorney is substituted shall state the last known address of the party represented. The motion may be denied by the court if the granting of it would delay the trial of the case, or would otherwise be inequitable.

(4) *Copy to be Served on Party.* If the party does not appear at the time the motion for withdrawal is granted, either in person or by substitute counsel, then, within three days of the entry of the order of withdrawal, a copy thereof shall be served upon the party by the withdrawing attorney in the manner provided in paragraph (c)(2) of this rule, and proof of service shall be made and filed.

(5) *Supplemental Appearance.* Unless another attorney is, at the time of such withdrawal, substituted for the one withdrawing, the party shall file in the case within 21 days after entry of the order of withdrawal a supplementary appearance, stating therein an address at which the service of notices or other documents may be had upon him. In case of his failure to file such supplementary appearance, notice, if by mail or by third-party carrier, shall be directed to him at his last known business or residence address.

(6) *Limited Scope Appearance*. An attorney may make a limited scope appearance on behalf of a party in a civil proceeding pursuant to Rule of Professional Conduct 1.2(c) when the attorney has entered into a written agreement with that party to provide limited scope representation. The attorney shall file a Notice of Limited Scope Appearance in the form attached to this rule, identifying each aspect of the proceeding to which the limited scope appearance pertains.

An attorney may file a Notice of Limited Scope Appearance more than once in a case. An attorney must file a new Notice of Limited Scope Appearance before any additional aspect of the proceeding in which the attorney intends to appear. A party shall not be required to pay more than one appearance fee in a case.

On completing the representation specified in the Notice of Limited Scope Appearance, an attorney shall withdraw by filing a Motion to Withdraw Limited Scope Appearance attesting to completion of the limited scope representation described in the Notice of Limited Scope Appearance. The motion shall be served in accordance with paragraph (c)(2) of this rule unless the court orders otherwise. The court shall grant the Motion to Withdraw unless the court finds, upon objection of the client, that the limited scope representation described in the Notice of Limited Scope Appearance has not been completed.

**Committee Comments**

Rule 13 was added in 1982. It was patterned after Proposed Uniform Circuit Court Rule III, which was prepared by a special committee of the Illinois State Bar Association and approved by the ISBA Board of Governors on June 22, 1976. Under paragraph (c) of this rule, an attorney's written appearance on behalf of a client before any court in this State binds the attorney to continue to represent that client in that cause until the court, after notice and motion, grants leave for the attorney to withdraw. (See Rule of Professional Conduct 1.16(c).)

(_____, __, 20__)

Paragraph (c)(6) addresses the provision of limited scope representation to clients under Rule of Professional Conduct 1.2(c). The paragraph is not intended to regulate or impede appearances made pursuant to other types of limited engagements by attorneys, who may appear and withdraw as otherwise provided by Rule 13.

An attorney making a limited scope appearance in a civil proceeding must first enter into a written agreement with the party disclosing the limited nature of the representation. The limited appearance is then effected by using the form Notice of Limited Scope Appearance appended to this Rule. Utilizing this standardized form promotes consistency in the filing of limited scope appearances, makes the notices easily recognizable to judges and court personnel, and helps ensure that the scope of the representation is identified with specificity.

A party on whose behalf an attorney has filed a Notice of Limited Scope Appearance remains responsible, either personally or through an attorney who represents the party, for all matters not specifically identified in the Notice of Limited Scope Appearance.

Paragraph (c)(6) does not restrict (1) the number of limited scope appearances an attorney may make in a case, (2) the aspects of the case for which an attorney may file a limited scope appearance such as, for example, specified court proceedings, depositions, or settlement negotiations, or (3) the purposes for which an attorney may file a limited scope appearance. Notwithstanding the absence of numeric or subject matter restrictions on filing limited scope appearances, nothing in the Rule restricts the ability of a court to manage the cases before it, including taking appropriate action in response to client or lawyer abuse of the limited scope representation procedures.

Paragraph (c)(6) also prescribes the procedure for an attorney's withdrawal from a matter when the services within the scope of the Notice of Limited Scope Appearance have been completed. The court may deny a Motion to Withdraw Limited Scope Appearance only if the client objects to the withdrawal and the court finds that the limited scope services contemplated under the Notice of Limited Scope Appearance have not been completed. This procedure for withdrawal is not to be used by an attorney seeking to withdraw from a limited scope appearance before completing the services within the scope of Notice of Limited Scope Appearance. Withdrawal for reasons other than completion of the limited scope appearance should be by motion pursuant to paragraphs (c)(2) through (c)(4) of this rule.

A limited scope appearance under the rule is unrelated to "special and limited" appearances formerly used to object to the lack of personal jurisdiction. The use of such appearances ended with the adoption of Public Act 91-145, which amended Section 2-301 of the Code of Civil Procedure (735 ILCS 5/2-301) effective January 1, 2000.

**Form Limited Scope Appearance in Civil Action**

**IN THE CIRCUIT COURT OF THE _____ JUDICIAL CIRCUIT**
**_____ COUNTY, ILLINOIS**
**(OR, IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS)**

| | | |
|---|---|---|
| _____ | ) | **No.** |
| Plaintiff/Petitioner | ) | |
| | ) | |
| **vs.** | ) | |
| | ) | |
| | ) | |
| _____ | ) | |
| Defendant/Respondent | ) | |

**NOTICE OF LIMITED SCOPE APPEARANCE**

1. The attorney, _____, and the Party, _____, have entered into a written agreement dated _____ providing that the attorney will provide limited scope representation to the Party in the above-captioned matter in accordance with Paragraphs 3 and 4, below.

2. The Party is Plaintiff Petitioner Defendant Respondent in this matter. (Circle one)

3. The attorney appears pursuant to Supreme Court Rule 13(c)(6). This appearance is limited in scope to the following matter(s) in which the attorney will represent the Party (check and complete all that apply):

   ☐ In the court proceeding (identify)_____
   on the following date: _____

   ☐ And in any continuance of that proceeding

   ☐ At the trial on the following date: _____

   ☐ And in any continuance of that trial

   ☐ And until judgment

   ☐ At the following deposition(s): _____

   ☐ If a family law matter, specify the scope and limits of representation: _____
   _____

☐ Other (specify the scope and limits of representation): _____

_____

4. If this appearance does not extend to all matters to be considered at the proceeding(s) above, identify the discrete issues within each proceeding covered by this appearance: _____

_____

5. On completion of the representation, the attorney shall file a Motion to Withdraw Limited Scope Appearance attesting to completion of the limited scope representation described in this Notice of Limited Scope Appearance. The motion shall be served in accordance with Supreme Court Rule 13(c)(2) unless the court orders otherwise.

6. Service of pleadings on the attorney and party named above shall be made in accordance with Supreme Court Rule 11(e).

| | |
|---|---|
| _____ | _____ |
| Signature of Attorney | Name of Attorney |
| _____ | _____ |
| Attorney's Address | Attorney's Telephone Number |
| _____ | _____ |
| Attorney's E-Mail Address | Attorney Number |
| _____ | _____ |
| Signature of Party | Name of Party |
| _____ | _____ |
| Party's Address | Party's Telephone Number |

_____

Party's E-Mail Address

_____

Date

**Rule 11. Manner of Serving Documents Other Than Process and Complaint on Parties Not in Default in the Trial and Reviewing Courts**

**(a) On Whom Made.** If a party is represented by an attorney of record, service shall be made upon the attorney. Otherwise service shall be made upon the party.

**(b) Method.** Documents shall be served as follows:

(1) by delivering them to the attorney or party personally;

(2) by leaving them in the office of the attorney with the attorney's clerk, or with a person in charge of the office; or if a party is not represented by counsel, by leaving them at the party's residence with a family member of the age of 13 years or upwards;

(3) by depositing them in a United States post office or post office box, enclosed in an envelope, plainly addressed to the attorney at the attorney's business address, or to the party at the party's business address or residence, with postage fully prepaid; or

(4) by delivering them to a third-party commercial carrier – including deposit in the carrier's pick-up box or drop off with the carrier's designated contractor – enclosed in a package, plainly addressed to the attorney at the attorney's business address, or to the party at the party's business address or residence, with delivery charge fully prepaid; or

(5) by transmitting them via facsimile machine to the office of the attorney or party, who has consented to receiving service by facsimile transmission. Briefs filed in reviewing courts shall not be served by facsimile transmission.

> (i) A party or attorney electing to serve pleadings by facsimile must include on the certificate of service transmitted the telephone number of the sender's facsimile transmitting device. Use of service by facsimile shall be deemed consent by that party or attorney to receive service by facsimile transmission. Any party may rescind consent of service by facsimile transmission in a case by filing with the court and serving a notice on all parties or their attorneys who have filed appearances that facsimile service will not be accepted. A party or attorney who has rescinded consent to service by facsimile transmission in a case may not serve another party or attorney by facsimile transmission in that case.
>
> (ii) Each page of notices and documents transmitted by facsimile pursuant to this rule should bear the circuit court number, the title of the document, and the page number.

(6) by transmitting them via e-mail to the designated e-mail address of record for the attorney or party if the attorney or party consented to e-mail service. The listing of a designated e-mail address on documents or the use of e-mail service shall be deemed consent by that party or attorney to receive e-mail service. Any party may rescind consent of e-mail service in a case by serving a notice on all parties or the attorneys of record. A party or attorney who has

rescinded consent to e-mail service in a case may not serve another party or attorney by e-mail in that case; or

(7) by transmission through a service provider that provides an electronic in-box for those parties registered to use the service.

**(c) Multiple Parties or Attorneys.** In cases in which there are two or more plaintiffs or defendants who appear by different attorneys, service of all documents shall be made on the attorney for each of the parties. If one attorney appears for several parties, that attorney is entitled to only one copy of any document served upon him by the opposite side. When more than one attorney appears for a party, service of a copy upon one of them is sufficient.

**(d) Mandatory E-Mail Service.** The use of e-mail service is mandatory if a local circuit adopts mandatory e-filing pursuant to Illinois Supreme Court Electronic Filing Standards.

**(e) Limited Scope Appearance.** After an attorney files a Notice of Limited Scope Appearance in accordance with Rule 13(c)(6), service of all documents shall be made on both the attorney and the party represented on a limited basis until either the court enters an order granting the attorney's Motion to Withdraw Limited Scope Appearance pursuant to that rule or, if withdrawal is sought before completion of the limited scope representation, leave of court is granted in accordance with Rule 13(c)(2).

**Rule 137. Signing of Pleadings, Motions and Other Documents—Sanctions**

**(a) Signature requirement/certification.** Every pleading, motion and other document of a party represented by an attorney shall be signed by at least one attorney of record in his individual name, whose address shall be stated. A party who is not represented by an attorney shall sign his pleading, motion, or other document and state his address. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. The signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion or other document; that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. If a pleading, motion, or other document is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion, or other document is signed in violation of this rule, the court, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of reasonable expenses incurred because of the filing of the pleading, motion or other document, including a reasonable attorney fee.

**(b) Procedure for Alleging Violations of This Rule.** All proceedings under this rule shall be brought within the civil action in which the pleading, motion or other document referred to has been filed, and no violation or alleged violation of this rule shall give rise to a separate civil suit, but shall be considered a claim within the same civil action. Motions brought pursuant to this rule must be filed within 30 days of the entry of final judgment, or if a timely post-judgment motion is filed, within 30 days of the ruling on the post-judgment motion.

**(c) Applicability to State Entities and Review of Administrative Determinations.** This rule shall apply to the State of Illinois or any agency of the State in the same manner as any other party. Furthermore, where the litigation involves review of a determination of an administrative agency, the court may include in its award for expenses an amount to compensate a party for costs actually incurred by that party in contesting on the administrative level an allegation or denial made by the State without reasonable cause and found to be untrue.

**(d) Required Written Explanation of Imposition of Sanctions.** Where a sanction is imposed under this rule, the judge shall set forth with specificity the reasons and basis of any sanction so imposed either in the judgment order itself or in a separate written order.

**(e) Attorney Assistance Not Requiring an Appearance or Signature.** An attorney may assist a self-represented person in drafting or reviewing a pleading, motion, or other paper without making a general or limited scope appearance. Such assistance does not constitute either a general or limited scope appearance by the attorney. The self-represented person shall sign the pleading, motion, or other paper. An attorney providing drafting or reviewing assistance may rely on the self-represented person's representation of facts without further investigation by the attorney, unless the attorney knows that such representations are false.

**Committee Comments**

(August 1, 1989)

The Supreme Court has adopted Rule 137, effective August 1, 1989. Rule 137 will require all pleadings and papers to be signed by an attorney of record or by a party, if the party is not represented by an attorney, and (treating such signature as a certification that the paper has been read, that after reasonable inquiry it is well-grounded in fact and law, and that it is not interposed for any improper purpose, etc.) the rule authorizes the trial courts to impose certain sanctions for violations of the rule. Rule 137 preempts all matters sought to be covered by section 2-611 of the Code of Civil Procedure. Unlike section 2—611, Rule 137 allows but does not require the imposition of sanctions. Unlike section 2—611, Rule 137 requires a trial judge who imposes sanctions to set forth with specificity the reasons and basis of any sanction in a separate written order. Unlike section 2—611, Rule 137 does not make special provisions concerning the potential exposure to sanctions of insurance companies that might employ attorneys.

(December 17, 1993)

The rule is modified to clarify when motions for sanctions must be filed.

(_____, 20__)

Under Illinois Rule of Professional Conduct 1.2(c), an attorney may limit the scope of a representation if the limitation is reasonable under the circumstances and the client gives informed consent. Such a limited scope representation may include providing advice to a party regarding the drafting of a pleading, motion or other paper, or reviewing a pleading, motion or other paper drafted by a party, without filing a general or limited scope appearance. In such circumstances, an attorney is not required to sign or otherwise note the attorney's involvement and the certification requirements in Rule 137 are inapplicable. Moreover, even if an attorney is identified in connection with such a limited scope representation, the attorney will not be deemed to have made a general or limited scope appearance.

Consistent with the limited scope of services envisioned under this drafting and reviewing function, attorneys may rely on the representation of facts provided by the self-represented person. This rule applies, for example, to an attorney who advises a caller to a legal aid telephone hotline regarding the completion of a form pleading, motion or other paper or an attorney providing information at a pro bono clinic.

All obligations under Rule 137 with respect to signing pleadings and certifications apply fully in those limited scope representations where an attorney has filed a general or limited scope appearance. Drafting a pleading, motion or other paper, or reviewing a pleading, motion or paper drafted by a party does not establish any independent responsibility not already applicable under current law.

**Proposed Amendment to Comment [2] and Addition of Comment [8A]**
**to Rule 4.2 of the Illinois Rules of Professional Conduct**

## RULE 4.2: COMMUNICATION WITH PERSON REPRESENTED BY COUNSEL

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.

Adopted July 1, 2009, effective January 1, 2010.

### Comment

[1] This Rule contributes to the proper functioning of the legal system by protecting a person who has chosen to be represented by a lawyer in a matter against possible overreaching by other lawyers who are participating in the matter, interference by those lawyers with the client-lawyer relationship and the uncounselled disclosure of information relating to the representation.

[2] This Rule applies to communications with any person who is represented by counsel, including counsel in a limited scope representation pursuant to Rule 1.2(c), concerning the matter to which the communication relates.

[3] The Rule applies even though the represented person initiates or consents to the communication. A lawyer must immediately terminate communication with a person if, after commencing communication, the lawyer learns that the person is one with whom communication is not permitted by this Rule.

[4] This Rule does not prohibit communication with a represented person, or an employee or agent of such a person, concerning matters outside the representation. For example, the existence of a controversy between a government agency and a private party, or between two organizations, does not prohibit a lawyer for either from communicating with nonlawyer representatives of the other regarding a separate matter. Nor does this Rule preclude communication with a represented person who is seeking advice from a lawyer who is not otherwise representing a client in the matter. A lawyer may not make a communication prohibited by this Rule through the acts of another. See Rule 8.4(a). Parties to a matter may communicate directly with each other, and a lawyer is not prohibited from advising a client concerning a communication that the client is legally entitled to make. Also, a lawyer having independent justification or legal authorization for communicating with a represented person is permitted to do so.

[5] Communications authorized by law may include communications by a lawyer on behalf of a client who is exercising a constitutional or other legal right to communicate with the government. Communications authorized by law may also include investigative activities of

lawyers representing governmental entities, directly or through investigative agents, prior to the commencement of criminal or civil enforcement proceedings. When communicating with the accused in a criminal matter, a government lawyer must comply with this Rule in addition to honoring the constitutional rights of the accused. The fact that a communication does not violate a state or federal constitutional right is insufficient to establish that the communication is permissible under this Rule.

[6] A lawyer who is uncertain whether a communication with a represented person is permissible may seek a court order. A lawyer may also seek a court order in exceptional circumstances to authorize a communication that would otherwise be prohibited by this Rule, for example, where communication with a person represented by counsel is necessary to avoid reasonably certain injury.

[7] In the case of a represented organization, this Rule prohibits communications with a constituent of the organization who supervises, directs or regularly consults with the organization's lawyer concerning the matter or has authority to obligate the organization with respect to the matter or whose act or omission in connection with the matter may be imputed to the organization for purposes of civil or criminal liability. Consent of the organization's lawyer is not required for communication with a former constituent. If a constituent of the organization is represented in the matter by his or her own counsel, the consent by that counsel to a communication will be sufficient for purposes of this Rule. Compare Rule 3.4(f). In communicating with a current or former constituent of an organization, a lawyer must not use methods of obtaining evidence that violate the legal rights of the organization. See Rule 4.4.

[8] The prohibition on communications with a represented person only applies in circumstances where the lawyer knows that the person is in fact represented in the matter to be discussed. This means that the lawyer has actual knowledge of the fact of the representation; but such actual knowledge may be inferred from the circumstances. See Rule 1.0(f). Thus, the lawyer cannot evade the requirement of obtaining the consent of counsel by closing eyes to the obvious.

[8A] For purposes of this Rule, when a person is being represented on a limited basis under Rule 1.2(c), a lawyer is only deemed to know that the person is represented by another lawyer, and the subject of that representation, upon receipt of (i) a proper Notice of Limited Scope Appearance under Supreme Court Rule 13(c)(6), or (ii) with respect to a matter not involving court proceedings, written notice advising that the client is being represented by specified counsel with respect to an identified subject matter and time frame. A lawyer is permitted to communicate with a person represented under Rule 1.2(c) outside the subject matter or time frame of the scope of the representation, as indicated in the Notice of Limited Scope Appearance or other written notice.

[9] In the event the person with whom the lawyer communicates is not known to be represented by counsel in the matter, the lawyer's communications are subject to Rule 4.3.

**Proposed Amendment to Comment [8] to**
**Rule 1.2 of the Illinois Rules of Professional Conduct**

## RULE 1.2: SCOPE OF REPRESENTATION AND ALLOCATION OF AUTHORITY BETWEEN CLIENT AND LAWYER

(a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. 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.

(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) After accepting employment on behalf of a client, a lawyer shall not thereafter delegate to another lawyer not in the lawyer's firm the responsibility for performing or completing that employment, without the client's informed consent.

### Comment

### Allocation of Authority between Client and Lawyer

[1] Paragraph (a) confers upon the client the ultimate authority to determine the purposes to be served by legal representation, within the limits imposed by law and the lawyer's professional obligations. The decisions specified in paragraph (a), such as whether to settle a civil matter, must also be made by the client. See Rule 1.4(a)(1) for the lawyer's duty to communicate with the client about such decisions. With respect to the means by which the client's objectives are to be pursued, the lawyer shall consult with the client as required by Rule 1.4(a)(2) and may take such action as is impliedly authorized to carry out the representation.

[2] On occasion, however, a lawyer and a client may disagree about the means to be used to accomplish the client's objectives. Clients normally defer to the special knowledge and skill of their lawyer with respect to the means to be used to accomplish their objectives, particularly with

respect to technical, legal and tactical matters. Conversely, lawyers usually defer to the client regarding such questions as the expense to be incurred and concern for third persons who might be adversely affected. Because of the varied nature of the matters about which a lawyer and client might disagree and because the actions in question may implicate the interests of a tribunal or other persons, this Rule does not prescribe how such disagreements are to be resolved. Other law, however, may be applicable and should be consulted by the lawyer. The lawyer should also consult with the client and seek a mutually acceptable resolution of the disagreement. If such efforts are unavailing and the lawyer has a fundamental disagreement with the client, the lawyer may withdraw from the representation. See Rule 1.16(b)(4). Conversely, the client may resolve the disagreement by discharging the lawyer. See Rule 1.16(a)(3).

[3] At the outset of a representation, the client may authorize the lawyer to take specific action on the client's behalf without further consultation. Absent a material change in circumstances and subject to Rule 1.4, a lawyer may rely on such an advance authorization. The client may, however, revoke such authority at any time.

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

**Independence from Client's Views or Activities**

[5] 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.

**Agreements Limiting Scope of Representation**

[6] The scope of services to be 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. When a lawyer has been retained by an insurer to represent an insured, for example, the representation may be limited to matters related to the insurance coverage. A limited representation may be appropriate because the client has limited objectives for the representation. In addition, the terms upon which representation is undertaken may exclude specific means that might otherwise be used to accomplish the client's objectives. Such limitations may exclude actions that the client thinks are too costly or that the lawyer regards as repugnant or imprudent.

[7] Although this Rule affords the lawyer and client substantial latitude to limit the representation, the limitation must be reasonable under the circumstances. If, for example, a client's objective is limited to securing general information about the law the client needs in order to handle a common and typically uncomplicated legal problem, the lawyer and client may agree that the lawyer's services will be limited to a brief telephone consultation. Such a limitation, however, would not be reasonable if the time allotted was not sufficient to yield advice upon which the client could rely. Although an agreement for a limited representation does not exempt a lawyer from the duty to provide competent representation, the limitation is a factor to be considered when determining the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. See Rule 1.1.

[8] All agreements concerning a lawyer's representation of a client must accord with the Rules of Professional Conduct and other law. See, *e.g.*, Rules 1.1, 1.8 and 5.6, and Supreme Court Rules 13(c)(6) and 137(e).

**Criminal, Fraudulent and Prohibited Transactions**

[9] Paragraph (d) prohibits a lawyer from knowingly counseling or assisting a client to commit a crime or fraud. This prohibition, however, does not preclude the lawyer from giving an honest opinion about the actual consequences that appear likely to result from a client's conduct. Nor does the fact that a client uses advice in a course of action that is criminal or fraudulent of itself make a lawyer a party to the course of action. 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.

[10] When the client's course of action has already begun and is continuing, the lawyer's responsibility is especially delicate. The lawyer is required to avoid assisting the client, for example, by drafting or delivering documents that the lawyer knows are fraudulent or by suggesting how the wrongdoing might be concealed. A lawyer may not continue assisting a client in conduct that the lawyer originally supposed was legally proper but then discovers is criminal or fraudulent. The lawyer must, therefore, withdraw from the representation of the client in the matter. See Rule 1.16(a). In some cases, withdrawal alone might be insufficient. It may be necessary for the lawyer to give notice of the fact of withdrawal and to disaffirm any opinion, document, affirmation or the like. See Rule 4.1. In such situations, the lawyer should also consider whether disclosure of information relating to the representation is appropriate. See Rule 1.6(b).

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

[12] Paragraph (d) applies whether or not the defrauded party is a party to the transaction. Hence, a lawyer must not participate in a transaction to effectuate criminal or fraudulent avoidance of tax liability. Paragraph (d) does not preclude undertaking a criminal defense incident to a general retainer for legal services to a lawful enterprise. The last clause of paragraph (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.

[13] If a lawyer comes to know or reasonably should know that a client expects assistance not permitted by the Rules of Professional Conduct or other law or if the lawyer intends to act contrary to the client's instructions, the lawyer must consult with the client regarding the limitations on the lawyer's conduct. See Rule 1.4(a)(5).

[14] The prohibition stated in paragraph (e) has existed in Illinois ethics rules and in the prior Code since 1980. It is intended to curtail abuses that occasionally occur when a lawyer attempts to transfer complete or substantial responsibility for a matter to an unaffiliated lawyer without the client's awareness or consent. The Rule is designed to clarify the lawyer's obligation to complete the employment contemplated unless the client gives informed consent to substitution by an unaffiliated lawyer. The Rule is not intended to prohibit lawyers from hiring

lawyers outside of their firm to perform certain services on the client's or the law firm's behalf. Nor is it intended to prevent lawyers from engaging lawyers outside of their firm to stand in for discrete events in situations such as personal emergencies, illness or schedule conflicts.

**Proposed Amendment to Comment [3] to**
**Rule 5.5 of the Illinois Rules of Professional Conduct**

**RULE 5.5: UNAUTHORIZED PRACTICE OF LAW; MULTIJURISDICTIONAL PRACTICE OF LAW**

(a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

(b) A lawyer who is not admitted to practice in this jurisdiction shall not:

(1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or

(2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.

(c) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that:

(1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;

(2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;

(3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires pro hac vice admission; or

(4) are not within paragraphs (c)(2) or (c)(3) and arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice.

(d) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services in this jurisdiction that:

(1) are provided to the lawyer's employer or its organizational affiliates and are not services for which the forum requires pro hac vice admission; or

(2) are services that the lawyer is authorized to provide by federal law or other law of this jurisdiction.

**Comment**

[1] A lawyer may practice law only in a jurisdiction in which the lawyer is authorized to practice. A lawyer may be admitted to practice law in a jurisdiction on a regular basis or may be authorized by court rule or order or by law to practice for a limited purpose or on a restricted basis. Paragraph (a) applies to unauthorized practice of law by a lawyer, whether through the lawyer's direct action or by the lawyer assisting another person.

[2] The definition of the practice of law is established by law and varies from one jurisdiction to another. Whatever the definition, limiting the practice of law to members of the bar protects the public against rendition of legal services by unqualified persons. This Rule does not prohibit a lawyer from employing the services of paraprofessionals and delegating functions to them, so long as the lawyer supervises the delegated work and retains responsibility for their work. See Rule 5.3.

[3] A lawyer may provide professional advice and instruction to nonlawyers whose employment requires knowledge of the law; for example, claims adjusters, employees of financial or commercial institutions, social workers, accountants and persons employed in government agencies. Lawyers also may assist independent nonlawyers, such as paraprofessionals, who are authorized by the law of a jurisdiction to provide particular law-related services. In addition, a lawyer may counsel nonlawyers who wish to proceed *pro se*. See Supreme Court Rule 137(e) (lawyer may help draft a pleading, motion or other paper filed by a *pro* se party). See also Supreme Court Rule 13(c)(6) (lawyer may make a limited scope appearance in a civil proceeding on behalf of a *pro se* party).

[4] Other than as authorized by law or this Rule, a lawyer who is not admitted to practice generally in this jurisdiction violates paragraph (b) if the lawyer establishes an office or other systematic and continuous presence in this jurisdiction for the practice of law. Presence may be systematic and continuous even if the lawyer is not physically present here. Such a lawyer must not hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction. See also Rules 7.1(a) and 7.5(b).

[5] There are occasions in which a lawyer admitted to practice in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction under circumstances that do not create an unreasonable risk to the interests of their clients, the public or the courts. Paragraph (c) identifies four such circumstances. The fact that conduct is not so identified does not imply that the conduct is or is not authorized. With the exception of paragraphs (d)(1) and (d)(2), this Rule does not authorize a lawyer to establish an office or other systematic and continuous presence in this jurisdiction without being admitted to practice generally here.

[6] There is no single test to determine whether a lawyer's services are provided on a "temporary basis" in this jurisdiction, and may therefore be permissible under paragraph (c). Services may be "temporary" even though the lawyer provides services in this jurisdiction on a recurring basis, or for an extended period of time, as when the lawyer is representing a client in a single lengthy negotiation or litigation.

[7] Paragraphs (c) and (d) apply to lawyers who are admitted to practice law in any United States jurisdiction, which includes the District of Columbia and any state, territory or commonwealth of the United States. The word "admitted" in paragraph (c) contemplates that the lawyer is authorized to practice in the jurisdiction in which the lawyer is admitted and excludes a lawyer who while technically admitted is not authorized to practice, because, for example, the lawyer is on inactive status.

[8] Paragraph (c)(1) recognizes that the interests of clients and the public are protected if a lawyer admitted only in another jurisdiction associates with a lawyer licensed to practice in this jurisdiction. For this paragraph to apply, however, the lawyer admitted to practice in this jurisdiction must actively participate in and share responsibility for the representation of the client.

[9] Lawyers not admitted to practice generally in a jurisdiction may be authorized by law or order of a tribunal or an administrative agency to appear before the tribunal or agency. This authority may be granted pursuant to formal rules governing admission pro hac vice or pursuant to informal practice of the tribunal or agency. Under paragraph (c)(2), a lawyer does not violate this Rule when the lawyer appears before a tribunal or agency pursuant to such authority. To the extent that a court rule or other law of this jurisdiction requires a lawyer who is not admitted to practice in this jurisdiction to obtain admission pro hac vice before appearing before a tribunal or administrative agency, this Rule requires the lawyer to obtain that authority.

[10] Paragraph (c)(2) also provides that a lawyer rendering services in this jurisdiction on a temporary basis does not violate this Rule when the lawyer engages in conduct in anticipation of a proceeding or hearing in a jurisdiction in which the lawyer is authorized to practice law or in which the lawyer reasonably expects to be admitted pro hac vice. Examples of such conduct include meetings with the client, interviews of potential witnesses, and the review of documents. Similarly, a lawyer admitted only in another jurisdiction may engage in conduct temporarily in this jurisdiction in connection with pending litigation in another jurisdiction in which the lawyer is or reasonably expects to be authorized to appear, including taking depositions in this jurisdiction.

[11] When a lawyer has been or reasonably expects to be admitted to appear before a court or administrative agency, paragraph (c)(2) also permits conduct by lawyers who are associated with that lawyer in the matter, but who do not expect to appear before the court or administrative agency. For example, subordinate lawyers may conduct research, review documents, and attend meetings with witnesses in support of the lawyer responsible for the litigation.

[12] Paragraph (c)(3) permits a lawyer admitted to practice law in another jurisdiction to perform services on a temporary basis in this jurisdiction if those services are in or reasonably

related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice. The lawyer, however, must obtain admission pro hac vice in the case of a court-annexed arbitration or mediation or otherwise if court rules or law so require.

[13] Paragraph (c)(4) permits a lawyer admitted in another jurisdiction to provide certain legal services on a temporary basis in this jurisdiction that arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted but are not within paragraphs (c)(2) or (c)(3). These services include both legal services and services that nonlawyers may perform but that are considered the practice of law when performed by lawyers.

[14] Paragraphs (c)(3) and (c)(4) require that the services arise out of or be reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted. A variety of factors evidence such a relationship. The lawyer's client may have been previously represented by the lawyer, or may be resident in or have substantial contacts with the jurisdiction in which the lawyer is admitted. The matter, although involving other jurisdictions, may have a significant connection with that jurisdiction. In other cases, significant aspects of the lawyer's work might be conducted in that jurisdiction or a significant aspect of the matter may involve the law of that jurisdiction. The necessary relationship might arise when the client's activities or the legal issues involve multiple jurisdictions, such as when the officers of a multinational corporation survey potential business sites and seek the services of their lawyer in assessing the relative merits of each. In addition, the services may draw on the lawyer's recognized expertise developed through the regular practice of law on behalf of clients in matters involving a particular body of federal, nationally uniform, foreign, or international law.

[15] Paragraph (d) identifies two circumstances in which a lawyer who is admitted to practice in another United States jurisdiction, and is not disbarred or suspended from practice in any jurisdiction, may establish an office or other systematic and continuous presence in this jurisdiction for the practice of law as well as provide legal services on a temporary basis. Except as provided in paragraphs (d)(1) and (d)(2), a lawyer who is admitted to practice law in another jurisdiction and who establishes an office or other systematic or continuous presence in this jurisdiction must become admitted to practice law generally in this jurisdiction.

[16] Paragraph (d)(1) applies to a lawyer who is employed by a client to provide legal services to the client or its organizational affiliates, i.e., entities that control, are controlled by, or are under common control with the employer. This paragraph does not authorize the provision of personal legal services to the employer's officers or employees. The paragraph applies to in-house corporate lawyers, government lawyers and others who are employed to render legal services to the employer. The lawyer's ability to represent the employer outside the jurisdiction in which the lawyer is licensed generally serves the interests of the employer and does not create an unreasonable risk to the client and others because the employer is well situated to assess the lawyer's qualifications and the quality of the lawyer's work.

[17] If an employed lawyer establishes an office or other systematic presence in this jurisdiction for the purpose of rendering legal services to the employer, the lawyer may be subject to registration or other requirements, including assessments for client protection funds

and mandatory continuing legal education. See Illinois Supreme Court Rules 706(f), (g), 716, and 717 concerning requirements for house counsel and legal service program lawyers admitted to practice in other jurisdictions who wish to practice in Illinois.

[18] Paragraph (d)(2) recognizes that a lawyer may provide legal services in a jurisdiction in which the lawyer is not licensed when authorized to do so by federal or other law, which includes statute, court rule, executive regulation or judicial precedent.

[19] A lawyer who practices law in this jurisdiction pursuant to paragraphs (c) or (d) or otherwise is subject to the disciplinary authority of this jurisdiction. See Rule 8.5(a).

[20] In some circumstances, a lawyer who practices law in this jurisdiction pursuant to paragraphs (c) or (d) may have to inform the client that the lawyer is not licensed to practice law in this jurisdiction. For example, that may be required when the representation occurs primarily in this jurisdiction and requires knowledge of the law of this jurisdiction. See Rule 1.4(b).

[21] Paragraphs (c) and (d) do not authorize communications advertising legal services to prospective clients in this jurisdiction by lawyers who are admitted to practice in other jurisdictions. Whether and how lawyers may communicate the availability of their services to prospective clients in this jurisdiction is governed by Rules 7.1 to 7.5.