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***Committee On Professional Ethics  
And The Unauthorized Practice of Law***

**Informal Opinion 25-1**

**Virtual Unbundled Services for Criminal Matters**

A Connecticut criminal defense attorney (“the Requester”) seeks guidance as to whether they violate Rule 1.2(c) of Connecticut’s Rules of Professional Conduct by creating and using a virtual (*i.e.*, online) platform to offer limited scope representation—for a fee—to criminal defendants. The Requester specifies that the proposed legal services would be provided to self-represented (a/k/a “*pro se*”) criminal defendants charged with “minor criminal offenses,” which the Requester defines as “infractions, misdemeanors, and Class D felonies.”<sup>1</sup> The Requester’s proposed limited scope representation would not include filing an appearance on a defendant’s behalf, and any legal advice proffered to the client would be conveyed solely through the proposed virtual platform with neither phone nor in-person contact occurring.

Additional facts provided by the Requester indicate: (1) the virtual platform would consist of purely chat (*i.e.*, exchange of text messages), with no video or voice communications; (2) documents will be shared by and with the client by email; (3) information would be gathered from the potential client via a questionnaire posted on the lawyer’s website associated with the virtual platform; (4) the work contemplated to be performed by the lawyer would include evaluation of state’s case in terms of strength of evidence against the accused, possible defenses, suggestions on possible investigation that should be conducted, and discussion and review of any documents in the client’s possession, such as police reports and collateral documents<sup>2</sup>; (5) the client would be given the option of hiring the lawyer for full representation, or the lawyer may advise the client on how to get other representation or apply for a public defender; and (6) the risks of this proposed limited representation would be conveyed to the client by the lawyer through an advisement on the lawyer’s website associated with the virtual platform.

Rule 1.2(c) imposes two requirements on a lawyer when limiting the scope of a representation: first, that the limitation be “reasonable under the circumstances” and, second, that

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<sup>1</sup> The Requester, not the Committee, defines these offenses as “minor.” Note that a conviction of a Class D felony in Connecticut exposes a defendant to a five-year loss of liberty and a fine of \$5,000.00. *See* C.G.S. §§53a-35a and 53a-41. We also note the Requester’s definition of “minor criminal offenses” did not mention either unclassified felonies or Class E felonies.

<sup>2</sup> The Requester unequivocally states that they will not prepare or draft any documentation as part of the proposed limited representation.

the client “gives informed consent” to the limited representation. The Commentary to Rule 1.2 also requires that “[a]ll agreements concerning a lawyer’s representation of a client must accord with the Rules of Professional Conduct and other law.”<sup>3</sup>

As further explained below, the Committee finds there is no *per se* violation of Rule 1.2(c) in providing virtual, unbundled legal services to criminal defendants; however, compliance with the full scope of the Rules when in engaging in such limited scope representation may prove difficult, if not impossible, in most of the defined “minor criminal” cases.<sup>4</sup>

## **I. Unbundled Legal Services Are Generally Acceptable.**

In general, unbundling of legal services is acceptable and even beneficial to those providing and receiving agreed-upon limited legal services. The American Bar Association’s Standing Committee on the Delivery of Legal Services highlights that such limited-scope representations provide benefits for clients, lawyers, and the courts: “(1) clients get just the advice and services they need and therefore pay a more affordable overall fee; (2) lawyers expand their client base by reaching those who cannot afford full-service representation but have the means for some services; and (3) courts benefit from greater efficiency when otherwise self-represented litigants receive some counsel.” ABA Unbundling Resource Center, *available at* [https://www.americanbar.org/groups/delivery\\_legal\\_services/resources/](https://www.americanbar.org/groups/delivery_legal_services/resources/). The ABA has further voiced support for lawyers assisting *pro se* parties on a limited, behind-the-scenes basis in Formal Opinion 07-446 (Undisclosed Legal Assistance to Pro Se Litigants). There, the ABA’s Standing Committee on Ethics and Professional Responsibility concluded that “there is no prohibition in the Model Rules of Professional Conduct against undisclosed assistance to pro se litigants, as long as the lawyer does not do so in a manner that violates rules that otherwise would apply to the lawyer’s conduct.” ABA Formal Opinion 07-446 (May 5, 2007). The Connecticut Bar Association has likewise voiced support for limited scope representations, including “[p]roviding legal advice to an individual about a case or a legal problem they are involved in.” Conn. Bar Assoc., Limited Scope Representation (LSR): Grow your Practice; Promote Access to Justice (2022 Attorney Toolkit), at 10.

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<sup>3</sup> To the extent the Requester describes a “fee” for the virtual, unbundled services, that fee must comport with Rule 1.5. Similarly, the singular method of “virtual” chat/text communication described in the opinion request must comport with Rule 1.4.

<sup>4</sup> Limiting the scope of the lawyer's representation does not limit the lawyer's ethical obligations to the client, to the court, or to the public. All lawyers, including lawyers providing limited scope representation, among other duties, must perform competently (Rule 1.1), act diligently (Rule 1.3), communicate timely (Rule 1.4), maintain confidentiality (Rule 1.6), and avoid conflicts of interest (Rules 1.7, 1.8, 1.9, and 1.10)

## II. Rule 1.2(c) and the Proposed Virtual Representation

### A. “Reasonableness” of the Proposed Virtual Representation

A lawyer violates Rule 1.2(c) if a limited representation of a client is not “reasonable under the circumstances.” There is no “one size fits all” assessment of reasonableness under this Rule, therefore, the Rule requires that each matter be assessed based on its own facts. The commentary to Rule 1.2 discusses a hypothetical where the lawyer provides advice to a client regarding a “common and typically uncomplicated legal problem” via a “brief telephone conversation” noting this limited scope representation is permissible. However, the commentary immediately warns that such a brief conversation “would not be reasonable if the time allotted was not sufficient to yield advice upon which the client could rely.”

We note that the spectrum of complexity presented by the defined “minor criminal matters” is quite broad, ranging from mere traffic infractions to Class D felonies.<sup>5</sup> The Requester’s ability to comply with the Rule’s “reasonableness” requirement via the proposed virtual platform is dependent on the complexity of the underlying charges, the facts and evidence regarding those charges, and the lawyer’s ability to become possessed of all the relevant information necessary to provide competent advice.

Gathering facts and information necessary to competent representation under this proposed limited scope representation is problematic. For example, the proposed representation would have all client communications occurring via text through a virtual platform. As a result, the Requestor would never personally observe nor orally communicate directly with the client and would not know the information customarily obtained by criminal defense lawyers gleaned through the observation of and communication with clients (*e.g.*, the client’s personal appearance, verbal skills, intelligence, comprehension, and emotional affect, to name a few). While there may be some clients facing “minor criminal matters” where such information is not needed, for many others failing to gain this information would render the limited scope representation unreasonable under the Rule. Additionally, many *pro se* defendants will not know how to gain access to documents and evidence possessed by the prosecuting authorities, and some information is not available to a *pro se* defendant without an order of the court. Providing legal advice of the strength of the State’s case to a *pro se* criminal defendant without first reviewing the relevant documents and evidence (*e.g.*, police reports, witness statements, physical evidence, laboratory reports, crime scene photos, etc.) would be incompetent and render the representation unreasonable.<sup>6</sup>

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<sup>5</sup> The Connecticut Penal Code classifies many crimes as Class D felonies including some sexual assaults, assaults, possession of child pornography, burglaries, threatening, identity theft, perjury, violation of protective orders, hindering prosecution, intimidation based on bigotry or bias, interfering with police, stalking, larcenies, and robberies.

<sup>6</sup> Without filing an appearance on behalf of the criminal defendant the Requester is unable to file discovery requests. Therefore, if the Requester is relying on the *pro se* client’s ability to obtain the relevant documentation and evidence, the Requester still needs to independently verify the client’s success in obtaining the relevant information.

In every matter the relevant information gathering needs to be tailored to each individual client. For example, in some defined minor criminal cases, the information necessary to provide competent advice will also require knowledge of the client's immigration status, criminal history, type of motor vehicle license and/or employment information. The Requester indicates that all information regarding the client and the underlying charges faced by that client will be gathered via a questionnaire posted on the lawyer's website associated with the virtual platform. Any such questionnaire, however, must be robust enough for the lawyer to obtain all the information necessary to provide competent and diligent representation under Rules 1.1 and 1.3.

Finally, while a limited scope representation may start out as reasonable under the circumstances, it may become unreasonable as the representation continues and circumstances change. Should this occur, the lawyer must act accordingly.

## **B. Informed Consent to the Proposed Virtual Representation**

The second requirement of Rule 1.2(c) is that the client give "informed consent"<sup>7</sup> to the limited representation. To comply with this requirement, the Requester plans to provide an engagement letter to the client specifically alerting the client that the lawyer will not file an appearance in the criminal matter on the client's behalf. The Requester also plans to provide an "advisement" of the risks of the proposed limited representation on the website associated with the virtual platform. The Requester did not provide a sample of the proposed engagement letter or a copy of the "advisement" to be posted on the website. Without these documents it is difficult to determine what "material risks and reasonably available alternatives" to the proposed virtual representation are being conveyed to clients. If we assume a generic "advisement" were drafted sufficiently broad enough to provide adequate information to clients charged with one or more of any of the defined "minor criminal matters," such an advisement would include a vast amount of information. While some of this information would apply to many limited scope representations, much of it would be applicable to only small subsets of clients. Such an onerous "advisement" would not discharge the lawyer's duty under the Rule to communicate "adequate information and explanation" enabling that client to make an "informed" decision.

Compliance with the informed consent provision requires that communications be tailored to the specific client and that specific client's matter. There should also be communication as to any risks associated with the chat/text messaging via the virtual platform.<sup>8</sup> Informed consent also requires the client's understanding of the "alternatives" to the proposed limited scope representation. For example, the Requester should advise the client about any

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<sup>7</sup> See Rule 1.0(f): "Informed consent" denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct."

<sup>8</sup> The Committee notes here the Requester has also indicated documents will be exchanged with the client via email, so this appears to be an inconsistency with the proposed "chat-only" communication structure in the request. This inconsistency highlights possible factual wrinkles that will present themselves as the proposed representation moves from an abstract concept to real representation of a client.

available limited scope representation wherein the client would have direct access to a lawyer by phone or in person.

Assuming the client's informed consent, the lawyer must detail in the engagement letter, as specifically as possible, all the limitations of the representation. *See* Conn. Judicial Branch, Limited Scope Representation FAQs, *available at* [https://www.jud.ct.gov/faq/limited\\_scope\\_rep.htm](https://www.jud.ct.gov/faq/limited_scope_rep.htm) ("The retainer letter and fee agreement between the attorney and the client must explicitly articulate and itemize the scope of the legal assistance . . .").

### **III. Conclusion**

In conclusion, the Committee does not find a *per se* violation of Rule 1.2(c) by providing virtual legal advice for a fee to *pro se* defendants on handling minor criminal cases. Each such limited representation must comply with the two requirements of Rule 1.2(c) throughout the representation—the limited representation must be and remain reasonable under the circumstances, and the client must give informed consent to the limited representation. Additionally, the lawyer must remain cognizant of and comply with all other Rules of Professional Conduct and laws in providing such limited representation, including but not limited to the duties of competence and diligence under Rules 1.1 and 1.3. The Committee opines, however, that compliance with the full scope of the Rules when in engaging in such limited scope representation in a criminal proceeding may prove difficult, if not impossible, in most of the defined minor criminal cases.

## **THE COMMITTEE ON PROFESSIONAL ETHICS AND THE UNAUTHORIZED PRACTICE OF LAW**

*Stuart C. Johnson*

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BY     Stuart Johnson, Chair