

Proposal to Facilitate Limited Representation in Illinois Courts

The proposed amendments are in bold type. Each proposed amendment is followed by a brief explanatory note.

Proposed Amendment to Illinois Supreme Court Rule 13

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

(a) **Written Appearances.** If a written appearance, general or special, 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, or by certified mail 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 papers 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 papers may be had upon him. In case of his failure to file such

supplementary appearance, notice, if by mail, shall be directed to him at his last known business or residence address.

(6) *Limited Appearance.* An attorney may make a limited appearance on behalf of a party in a court proceeding when the attorney has entered into a written agreement with that party to provide limited scope representation pursuant to Rule of Professional Conduct 1.2(c). The attorney shall file a Notice of Limited Appearance in the form attached to this rule, identifying the court proceeding or proceedings to which the limited appearance pertains. An attorney may not enter a limited appearance for the sole purpose of making evidentiary objections.

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

On completing the representation specified in the Notice of Limited Appearance, an attorney shall withdraw by filing a Notice of Withdrawal of Limited Appearance in the form attached to this rule. The notice shall be served on the party the attorney is representing and on all counsel and parties not represented by counsel. Only on filing and serving the Notice of Withdrawal does the attorney's limited appearance in the case terminate. Leave of court is not required and an attorney's withdrawal of a limited appearance shall not be denied by order of court or otherwise as long as the withdrawal is made in accordance with this rule.

Adopted June 15, 1982, effective July 1, 1982.

Notices of Limited Appearance and Withdrawal of Limited Appearance

The form notices identified in the amendment are on the pages immediately following the explanatory note regarding this rule.

Explanatory Note Regarding Proposed Amendment to Rule 13

This proposed amendment is intended to permit attorneys to make limited appearances in court proceedings on behalf of self-represented litigants. The amendment requires an attorney making a limited appearance to enter into a written agreement with the party, which provides disclosure regarding the limited scope of the representation and protects attorneys from the expectation that their representation in a matter before the court will be ongoing. The amendment also requires the use of the form Notice of Limited Appearance appended to the rule. This is intended to promote consistency in the filing of limited appearances and to make the notices easily recognizable to judges and court personnel. To clarify the limited representation attorney's role in the case, the form notice requires the attorney to identify the scope of the representation with specificity.

The proposed amendment permits an attorney to make more than one limited appearance in a case. Allowing for multiple appearances affords flexibility in the event a litigant determines that he or she desires representation for more than one proceeding in a case.

The proposed change prescribes the procedure for an attorney's withdrawal from a matter when the limited representation is completed. Requiring the filing of a written notice at the conclusion of a court event notifies everyone – the court, the client, and the opposing party – that the limited representation attorney's role in the matter has ended. The proposed change provides that withdrawal from a limited appearance may be made without leave of court, which should assure attorneys that they can appear on a limited basis, without making an open-ended commitment to represent the party in the litigation.

IN THE CIRCUIT COURT OF THE _____ JUDICIAL CIRCUIT
_____ COUNTY, ILLINOIS

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

NOTICE OF LIMITED APPEARANCE

1. The attorney, _____, and the Party, _____ have a written agreement that the attorney will provide limited scope representation to the party in the matter pertaining to this limited appearance.

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

3. The attorney appears pursuant to Supreme Court Rule 13. This appearance is limited in scope and the attorney will represent the party (check and complete all that apply):

___ In the court proceeding (identify): _____ on (date): _____

___ In any continuance of that proceeding

___ At the trial on (date): _____

___ In any continuance of that trial

___ Until judgment

___ Other (specify the nature 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 the proceeding covered by this appearance: _____

5. The Party, _____, remains responsible for all matters not specifically described in this notice.

6. On termination of the representation, the attorney will file a Notice of Withdrawal of Limited Appearance and serve a copy on the party at the address below, and on all counsel and parties not represented by counsel.

7. The attorney named above is "attorney of record" and available for service of documents only for those proceedings as described in paragraph 3. Service on the party is also required for the matters described in paragraph 3. For all matters not described in this notice, only the party must be served. The party's name, attorney identification number, address, and phone number are listed below for that purpose.

Signature of Party

Name of Party

Address (*for the purpose of service*)

Party's Telephone Number

Date

I certify that I have this day served this Notice of Limited Appearance on all counsel and all parties not represented by counsel.

Signature of Attorney

Name of Attorney

Attorney's Address

Attorney's Telephone Number

Attorney Number

Date

IN THE CIRCUIT COURT OF THE _____ JUDICIAL CIRCUIT
_____ COUNTY, ILLINOIS

)	
Plaintiff/Petitioner)	No.
)	
vs.)	
)	
)	
Defendant/Respondent)	

NOTICE OF WITHDRAWAL OF LIMITED APPEARANCE

Enter my Withdrawal of Limited Appearance as attorney for _____, the Plaintiff Petitioner Defendant Respondent pursuant to Supreme Court Rule 13. I certify that I have completed all services within the scope of the Notice of Limited Appearance, and that I have completed all acts ordered by the court.

On filing of the Notice of Withdrawal of Limited Appearance, service is no longer required on me but remains required on the party at the address below.

I certify that I have this day served this Notice of Withdrawal of Limited Appearance on all counsel and parties not represented by counsel, including the party I represented, who was served at the following address:

Name of Party Represented

Last Known Address of Party

Last Known Phone Number of Party

Signature of Attorney

Name of Attorney

Attorney's Address

Attorney's Telephone Number

Attorney Number

Date

Proposed Amendment to Illinois Supreme Court Rule 137

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

Every pleading, motion and other paper 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 paper 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 paper; 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 paper 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 paper 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 paper, including a reasonable attorney fee.

All proceedings under this rule shall be brought within the civil action in which the pleading, motion or other paper 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.

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.

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.

An attorney may assist a self-represented person in preparing a pleading, motion, or other paper. The self-represented person shall sign the pleading, motion, or other paper, and on the signature page the attorney shall insert the notation “Prepared with assistance of counsel under Supreme Court Rule 137” followed by the attorney’s name, firm, or organization name (if any), business address, and phone number. This notation does not constitute either a general or limited appearance by the attorney. An attorney providing

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.

An attorney who signs a pleading, motion, or other paper will be considered to have filed a general appearance and for the remainder of his or her involvement in the case shall not be considered as a limited representation attorney. Withdrawal from the representation thereafter shall be by way of motion pursuant to these rules.

Adopted June 19, 1989, effective August 1, 1989; amended December 17, 1993, effective February 1, 1994.

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.

Commentary

(December 17, 1993)

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

Explanatory Note Regarding Proposed Amendment to Rule 137

This proposed amendment is intended to permit attorneys to prepare or assist with the preparation of pleadings and other legal documents for unrepresented persons, and to establish clear guidelines for this type of representation. It requires attorneys to add a notation and their identifying information to documents they have helped prepare. This informs the court that an attorney has provided the pro se litigant with drafting assistance.

Attorneys are not required to sign the documents they have helped prepare, which allows them to rely on the representation of facts by the pro se litigant and does not impose the certification requirements elsewhere in Rule 137.

The amendment also provides that an attorney's signature on a document prepared for an unrepresented person creates a general appearance in the case.

Proposed Amendment to Illinois Supreme Court Rule 11

Rule 11. Manner of Serving Papers 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. Papers 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 his clerk, or with a person in charge of the office; or if a party is not represented by counsel, by leaving them at his 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 his business address, or to the party at his business address or residence, with postage fully prepaid; or

(4) 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.

(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 papers shall be made on the attorney for each of the parties. If one attorney appears for several parties, he is entitled to only one copy of any paper 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) Limited Appearance. When a Notice of Limited Appearance has been filed, service shall be made on the attorney who has filed the notice, as well as on the party represented on a limited basis. For matters outside the scope of limited representation identified in the

Notice of Limited Appearance, service on the attorney who filed the limited appearance is not required.

After the attorney files a Notice of Withdrawal of Limited Appearance, service on the attorney is not required. Service is not required on any attorney whose name appears on a pleading, motion, or paper that contains the notation “Prepared with assistance of counsel under Supreme Court Rule 137.”

Amended April 8, 1980, effective May 15, 1980; amended April 10, 1987, effective August 1, 1987; amended October 30, 1992, effective November 15, 1992.

Explanatory Note Regarding Proposed Amendment to Rule 11

This proposed amendment requires service on an attorney who files a Notice of Limited Appearance and on the litigant. This provides an attorney with notice of any filings related to the court proceeding in which the attorney is appearing. The amendment requires service on the litigant under all circumstances to ensure the litigant is informed of events in the case and to maintain continuity and avoid confusion regarding service on matters outside the scope of the Notice of Limited Appearance.

Proposed Amendment to Rule 4.2, Illinois Rules of Professional Conduct of 2010

RULE 4.2: 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 party to whom limited representation is provided under Rule 1.2(c) is considered to be represented for purposes of this rule when the lawyer acting in the scope of limited representation provides the other party or counsel with a Notice of Limited Appearance or other written notice identifying a court proceeding or issue for which the party is being represented on a limited basis, and for which communication should be with the lawyer providing limited representation. A party is not considered to be represented under this rule on the basis of a pleading, motion, or paper that contains the notation “Prepared with assistance of counsel under Supreme Court Rule 137.”

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 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.

[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.

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

Explanatory Note Regarding Proposed Amendment to Rule 4.2

This proposed amendment is intended to provide clarity regarding attorney communications with a person represented on a limited basis. As amended, the rule requires lawyers to treat an otherwise unrepresented person as represented when the attorney is informed of the limited representation by counsel, either through a Notice of Limited Appearance (if the limited representation is in a litigation matter) or through another communication (if the limited representation does not include litigation). An attorney may communicate directly with a person receiving limited representation on matters outside the scope of limited representation.