

SUPREME JUDICIAL COURT

Boston, Massachusetts 02108

NOTICE OF APPROVAL

Notice is hereby given that the Supreme Judicial Court has approved and promulgated rules as further indicated below.

RALPH D. GANTS
Chief Justice

-
1. Court Submitting Rules for Approval:

Trial Court

2. Date Rules Submitted for Approval:

May 24, 2018

3. Date Approved & Promulgated by the Supreme Judicial Court:

November 29, 2018

4. Rule or Rules, or Amendments Thereto, Approved and Promulgated:

Uniform Trial Court Rule on Limited Assistance Representation, as attached hereto. The Supreme Judicial Court Order in re: Limited Assistance Representation adopted April 10, 2009 is hereby rescinded.

5. Effective Date:

February 1, 2019

(The original of this notice is to be filed in the office of the Clerk of the Supreme Judicial Court for the Commonwealth, and a copy to be sent by the Clerk to the court which requested approval of the rules.)



THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF THE TRIAL COURT
John Adams Courthouse
One Pemberton Square, Floor 1M
Boston, Massachusetts 02108
617-878-0203

Paula M. Carey
Chief Justice of the Trial Court

May 24, 2018

Honorable Frank M. Gaziano, Chair
Rules Committee, Supreme Judicial Court
John Adams Courthouse
One Pemberton Square, Suite 2500
Boston, MA 02108

RE: Proposed Uniform Trial Court Rule on Limited Assistance Representation

Dear Justice Gaziano:

Attached please find for your approval, proposed Uniform Trial Court Rule XVI, Limited Assistance Representation.

By way of background, last spring Justice Botsford contacted me on behalf of the Rules Committee. In taking up a request to approve a new rule to address Limited Assistance Representation (LAR) in the Superior Court, the Rules Committee agreed that the procedures for LAR should be consistent across departments. Thereafter, I formed an inter-departmental committee, (the Limited Assistance Representation Rule Committee) and charged it with drafting a Uniform Trial Court Rule on Limited Assistance Representation.

The proposed Uniform Rule takes into consideration the Supreme Judicial Court Limited Assistance Representation Order (SJC Order) as well as the Orders that exist in the Trial Court Departments and does not differ in any significant substantive or procedural ways from any of the existing orders. The Committee has simplified the language, reorganized the text and made the four (4) changes below which I approve and support.

- We have removed the current limitation on an LAR attorney entering limited appearance "for the sole purpose of making evidentiary objections" as stated in Section 2 of the SJC Order. This allows the presiding judge to exercise her/his discretion in case management and (b) to accommodate as many opportunities for LAR attorney participation as possible during the course of a self-represented litigant's case.

- We have removed the following sentence in Section 2 of the SJC Order: "Nor shall a limited appearance allow both an attorney and litigant to argue on the same issue during the period of the limited appearance." This permits the presiding judge to exercise her/his discretion in case management.
- We have elaborated upon the last sentence in Section 2 of the SJC Order regarding the sanctions the court may impose on attorneys for failure to file a Notice of Withdrawal in order to (a) to permit the presiding judge to exercise her/his discretion in case management and (b) to increase transparency for attorneys and litigants about LAR.
- We have included a section called Applicability that states Limited Assistance Representation is available in "a non-criminal action" rather than stating in "a civil action." This is a more generic all-encompassing term that is more inclusive of the actions for which LAR is permissible (e.g., small claims, summary process, and domestic relations), particularly those for which the rules of civil procedure do not apply. We have also added a notation that LAR is not permitted in Juvenile Court unless and until that court department chooses to adopt the rule.

I believe that this Rule will provide consistency across all Trial Court departments and will serve to make it easier both for lawyers who wish to provide Limited Assistance Representation (LAR) and litigants who wish to secure LAR services.

I have also enclosed a copy of the SJC Order for your convenience. I have not included a redlined version of this order due to the significant changes in format in the proposed rule but I am happy to do so if you believe it would be helpful. Thank you for your consideration and I am available to answer any questions you may have.

Sincerely,



Paula M. Carey
Chief Justice of the Trial Court

Enclosures

cc: Jonathan S. Williams, Court Administrator
Christine P. Burak, Legal Counsel to the Chief Justice, Supreme Judicial Court

PROPOSED UNIFORM TRIAL COURT RULE XVI: LIMITED ASSISTANCE REPRESENTATION

1. Limited Assistance Representation.

Limited Assistance Representation (LAR) permits an attorney to represent a party in a non-criminal action for discrete, limited purposes, if the limitation is reasonable under the circumstances and the client gives informed consent. LAR allows an attorney to withdraw from representation after s/he completes the agreed upon limited services. Before representing a client in an LAR matter, an attorney shall give a prospective client a written agreement that clearly and precisely states the scope of representation. The attorney shall review the written agreement with the client before it is signed and obtain the client's informed consent. Both the attorney and the client shall sign the agreement. An LAR attorney may appear on a compensated or an uncompensated basis.

2. Applicability.

This Rule applies to any Limited Assistance Representation of a party in a non-criminal action in any Trial Court department, provided it shall not apply to Juvenile Court unless adopted by Juvenile Court.

3. Attorney Qualification.

To qualify as an LAR attorney, an attorney must complete training, as provided for in the Uniform Protocol for Limited Assistance Representation Training in the Massachusetts Trial Court. An attorney must certify that s/he is LAR-qualified on the court-approved Notice of Limited Appearance.

4. Notice of Limited Appearance.

Before representing a client in an LAR matter, an LAR attorney must file a Notice of Limited Appearance on a form approved by the Chief Justice of the Trial Court and shall serve the Notice on all parties in compliance with applicable rules and paragraph 6 below. The Notice of Limited Appearance shall state precisely the discrete event(s) and/or discrete issue(s) for which the LAR attorney will represent the client. An LAR attorney may file a new or a revised Notice of Limited Appearance during or after the previously agreed upon events and/or issues. Both the LAR attorney and the client must sign each Notice of Limited Appearance. If an LAR attorney files a pleading, motion or other document and/or argues a legal issue outside the scope of a filed Notice of Limited Appearance, then the court may require the filing of a new Notice of Limited Appearance. If the LAR attorney thereafter fails to do so, the court may consider the LAR attorney to have entered a general appearance.

5. Notice of Withdrawal of Limited Appearance.

Upon completion of all events or issues for which an LAR attorney has filed a Notice of Limited Appearance, s/he shall serve and file a Notice of Withdrawal of Limited Appearance on a form approved by the Chief Justice of the Trial Court. A Notice of Withdrawal must be filed for each Notice of Limited Appearance. The attorney must sign the Notice of Withdrawal. A Notice of Withdrawal filed and served in compliance with this paragraph and paragraph 6 below is effective upon filing. No motion to withdraw under Mass. R. Civ. P. 11(c) is required. The Court may treat the attorney as appearing for the client until the attorney files a Notice of Withdrawal, even if the events or issues covered by the limited representation have concluded. In such instances, the Court also may order the attorney to file a Notice of Withdrawal. If any other party incurs costs or is otherwise prejudiced by the attorney's failure to file a Notice of Withdrawal, then upon motion the court for good cause may order a non-punitive remedy, including compensation for fees and costs reasonably incurred.

6. Service.

An LAR attorney who files a Notice of Limited Appearance, including a new or revised Notice of Limited Appearance, and/or Notice of Withdrawal of Limited Appearance, shall serve a copy of each Notice, with a certificate of service, upon each opposing party's attorney or, if a party is not represented by an attorney, on that party.

Whenever service is required or permitted to be made upon a party who has an LAR attorney, for all matters within the scope of the Notice of Limited Appearance, service shall be made upon both the LAR attorney and the party. Service of the party should be made at the address listed for the party in the Notice of Limited Appearance. If the party's address has been impounded by court order or rule, service of the party shall be made as set out in the court order or rule. Service upon an LAR attorney is not required for matters outside the scope of the Notice of Limited Appearance.

7. Filings Shall State LAR Appearance.

An LAR attorney must comply with Mass. R. Civ. P. 11(a) when filing any pleading, motion or other document in the course of her/his limited appearance and shall state in bold type on the signature page of the document, **"Attorney of [party] for the limited purpose of [court event or issue]."**

8. Court Notice.

Whenever a clerk, recorder, or register is required to provide notice where a party is represented by an LAR attorney, s/he shall provide notice to the party and to the LAR attorney unless the LAR attorney has filed a Notice of Withdrawal of Appearance.

9. Assisting a Party to Prepare Court Documents.

An attorney may assist a party in preparing a pleading, motion or any other document that the party will sign and file in court. In assisting the preparation of any such pleading, motion or other document, the attorney shall insert the notation "prepared with assistance of counsel." Assisting a party with this type of document preparation does not constitute a general or limited appearance of the attorney. The party remains responsible to the court and other parties for all statements in any pleading, motion, or other document prepared but not signed by an attorney.

SUPREME JUDICIAL COURT

SUFFOLK, SS.

SUPREME JUDICIAL COURT

IN RE: LIMITED ASSISTANCE REPRESENTATION

BACKGROUND

Limited Assistance Representation permits attorneys to assist a self-represented litigant on a limited basis without undertaking a full representation of the client on all issues related to the legal matter for which the attorney is engaged. After the completion and assessment of a Limited Assistance Representation Pilot Project in the Hampden, Suffolk, and Norfolk Divisions of the Probate and Family Court Department pursuant to a Standing Order dated August 1, 2006, as amended from time to time, the Justices have concluded that limited assistance representation can be of significant benefit in expanding access to justice in the Trial Courts, and should be available in such Divisions and in connection with such matters as each Trial Court Department Chief Justice, in his or her discretion and with the approval of the Chief Justice for Administration and Management, may prescribe.

ORDER

Limited Assistance Representation may be implemented in any Department of the Trial Court in such Divisions and in connection with such matters as each Trial Court Department Chief Justice, in his or her discretion and with the approval of the Chief Justice for Administration and Management, may prescribe. Notwithstanding any provision to the contrary in any Rule of Court or Standing Order, it is hereby **ORDERED** that the following procedures shall apply with respect to Limited Assistance Representation.

1. Limited Assistance Representation.

A qualified attorney may limit the scope of his or her representation of a client if the limitation is reasonable under the circumstances and the client gives informed consent. An attorney shall not be deemed a "qualified attorney" unless he or she completes an information session on Limited Assistance Representation approved by the Chief Justice of the Trial Court Department in which the attorney seeks to represent a client on a

limited basis.

2. Limited Appearance.

An attorney making a limited appearance on behalf of an otherwise unrepresented party shall file a Notice of Limited Appearance in the form attached to this Order. The Notice shall state precisely the court event to which the limited appearance pertains, and, if the appearance does not extend to all issues to be considered at the event, the Notice shall identify the discrete issues within the event covered by the appearance. An attorney may not enter a limited appearance for the sole purpose of making evidentiary objections. Nor shall a limited appearance allow both an attorney and a litigant to argue on the same legal issue during the period of the limited appearance. An attorney may file a Notice of Limited Appearance for more than one court event in a case. At any time, including during an event, an attorney may file a new Notice of Limited Appearance with the agreement of the client.

A pleading, motion or other document filed by an attorney making a limited appearance shall comply with Rule 11(a), Mass. R.Civ.P., and/or cognate Departmental Rules, and shall state in bold type on the signature page of the document: **"Attorney of [party] for the limited purpose of [court event]."** An attorney filing a pleading, motion or other document outside the scope of the limited appearance shall be deemed to have entered a general appearance, unless the attorney files a new Notice of Limited Appearance with the pleading, motion or other document.

Upon the completion of the representation within the scope of a limited appearance, an attorney shall withdraw by filing a Notice of Withdrawal of Limited Appearance in the form attached to this Order, which notice shall include the client's name, address and telephone number, unless otherwise provided by law. The attorney must file a Notice of Withdrawal of Limited Appearance for each court event for which the attorney has filed a Notice of Limited Appearance. The court may impose sanctions for failure to file such notice.

3. Service.

Whenever service is required or permitted to be made upon a party represented by an attorney making a limited appearance, for all matters within the scope of the limited appearance, the service shall be made upon both the attorney and the party. Service upon a party shall be at the address listed for the party in the Notice of Limited Appearance. If the party's address has been impounded by court order or rule, service of process on the party shall be made in accordance with the court order or rule. Service upon an attorney making a limited appearance shall not be required for matters outside the scope of the limited appearance.

4. Assistance in the preparation of documents.

An attorney may assist a client in preparing a pleading, motion or other document to be signed and filed in court by the client, a practice sometimes referred to as "ghostwriting." In such cases, the attorney shall insert the notation "prepared with assistance of counsel" on any pleading, motion or other document prepared by the attorney. The attorney is not required to sign the pleading, motion or document, and the filing of such pleading, motion or document shall not constitute an appearance by the attorney.

<u>MARGARET H. MARSHALL</u>)	
)	
<u>RODERICK L. IRELAND</u>)	
)	
<u>FRANCIS X. SPINA</u>)	
)	Justices
<u>JUDITH A. COWIN</u>)	
)	
<u>ROBERT J. CORDY</u>)	
)	
<u>MARGOT BOTSFORD</u>)	
)	
<u>RALPH D. GANTS</u>)	

Effective Date: May 1, 2009

Dated: April 10, 2009