

Suggested Guidelines for Lawyers Doing Limited Scope Agreed Family Dissolution

(From the Oklahoma Bar Association Management Assistance Program. These guidelines are to assist lawyers in developing their own limited scope practice procedures, but have not been officially “adopted” by the OBA.)

The purpose of this outline is twofold.

First, to assist the lawyer complying with Oklahoma Rules of Professional Conduct, in particular Rule 1.2(c), which states:

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

Second, to outline a business process for these services that serves and protects the public and protects the lawyer from untrue or unfair claims about the lawyer’s conduct while simplifying and standardizing the lawyer’s work process with the ultimate goal of reducing the cost to the public for the service.

Guidelines

- 1) Limited scope services will typically be delivered on a flat fee basis. A lawyer wishing to deliver such services in a family law dissolution context should provide a clear schedule of various services and the various fees. This can be done on the lawyer’s website as well as by a handout with the fee schedule to those who visit the lawyer’s office seeking information. There should be no disputes about the fees and these fees will likely vary depending on provisions such as child support guidelines computation, joint custody plans and qualified domestic relations orders as needed. Clarity and simplicity are key considerations.
- 2) Prior to tendering payment and the commencement of legal services, the client/consumer should acknowledge the fee in writing, typically by signing an attorney-client fee agreement, which may or may not be combined with other disclosures to the client and agreements.
- 3) Unless the individuals are well-known to the lawyer prior to the representation, identity verification of the individuals should be done at that time and the lawyer should retain these records so that there can be no dispute as to who met with the lawyer. Typically this would be done by making a photocopy of an Oklahoma driver’s license or passport and retaining it in the permanent records of the transaction. Even though it may not be a traditional lawyer’s first inclination, photographs taken with a cell phone or video recordings may also be used as documentation.

- 4) To obtain the needed facts for the document preparation and to be able to later verify what factual representations were made, a factual representation sheet should be prepared by both parties including a list of all assets and liabilities, both fixed and contingent. The best practice is for these separate documents to be signed and notarized by both the client and the unrepresented party. The factual representation sheet should contain a statement to the effect that the representations are true, and that in the event there is any false statement or material omission in these documents, this affidavit may be used to attempt to vacate any court order based on fraud in obtaining an order or judgment. (12 Okla. Stat. 1031).
- 5) The lawyer should verbally inquire about the factual representation sheet and the parties' agreed settlement proposal to determine that the parties competently understand and appreciate the significance of their actions.
- 6) Because some parties may need some time to complete their factual representation sheet, this process may involve two steps. It is appropriate to charge separate fees for additional meetings as long as these charges are made absolutely clear to the individuals in advance.
- 7) The lawyer should execute an affidavit of his or her findings and compliance with Oklahoma Rules of Professional Conduct Rule 1.2(c). Note that the rule contains a two-tier test.
- 8) While the lawyer may manually prepare the Petition for Dissolution of Marriage, Waiver, Decree and other pleadings, the use of some automated document assembly process is strongly recommended to assure a more error-free work product can be created utilizing much less of the lawyer's or staff's individual time.
- 9) The extra value that a lawyer can bring to this process is to provide very clear and simple instructions that a person unfamiliar with the process can use to be more comfortable. For example, don't just give them the address of the courthouse, but include a document with a map and photographs. And make suggestions for parking. Don't just tell them the courtroom number but give them a photograph of the courtroom door. You might even make a video of how the process in the court works and let them watch it in your office. Make certain they understand if there is a metal detector they have to go through and to allow time to do that. This is where you can provide greater value than a national document assembly service and can leave a favorable impression with these individuals in case they need additional legal services in the future.
- 10) A lawyer cannot give advice to both parties and one person must be designated as the client. This should be clearly disclosed in writing and signed by the client. If the other party is participating with the lawyer in any way beyond showing up at the lawyer's office later to sign documents, that individual should also sign a document indicating that they are aware the lawyer does not represent them and they are proceeding without the advice of counsel.
- 11) Permanently store all of the information (including any videos that were made) in at least two secure locations and retain it for at least five years.