

Rule Change 1999(10)
The Colorado Rules of Civil Procedure
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C.R.C.P. 11. Signing of Pleadings

(a) OBLIGATIONS OF PARTIES AND ATTORNEYS

[Reletter existing text of Rule 11 as subsection (a) with no change to original text.]

(b) LIMITED REPRESENTATION

AN ATTORNEY MAY UNDERTAKE TO PROVIDE LIMITED REPRESENTATION IN ACCORDANCE WITH COLO.RPC 1.2 TO A PRO SE PARTY INVOLVED IN A COURT PROCEEDING. PLEADINGS OR PAPERS FILED BY THE PRO SE PARTY THAT WERE PREPARED WITH THE DRAFTING ASSISTANCE OF THE ATTORNEY SHALL INCLUDE THE ATTORNEY'S NAME, ADDRESS, TELEPHONE NUMBER AND REGISTRATION NUMBER. THE ATTORNEY SHALL ADVISE THE PRO SE PARTY THAT SUCH PLEADING OR OTHER PAPER MUST CONTAIN THIS STATEMENT. IN HELPING TO DRAFT THE PLEADING OR PAPER FILED BY THE PRO SE PARTY, THE ATTORNEY CERTIFIES THAT, TO THE BEST OF THE ATTORNEY'S KNOWLEDGE, INFORMATION AND BELIEF, THIS PLEADING OR PAPER IS (1) WELL-GROUNDED IN FACT BASED UPON A REASONABLE INQUIRY OF THE PRO SE PARTY BY THE ATTORNEY, (2) IS WARRANTED BY EXISTING LAW OR A GOOD FAITH ARGUMENT FOR THE EXTENSION, MODIFICATION OR REVERSAL OF EXISTING LAW, AND (3) IS NOT INTERPOSED FOR ANY IMPROPER PURPOSE, SUCH AS TO HARASS OR TO CAUSE UNNECESSARY DELAY OR NEEDLESS INCREASE IN THE COST OF LITIGATION. THE ATTORNEY IN PROVIDING SUCH DRAFTING ASSISTANCE MAY RELY ON THE PRO SE PARTY'S REPRESENTATION OF FACTS, UNLESS THE ATTORNEY HAS REASON TO BELIEVE THAT SUCH REPRESENTATIONS ARE FALSE OR MATERIALLY INSUFFICIENT, IN WHICH INSTANCE THE ATTORNEY SHALL MAKE AN INDEPENDENT REASONABLE INQUIRY INTO

THE FACTS. ASSISTANCE BY AN ATTORNEY TO A PRO SE PARTY IN FILLING OUT PRE-PRINTED AND ELECTRONICALLY PUBLISHED FORMS THAT ARE ISSUED THROUGH THE JUDICIAL BRANCH FOR USE IN COURT ARE NOT SUBJECT TO THE CERTIFICATION AND ATTORNEY NAME DISCLOSURE REQUIREMENTS OF THIS RULE 11(b).

LIMITED REPRESENTATION OF A PRO SE PARTY UNDER THIS RULE 11(b) SHALL NOT CONSTITUTE AN ENTRY OF APPEARANCE BY THE ATTORNEY FOR PURPOSES OF C.R.C.P. 121, SECTION 1-1 OR C.R.C.P. 5(b), AND DOES NOT AUTHORIZE OR REQUIRE THE SERVICE OF PAPERS UPON THE ATTORNEY. REPRESENTATION OF THE PRO SE PARTY BY THE ATTORNEY AT ANY PROCEEDING BEFORE A JUDGE, MAGISTRATE, OR OTHER JUDICIAL OFFICER ON BEHALF OF THE PRO SE PARTY CONSTITUTES AN ENTRY OF AN APPEARANCE PURSUANT TO C.R.C.P. 121, SECTION 1-1. THE ATTORNEY'S VIOLATION OF THIS RULE 11(b) MAY SUBJECT THE ATTORNEY TO THE SANCTIONS PROVIDED IN C.R.C.P. 11(a).

C.R.C.P. 121, SECTION 1-1. ENTRY OF APPEARANCE AND WITHDRAWAL

[No Change]

COMMITTEE COMMENT

[No change to first paragraph of existing comment]

AN ATTORNEY MAY PROVIDE LIMITED REPRESENTATION TO A PRO SE PARTY IN ACCORDANCE WITH THE REQUIREMENTS OF C.R.C.P. 11(b) OR C.R.C.P. 311(b) AND COLO.RPC 1.2. PROVIDING LIMITED REPRESENTATION TO A PRO SE PARTY IN ACCORDANCE WITH C.R.C.P. 11(b) OR 311(b) AND COLO.RPC 1.2 DOES NOT CONSTITUTE AN ENTRY OF APPEARANCE EITHER UNDER C.R.C.P. 121, SECTION 1-1, OR IN THE COUNTY COURT. SUCH LIMITED REPRESENTATION DOES NOT REQUIRE OR AUTHORIZE THE SERVICE OF A PLEADING OR PAPER UPON THE ATTORNEY PURSUANT TO C.R.C.P. 5(b) OR C.R.C.P. 305.

C.R.C.P. 311. Signing of Pleadings

(a) OBLIGATIONS OF PARTIES AND ATTORNEYS

***[Reletter existing text of Rule 311 as subsection (a) with no change to original text.] ***

(b) LIMITED REPRESENTATION

AN ATTORNEY MAY UNDERTAKE TO PROVIDE LIMITED REPRESENTATION IN ACCORDANCE WITH COLO.RPC 1.2 TO A PRO SE PARTY INVOLVED IN A COURT PROCEEDING. PLEADINGS OR PAPERS FILED BY THE PRO SE PARTY THAT WERE PREPARED WITH THE DRAFTING ASSISTANCE OF THE ATTORNEY SHALL INCLUDE THE ATTORNEY'S NAME, ADDRESS, TELEPHONE NUMBER AND REGISTRATION NUMBER. THE ATTORNEY SHALL ADVISE THE PRO SE PARTY THAT SUCH PLEADING OR OTHER PAPER MUST CONTAIN THIS STATEMENT. IN HELPING TO DRAFT THE PLEADING OR PAPER FILED BY THE PRO SE PARTY, THE ATTORNEY CERTIFIES THAT TO THE BEST OF THE ATTORNEY'S KNOWLEDGE, INFORMATION AND BELIEF, THIS PLEADING OR PAPER IS (1) WELL-GROUNDED IN FACT BASED UPON A REASONABLE INQUIRY OF THE PRO SE PARTY BY THE ATTORNEY, (2) IS WARRANTED BY EXISTING LAW OR A GOOD FAITH ARGUMENT FOR THE EXTENSION, MODIFICATION OR REVERSAL OF EXISTING LAW, AND (3) IS NOT INTERPOSED FOR ANY IMPROPER PURPOSE, SUCH AS TO HARASS OR TO CAUSE UNNECESSARY DELAY OR NEEDLESS INCREASE IN THE COST OF LITIGATION. THE ATTORNEY IN PROVIDING SUCH DRAFTING ASSISTANCE MAY RELY ON THE PRO SE PARTY'S REPRESENTATION OF FACTS, UNLESS THE ATTORNEY HAS REASON TO BELIEVE THAT SUCH REPRESENTATIONS ARE FALSE OR MATERIALLY INSUFFICIENT, IN WHICH INSTANCE THE ATTORNEY SHALL MAKE AN INDEPENDENT REASONABLE INQUIRY INTO THE FACTS. ASSISTANCE BY AN ATTORNEY TO A PRO SE PARTY IN FILLING OUT PRE-PRINTED AND ELECTRONICALLY PUBLISHED FORMS THAT ARE ISSUED THROUGH THE JUDICIAL BRANCH FOR USE IN COURT ARE NOT SUBJECT TO THE CERTIFICATION AND ATTORNEY NAME DISCLOSURE REQUIREMENTS OF THIS RULE 311(b).

LIMITED REPRESENTATION OF A PRO SE PARTY UNDER THIS RULE 311(b) SHALL NOT CONSTITUTE AN ENTRY OF APPEARANCE BY THE ATTORNEY FOR PURPOSES OF C.R.C.P. 121, SECTION 1-1 OR C.R.C.P. 305, AND DOES NOT AUTHORIZE OR REQUIRE THE SERVICE OF PAPERS UPON THE ATTORNEY. REPRESENTATION OF THE PRO SE PARTY BY THE ATTORNEY AT ANY PROCEEDING BEFORE A JUDGE, MAGISTRATE, OR OTHER JUDICIAL OFFICER ON BEHALF OF THE PRO SE PARTY CONSTITUTES AN ENTRY OF AN APPEARANCE PURSUANT TO C.R.C.P. 121,

SECTION 1-1. THE ATTORNEY'S VIOLATION OF THIS RULE 311(b) MAY SUBJECT THE ATTORNEY TO THE SANCTIONS PROVIDED IN C.R.C.P. 311(a).

Colo.RPC 1.2. Scope AND OBJECTIVES of Representation

(a) A lawyer shall abide by a client's decisions concerning the SCOPE AND objectives of representation, subject to paragraphs (c), (d), and (e), and shall consult with the client as to the means by which they are to be pursued. A lawyer shall abide by a client's decision whether to accept an offer of settlement of 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) * * * [No change] * * *

(c) A lawyer may limit the SCOPE OR objectives, OR BOTH, of the representation if the client consents after consultation. A LAWYER MAY PROVIDE LIMITED REPRESENTATION TO PRO SE PARTIES AS PERMITTED BY C.R.C.P. 11(b) AND C.R.C.P. 311(b).

(d) * * * [No change] * * *

(e) * * * [No change] * * *

(f) * * * [No change] * * *

COMMENT

Scope AND OBJECTIVES of Representation

(INSERT FOLLOWING NEW MATERIAL TO BEGIN THE COMMENT AND THEN PROCEED WITH THE EXISTING COMMENT WITHOUT CHANGE)

THE SCOPE OR OBJECTIVES, OR BOTH, OF THE LAWYER'S REPRESENTATION OF THE CLIENT MAY BE LIMITED IF THE CLIENT CONSENTS AFTER CONSULTATION WITH THE LAWYER.

IN LITIGATION MATTERS ON BEHALF OF A PRO SE PARTY, LIMITATION OF THE SCOPE OR OBJECTIVES OF THE REPRESENTATION IS SUBJECT TO C.R.C.P. 11(b) OR 311 (b) AND C.R.C.P. 121, SECTION 1-1, AND, THEREFORE, INVOLVES NOT ONLY THE CLIENT AND THE LAWYER BUT ALSO THE COURT. WHEN A LAWYER IS PROVIDING LIMITED REPRESENTATION TO A PRO SE PARTY AS PERMITTED BY C.R.C.P. 11(b) OR 311(b), THE CONSULTATION WITH THE CLIENT SHALL INCLUDE AN EXPLANATION OF THE RISKS AND BENEFITS OF SUCH LIMITED

REPRESENTATION. A LAWYER MUST PROVIDE MEANINGFUL LEGAL ADVICE CONSISTENT WITH THE LIMITED SCOPE OF THE LAWYER'S REPRESENTATION, BUT A LAWYER'S ADVICE MAY BE BASED UPON THE PRO SE PARTY'S REPRESENTATION OF THE FACTS AND THE SCOPE OF REPRESENTATION AGREED UPON BY THE LAWYER AND THE PRO SE PARTY.

A LAWYER REMAINS LIABLE FOR THE CONSEQUENCES OF ANY NEGLIGENT LEGAL ADVICE. NOTHING IN THIS RULE IS INTENDED TO EXPAND OR RESTRICT, IN ANY MANNER, THE LAWS GOVERNING CIVIL LIABILITY OF LAWYERS.

[No change to balance of existing comment]

Colo.RPC 4.2. Communication with Person Represented by Counsel

[No change]

COMMENT

[No change to first two paragraphs]

This rule also covers any person, whether or not a party to a formal proceeding, who is represented by counsel concerning the matter in question. A PRO SE PARTY TO WHOM LIMITED REPRESENTATION HAS BEEN PROVIDED IN ACCORDANCE WITH C.R.C.P. 11(b), OR C.R.C.P. 311(b), AND COLO.RPC 1.2 IS CONSIDERED TO BE UNREPRESENTED FOR PURPOSES OF THIS RULE UNLESS THE LAWYER HAS KNOWLEDGE TO THE CONTRARY.

COMMITTEE COMMENT

[No change]

Colo.RPC 4.3. Dealing with Unrepresented Person

[No change]

COMMENT

An unrepresented person, particularly one not experienced in dealing with legal matters, might assume that a lawyer is disinterested in loyalties or is a disinterested authority on the law even when the lawyer represents a client. During the course of a

lawyer's representation of a client, the lawyer should not give advice to an unrepresented person other than the advice to obtain counsel. THE LAWYER MUST COMPLY WITH THE REQUIREMENTS OF THIS RULE FOR PRO SE PARTIES TO WHOM LIMITED REPRESENTATION HAS BEEN PROVIDED, IN ACCORDANCE WITH C.R.C.P. 11(b), C.R.C.P. 311(b), COLO. RPC 1.2, AND COLO.RPC 4.2. SUCH PARTIES ARE CONSIDERED TO BE UNREPRESENTED FOR PURPOSES OF THIS RULE.

COMMITTEE COMMENT

[No change]

Amended and adopted by the Court, En Banc, June 17, 1999, effective July 1, 1999.

BY THE COURT:

Gregory J. Hobbs, Jr.
Justice, Colorado Supreme Court

(Notice and Comment Accompanying Colorado Supreme Court's
Announcement of Limited Representation Rules for Litigation)

Notice: Limited Representation Rules (“litigation unbundling”) have been adopted effective July 1, 1999, amending C.R.C.P. 11, C.R.C.P. 311, Colo.RPC 1.2, C.R.C.P. 121, section 1.1 (comment), Colo.RPC 4.2 (comment) and Colo.RPC 4.3 (comment). Please Read Text of Rule Change and the Notice of its effect.

Notice of Limited Representation “Unbundling” Rules for Litigation In Effect July 1, 1999

The Colorado Supreme Court has adopted new rules for limited representation of clients in litigation matters. They address the obligations of attorneys to pro se parties and Colorado state courts in litigation that is being pursued by the pro se party with the drafting assistance of the attorney who is

not making an entry of appearance in the case before a judge, magistrate, or other judicial officer.

The new rules authorize limited representation of pro se parties by attorneys in litigation, pursuant to Colo. RPC 1.2. Under Colo.RPC 1.2 the attorney and the client as a result of consultation with each other may limit the objectives and scope of litigation representation. As the comment to this professional rule sets forth, the attorney shall explain to the client the risks and benefits of limited representation. The attorney providing limited representation must provide meaningful legal advice to the client but it may be based upon the pro se party's representation of the facts and the scope of the representation agreed upon between the attorney and the client.

New comment to Colo.RPC 4.2 and Colo.RPC 4.3 explains that a pro se party to whom such limited representation is being provided is considered to be unrepresented from the standpoint of other lawyers who must contact the pro se party in the course of the litigation. Such lawyers contacting the pro se parties may not give legal advice to them but do not have to proceed through the lawyer who has provided the limited representation.

C.R.C.P. Rules 11 and 311 now contain a new subsection (b) that addresses limited litigation representation. An attorney who provides drafting assistance to a pro se party who files a pleading or paper in court thereby certifies to the court that it, to the best of the attorney's knowledge, information and belief, it is (1) well grounded in fact based on a reasonable inquiry of the pro se party by the attorney, (2) is warranted by existing law or good faith argument for the extension, modification or reversal of existing law, and (3) is not interposed for any improper purpose. The attorney may rely on the pro se party's representation of the facts unless he or she has reason to believe that such representations are false or materially insufficient, in which instance the attorney shall make an independent reasonable inquiry into the facts.

The attorney must advise the pro se party that a pleading or paper for which the attorney has provided drafting assistance must include the attorney's name, address, telephone number and registration number. The attorney certification and name disclosure requirements do not apply to attorneys who assist pro se parties in filling out pre-printed and electronically published forms that are issued through the judicial branch for use in court. This

includes forms that are prepared and released through the State Court Administrator's Office and having been derived from the Colorado Judicial Branch are republished by print or electronically by services such as Bradford (marked "JDF" on Bradford forms), West, or Lexis. This also includes forms approved by rule of the Colorado Supreme Court and those available through the Colorado Judicial Branch web page. Forms that are derived from sources other than the Colorado Judicial Branch are considered pleadings or papers whose assistance in drafting must meet the attorney certification and name disclosure requirements of C.R.C.P. 11(b) and C.R.C.P. 311(b).

As set forth in C.R.C.P. 121, Section 1-1, providing limited representation in litigation in accordance with Colo.RPC 1.2, C.R.C.P. 11(b) and C.R.C.P. 311(b) does not constitute entry of appearance by the attorney in the case and does not require or authorize the service of a pleading or paper upon the attorney pursuant to C.R.C.P. 5(b) or C.R.C.P. 305. However, under rules 11(a) and 311(a) representation of the pro se party at any proceeding before a judge, magistrate, or other judicial officer on behalf of the pro se party constitutes an entry of appearance.

Violation of C.R.C.P. 11(b) or C.R.P.C. Rule 311 (b) subjects the attorney to the sanctions of C.R.C.P. 11(a) or C.R.C.P. 311(a).

Gregory J. Hobbs, Jr.
Liaison Justice, Civil Rules Committee