



# Ohio Board of Professional Conduct

**OPINION 2017-07**

Issued October 6, 2017

## **Court Established Self-Help Clinics for Self-Represented Litigants**

**SYLLABUS:** In order to ensure the right of self-represented litigants to be heard, a court may establish and fund a self-help center to assist self-represented litigants as long as the independence, integrity, and impartiality of its judges is maintained. A court may appoint and compensate lawyers to provide limited scope representation to litigants in a self-help clinic. A lawyer who provides legal assistance through a self-help clinic creates a client-lawyer relationship, although the relationship may be limited in scope. A written agreement that obtains the client's acknowledgement to the limited scope representation is recommended.

This nonbinding advisory opinion is issued by the Ohio Board of Professional Conduct in response to a prospective or hypothetical question regarding the application of ethics rules applicable to Ohio judges and lawyers. The Ohio Board of Professional Conduct is solely responsible for the content of this advisory opinion, and the advice contained in this opinion does not reflect and should not be construed as reflecting the opinion of the Supreme Court of Ohio. Questions regarding this advisory opinion should be directed to the staff of the Ohio Board of Professional Conduct.



# Ohio Board of Professional Conduct

65 SOUTH FRONT STREET, 5<sup>TH</sup> FLOOR, COLUMBUS, OH 43215-3431

Telephone: 614.387.9370 Fax: 614.387.9379

[www.bpc.ohio.gov](http://www.bpc.ohio.gov)

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VICE-CHAIR

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DIRECTOR  
D. ALLAN ASBURY  
SENIOR COUNSEL  
HEIDI WAGNER DORN  
COUNSEL

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**QUESTION PRESENTED:** Whether a court may appoint and compensate lawyers as independent contractors to work in a court-established self-help center to assist self-represented litigants on a limited scope basis.

**APPLICABLE RULES:** Prof.Cond.R. 1.0, 1.1, 1.2, 1.3, 1.4, 1.6, 1.7, 1.9, 6.2 and 6.5; Jud.Cond.R. 1.2, 2.2, 2.6, 2.9, 2.13, and 3.7.

**OPINION:** A common pleas domestic relations court proposes to create a legal self-help center staffed by court-appointed lawyers. The primary purpose of the self-help clinic is to provide short-term legal assistance to persons of limited means who otherwise would be unrepresented. The lawyers would be appointed to provide assistance to self-

represented litigants on a limited scope basis. Appointed lawyers will be paid by the court as independent contractors through the use of grant funds. The lawyers will not provide legal representation before the court, but only general legal assistance and information to litigants. Specifically, the lawyers will assist the litigants to ensure they file the correct court forms in their case, explain and address service of process issues, explain court procedures, and make necessary referrals to sources or persons for additional information or assistance. Litigants will be advised that the lawyers are not responsible for completing or filing the court forms and will not act as counsel of record before the court. Litigants also will be informed that the court-appointed lawyers are independent contractors paid through a grant.

*The Permissibility of Court-Annexed Limited Legal Services Programs*

A court may establish and fund a self-help clinic for self-represented litigants and appoint lawyers to staff the clinic. The Rules of Professional Conduct contemplate court-annexed, limited legal service programs like the one described in the opinion request, with or without outsourcing the legal services to third parties. A lawyer may provide short-term limited legal services under the “auspices of a program sponsored” by a “nonprofit organization or court.” Prof.Cond.R. 6.5. The comment to the rule recognizes that “courts \* \* \* have established programs through which lawyers provide short-term limited legal services - such as advice or the completion of legal forms - that will assist persons to address their legal problems.” Prof.Cond.R. 6.5, cmt. [1]. The appointments of clinic lawyers should be made impartially on a merit basis and the compensation for the appointed lawyers should not exceed the fair market value for similar services. Jud.Cond.R. 2.13. Lastly, a judge may encourage lawyers to assist in a *pro bono* program that provides free legal services to persons of limited means at a substantially reduced fee. See Jud.Cond.R. 3.7(B).

The establishment of a self-help clinic is a permissible method to ensure the right of the self-represented litigant to be heard and that improves access to justice. See Jud.Cond.R. 2.6, cmt. [1A]. See also Jud.Cond.R. 2.2, cmt. [4] (a judge may make reasonable accommodations to a self-represented litigant.) However a judge must always remain fair and impartial, and any reasonable accommodation for a self-represented litigant should not create an unfair advantage for the litigant. A self-help clinic in a court can

facilitate the administration of justice by reducing the necessity for a judge to provide additional accommodations for a self-represented litigant during a hearing, assisting in maintaining the appearance of impartiality, and increasing the opportunity for the matter to be heard on its merits rather than dismissed on technicalities.

However, establishing a self-help clinic implicates other judicial obligations under the Code of Judicial Conduct. Because the self-help clinic inevitably will be viewed by the public as a court-provided service, it must operate and appear, to the extent possible, as an independent function of the court. In order to underscore the court's impartiality, the court's oversight and involvement in the self-help clinic should be *de minimis* and primarily limited to the funding of the clinic and the appointment of the lawyers, not the day-to-day operation of the clinic. Jud.Cond.R. 1.2. That is not to say, however, that judicial officers, court staff, and appointed lawyers cannot meet occasionally to discuss general administrative issues related to the operation of the self-help clinic.

In order to further maintain the appropriate and ethical detachment from the clinic, judges must refrain from interaction with clinic lawyers that could undermine the public's confidence in the independence, impartiality, and integrity of the court. Jud.Cond.R. 1.2. More specifically, the same ethical boundaries observed with lawyers appointed by the court for indigent litigants should be maintained for self-help clinic lawyers. For example, the court should implement appropriate steps to avoid communications between the appointed lawyers and court staff and judges about case-related matters that could be interpreted as an *ex parte* communication or imply that judges are not impartial. Jud.Cond.R. 2.2., 2.9. An appropriate step may include placement of the self-help clinic in a physical location in the courthouse that reinforces the independence of the court and appointing judges.

#### *Limited Scope Representation by Court Appointed Lawyers*

A court that establishes a self-help clinic must be aware of the ethical obligations of the appointed lawyers in the clinic. Most importantly, a limited client-lawyer relationship is formed when a lawyer participates and assists litigants in a self-help clinic, requiring the lawyer to adhere to his or her ethical obligations under the Rules of Professional Conduct. Prof.Cond.R. 6.5, cmt. [1]; Ronald D. Rotunda and John S.

Dzienkowski, *Legal Ethics* 1214 (2016-17 ed.) Even if the initial intent of the parties is to the contrary, a client-lawyer relationship may be created by implication based upon the conduct of the parties and the reasonable expectations of the person seeking representation. *Cuyahoga Cty Bar Ass'n v. Hardiman*, 2003-Ohio-5596, 100 Ohio St.3d 260. Moreover, the determination of whether a client-lawyer relationship is formed in Ohio largely turns on the reasonable belief of the prospective client. *Id.* See also *Disciplinary Counsel v. Cicero*, 2012-Ohio-5457, 134 Ohio St.3d 311. Therefore, the Board recommends that clinic lawyers operate under the assumption that a client-lawyer relationship is formed when they interact with a clinic client. Any verbal or written assertion that a client-lawyer relationship is not formed in a clinic setting belies the underlying legal nature of the relationship and does not insulate the lawyer from his or her ethical obligations to the client. See N.J. Ethics Op. 671 (1993).

The level of legal services to be offered by the lawyers in the court's self-help clinic is a form of limited scope representation expressly permitted under the Rules. Prof.Cond. R. 1.2(c). Limited scope representation, or the "unbundling" of legal services, is an alternative to the traditional full-service model that permits a lawyer to limit the client-lawyer relationship to a specific task such as document assistance or procedural advice. The scope of the representation may be limited if it is reasonable under the circumstances. *Id.* "Reasonable" is defined as the conduct of a reasonably prudent and competent lawyer. Prof.Cond.R. 1.0(i). In some circumstances, particularly in a legal clinic setting, offering limited legal services without giving traditional legal advice or making a formal appearance before a court can be considered reasonable. Tenn. Ethics Op. 151 (2005).

From an ethical standpoint, appointed lawyers providing limited scope representation have the same ethical obligations to their clients as counsel retained to provide full representation including, but not limited to, a notice to and acknowledgement from a client concerning any lack of malpractice insurance. Prof.Cond.R. 6.2, cmt. [2]; Prof.Cond.R. 1.4(c). Notwithstanding the nature of the limited scope representation, lawyers appointed by the court in the self-help clinic must comply with the Rules of Professional Conduct by *inter alia* providing competent and diligent legal services, maintaining client confidences, and considering known conflicts created between clinic clients and current or former clients. Prof.Cond.R. 1.1, 1.3, 1.6, 1.7, and 1.9. See Prof.Cond.R. 6.5.

Additionally, the Board recommends that appointed lawyers enter into a written agreement with each clinic client that explains the limited nature of the legal services provided; that the services are limited to the actual meeting between the clinic client and lawyer; and that the representation will conclude without the filing by the lawyer of court documents or any appearance in court by the lawyer. *See* Prof.Cond.R. 1.2(c)(written agreement preferred in limited scope arrangements.) The appointed lawyer should obtain the client's written consent to the limited scope of the representation. Prof.Cond.R. 6.5, cmt. [2]. Finally, a lawyer who discovers that a client has a legal issue that falls outside the scope of the limited representation should inform his or her client of the issue, the fact that he or she is not representing the client regarding it, and that the client should seek additional legal representation. D.C. Bar Ethics Op. 330 (2005).

**CONCLUSION:** The Rules of Professional Conduct contemplate the establishment by a court of a self-help clinic for self-represented litigants. A court with a clinic must be mindful of the Code of Judicial Conduct requirements of independence, integrity, and impartiality when approving and funding the clinic and take steps to ensure a proper ethical separation between the clinic, the appointed lawyers, and the court. The court's involvement with the clinic should be viewed as *de minimis* and limited to the funding and appointment of lawyers in order to maintain the impartiality of the court.

Appointed lawyers in the clinic will be undertaking a limited scope representation of clients that forms a client-lawyer relationship under the Rules of Professional Conduct that triggers the lawyer's ethical obligations. Written or oral assertions that a client-lawyer relationship is not being formed are not appropriate. The Board recommends that lawyers enter into a written agreement that obtains the client's acknowledgement to the limited scope representation.