

LIMITED SCOPE REPRESENTATIONS, CONFLICT CHECKS, AND PRO BONO

Ethical rules in many jurisdictions permit attorneys to offer short-term limited legal services to a pro bono client without conducting a fulsome screening for legal conflicts. Limited scope representations often help low-income individuals who cannot afford counsel access legal representation. In a limited scope representation, also referred to as “unbundled” legal services, the client and attorney agree on precisely what focused assistance the attorney will provide to the client, and the client either self-represents or receives help from another attorney for other aspects of the matter. The attorney’s assistance may be limited to advising the client during the clinic or consultation, drafting a document, appearing at a court hearing, or assisting the client with legal strategy or guidance on a selected issue or procedure.

Limited scope representations commonly occur during pro bono clinics or hotlines sponsored by a legal services organization, or in meetings at a pro se legal assistance center operated in a courthouse. To facilitate such limited scope representations where conducting a comprehensive conflicts check is not feasible, most jurisdictions within the United States have adopted ethical rules that provide an exception to the rules governing the lawyer’s obligation to screen for client conflicts.

ABA Model Rule of Professional Conduct 6.5, Nonprofit and Court-Annexed Limited Legal Services Programs, eases the conflict check obligation on a “lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter.” The lawyer “is subject to Rules 1.7 and 1.9(a) only if the lawyer knows that the representation of the client involves a conflict of interest,” and “subject to Rule 1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by Rule 1.7 or 1.9(a) with respect to the matter.”¹

In summary, if a lawyer does not know of a conflict with the client at the time the lawyer meets the client, the lawyer can proceed with the limited scope representation. This rule makes it possible for lawyers to represent indigent clients who walk into a clinic, call a legal help hotline, or seek help at a pro se legal assistance center. The rule benefits both the lawyer, who would not otherwise be able to provide short-term legal services, and the client, who is able to receive needed legal services while remaining protected against known conflicts.

¹ Model Rule 1.7 sets forth the ordinary conflict of interest rules for a lawyer’s current clients, providing that “a lawyer shall not represent a client if the representation involves a concurrent conflict of interest,” because the representation will be “directly adverse to another client,” or “there is a significant risk that it will be materially limited by the lawyer’s responsibilities to another client, a former client or a third person or by a personal interest of the lawyer,” unless the lawyer reasonably believes the lawyer “will be able to provide competent and diligent representation to each affected client,” “the representation is not prohibited by law,” the clients are not directly opposed “in the same litigation or other proceeding before a tribunal,” and the clients give informed written consent. Model Rule 1.9(a) requires that a “lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person’s interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.” Model Rule 1.10 sets forth the rules imputing conflicts of interest among lawyers associated with one another in a law firm.

Many jurisdictions have adopted Model Rule 6.5 in full force. Other jurisdictions have adopted Model Rule 6.5 with some modifications. Common modifications include:

- Expanding the list of sponsors of the program, such as the clinic or helpline, to include government agencies, bar associations, or accredited law schools.
- Excluding fee-paying clients from the rule and limiting its application to the delivery of pro bono legal services.
- Restricting application of the rule to “one-time” or “initial” consultations.
- Specifying that the client must give informed consent for the limited scope representation.
- Clarifying the application of other rules, such as those concerning confidentiality of client information, to the limited scope representation.

Only two jurisdictions have no rule to govern conflicts in limited scope representations sponsored by nonprofit organizations or courts.

The chart below reviews the rules governing conflict checks for limited scope representations under the auspices of a nonprofit, court, or similar program in all fifty states and the District of Columbia. The chart summarizes whether the jurisdiction has adopted a rule that follows Model Rule 6.5 or whether and how the jurisdiction has modified Model Rule 6.5.

Summary of Rules Easing Conflict Checks for Limited Scope Representations²

State	Rule on Easing Conflict Check	Rule Highlights
Alabama	<u>Ala. R. Prof. Conduct 6.5</u>	Follows Model Rule 6.5
Alaska	<u>Alaska R. Prof. Conduct 6.5</u>	Follows Model Rule 6.5
Arizona	<u>Ariz. Ethics R. 6.5</u>	Similar to Model Rule 6.5, but also states that Ethics Rule 1.5 concerning fees does not apply to a pro bono representation under this rule.
Arkansas	<u>Ark. R. Prof. Conduct 6.5</u>	Follows Model Rule 6.5
California	<u>Cal. R. Prof. Conduct 1-650</u>	Similar to Model Rule 6.5, but also includes programs sponsored by a government agency, bar association, or law school.
Colorado	<u>Colo. R. Prof. Conduct 6.5</u>	Follows Model Rule 6.5
Connecticut	<u>Conn. R. Prof. Conduct 6.5</u>	Similar to Model Rule 6.5, but also requires that the lawyer obtain the client's informed consent to the limited scope of the representation. If a short-term limited representation would not be reasonable under the circumstances, the lawyer may offer advice to the client but must also advise the client of the need for further assistance of counsel.
Delaware	<u>Del. R. Prof. Conduct 6.5</u>	Follows Model Rule 6.5
District of Columbia	<u>D.C. R. Prof. Conduct 6.5</u>	Follows Model Rule 6.5
Florida	<u>Fla. R. Prof. Conduct 4-6.6</u>	Similar to Model Rule 6.5, but also includes programs sponsored by a government agency, bar association, or American Bar Association-accredited law school.
Georgia	<u>Ga. R. Prof. Conduct 6.5</u>	Similar to Model Rule 6.5, but restricts the rule to pro bono matters, and provides that the short-term limited legal services will occur "normally through a one-time consultation."
Hawaii	<u>Haw. R. Prof. Conduct 6.5</u>	Follows Model Rule 6.5
Idaho	<u>Idaho R. Prof. Conduct 6.5</u>	Follows Model Rule 6.5
Illinois	<u>Ill. R. Prof. Conduct 6.5</u>	Follows Model Rule 6.5
Indiana	<u>Ind. R. Prof. Conduct 6.5</u>	Follows Model Rule 6.5
Iowa	<u>Iowa R. Prof. Conduct 32:6.5</u>	Follows Model Rule 6.5

² Some rules include additional restrictions. See the text of the actual rules for complete information.

State	Rule on Easing Conflict Check	Rule Highlights
Kansas	No rule	N/A
Kentucky	Ky. R. Prof. Conduct 6.5	Follows Model Rule 6.5
Louisiana	La. R. Prof. Conduct 6.5	Follows Model Rule 6.5
Maine	Me. R. Prof. Conduct 6.5	Similar to Model Rule 6.5, but provides that the rule does not apply if the lawyer “is aware” the representation involves a conflict of interest or that another lawyer in the lawyer’s law firm is disqualified, rather than “knows” about the conflict.
Maryland	Md. R. Prof. Conduct 19-306.5	Follows Model Rule 6.5
Massachusetts	Mass. R. Prof. Conduct 6.5	Follows Model Rule 6.5
Michigan	Mich. R. Prof. Conduct 6.6	Follows Model Rule 6.5
Minnesota	Minn. R. Prof. Conduct 6.5	Similar to Model Rule 6.5, but restricts the rule to “a program offering pro bono legal services,” and does not specify who must sponsor the program.
Mississippi	Miss. R. Prof. Conduct 6.5	Similar to Model Rule 6.5, but restricts the rule to pro bono matters.
Missouri	Mo. R. Prof. Conduct 4-6.5	Follows Model Rule 6.5
Montana	Mont. R. Prof. Conduct 6.5	Follows Model Rule 6.5
Nebraska	Neb. Ct. R. § 3-506.5	Follows Model Rule 6.5
Nevada	Nev. R. Prof. Conduct 6.5	Follows Model Rule 6.5
New Hampshire	N.H. R. Prof. Conduct 6.5	Similar to Model Rule 6.5, but restricts the rule to a “one-time consultation” with a client, and also includes programs sponsored by the New Hampshire Bar Association. Clarifies that Rules 1.6 and 1.9(c) (regarding confidentiality of clients’ and former clients’ information) apply to a limited scope representation under this rule.
New Jersey	N.J. R. Prof. Conduct 6.5	Follows Model Rule 6.5
New Mexico	N.M. R. Prof. Conduct 16-605	Follows Model Rule 6.5
New York	N.Y. R. Prof. Conduct 6.5	Similar to Model Rule 6.5, but includes programs sponsored by a government agency or bar association. Additionally requires that lawyers comply with Rule 1.8, have “actual knowledge” and that clients provide “informed consent,” among other requirements.

State	Rule on Easing Conflict Check	Rule Highlights
North Carolina	N.C. R. Prof. Conduct 6.5	Follows Model Rule 6.5
North Dakota	N.D. R. Prof. Conduct 6.5	Similar to Model Rule 6.5, and also states that a client who receives short-term limited legal services under Rule 6.5 becomes a former client of the lawyer providing the service for purposes of Rule 1.9, but that no conflict should be imputed to lawyers associated with that lawyer for purposes of Rule 1.10.
Ohio	Ohio R. Prof. Conduct 6.5	Follows Model Rule 6.5
Oklahoma	Okla. R. Prof. Conduct 6.5	Follows Model Rule 6.5
Oregon	Or. R. Prof. Conduct 6.5	Follows Model Rule 6.5
Pennsylvania	Pa. R. Prof. Conduct 6.5	Follows Model Rule 6.5
Rhode Island	R.I. R. Prof. Conduct 6.5	Follows Model Rule 6.5
South Carolina	S.C. R. Prof. Conduct 6.5	Follows Model Rule 6.5
South Dakota	S.D. R. Prof. Conduct 6.5	Follows Model Rule 6.5
Tennessee	Tenn. R. Prof. Conduct 6.5	Follows Model Rule 6.5
Texas	No rule	N/A
Utah	Utah R. Prof. Conduct 6.5	Follows Model Rule 6.5
Vermont	Vt. R. Prof. Conduct 6.5	Follows Model Rule 6.5
Virginia	Va. R. Prof. Conduct 6.5	Follows Model Rule 6.5
Washington	Wash. R. Prof. Conduct 6.5	Similar to Model Rule 6.5, but restricts the rules to pro bono matters. Additionally requires that lawyers comply with Rule 1.8, and specifies that lawyers may provide limited legal services sufficient only to determine eligibility of the client for assistance by the program and to make an appropriate referral, among other requirements.
West Virginia	W.Va. R. Prof. Conduct 6.5	Follows Model Rule 6.5
Wisconsin	Wis. R. Prof. Conduct 6.5	Similar to Model Rule 6.5, but also includes programs sponsored by a bar association or an accredited law school.
Wyoming	Wyo. R. Prof. Conduct 6.5	Similar to Model Rule 6.5, but also includes programs sponsored by the state or county bar association.

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