

The 2024 Amendments to C.A.R. 5(e)

Expanding the Scope of Limited Legal
Services in Civil Appellate Proceedings

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Access to justice is a fundamental principle of any democratic society. However, the high cost of legal representation is a significant barrier to the judicial system for many individuals. Out of financial necessity, many nonlawyers will assume the difficult task of representing themselves in court. According to a 2022 Colorado Access to Justice Commission report, approximately 98% percent of defendants in civil county court cases, 40% of litigants in civil district court cases not involving domestic relations, and 75% of parties in domestic relations cases proceeded without a lawyer.¹ Moreover, a 2021 survey indicated that low-income households in this country receive little or no help from an attorney in resolving 92% of their civil legal problems.²

Many of these self-represented litigants go on to represent themselves on appeal. A self-represented party can lose an appeal simply because the party does not understand the complex issues inherent in appeals, such as determining the deadline for filing a notice of appeal (and the closely related issue of when a judgment is final), navigating the applicable standard of review, and citing accurate and persuasive legal authorities.

The recent amendments to Rule 5(e) of the Colorado Appellate Rules (C.A.R.) expand the types of limited legal services that attorneys are permitted to provide to clients in civil appellate proceedings.³ The amendments allow attorneys to provide a broad range of limited legal services to parties who would otherwise lack any legal representation in civil appellate proceedings. By permitting attorneys to assist with discrete appellate tasks, such as drafting briefs and providing strategic advice, the new amendments to Rule 5(e) help to bridge the gap between full representation and self-representation.

The expansion of the type of discrete limited legal services that an attorney can provide to an otherwise self-represented party in a civil appellate proceeding helps to ensure that litigants with limited resources have a fair opportunity to present their appellate arguments effectively. Under the previous version of Rule

5(e), attorneys could provide self-represented litigants with only a small number of specified legal services in civil appellate proceedings.

This article outlines the new amendments to Rule 5(e), discusses their role in narrowing the access to justice gap, and explains how attorneys can take advantage of the amendments to assist self-represented parties in civil appellate proceedings.

The Previous Version of Rule 5(e)

The previous version of Rule 5(e) specified a small number of discrete tasks that an attorney could provide to an otherwise self-represented party in a civil appellate proceeding:

- file a notice of appeal and designation of transcripts in the court of appeals or the Supreme Court;
- file or oppose a petition or cross-petition for a writ of certiorari in the Supreme Court;
- respond to an order to show cause issued by the court of appeals or the Supreme Court; and
- participate in one or more specified motion proceedings in either court.⁴

To provide limited representation under the previous version of the rule, attorneys were required to file a notice of limited appearance with the appellate court. This notice needed to specify the particular tasks the attorney would handle in the appeal. Once those tasks were completed, the attorney could withdraw from the case by filing a notice of completion.

The History of the 2024 Amendments to Rule 5(e)

An informal group of appellate practitioners, access to justice leaders, and court of appeals judges recognized that the narrow scope of the then-current version of Rule 5(e) unnecessarily restricted the limited legal services that attorneys could provide to otherwise self-represented parties in civil appellate proceedings. For example, an attorney could not enter a limited appearance to draft an appellate brief for a client. In addition, an attorney likely could not

review a self-represented party's draft brief, help an individual fill out an official appellate form, or answer basic questions regarding appeals at a legal clinic.

With encouragement from Chief Judge Gilbert Román of the Colorado Court of Appeals, over a multiyear period, the group looked into the history of Rule 5(e), researched other states' statutes and rules governing limited legal services, and drafted proposed amendments to Rule 5(e). The group decided to employ the term "limited legal services," which appears in Colorado Rule of Professional Conduct 6.5, rather than the term "limited representation." Colo. RPC 6.5 addresses the Rules of Professional Conduct applicable when "[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 group concluded that "limited legal services" would be clearer than "limited representation" if Rule 5(e) were amended to expand the scope of assistance that an attorney can provide to a self-represented party in a civil appellate proceeding—particularly assistance that did not require the attorney to file an entry of appearance.

The Rules of Appellate Procedure Committee agreed with the group's proposal and recommended that the Supreme Court adopt it. The Court adopted the proposal without a hearing on May 16, 2024, effective immediately.

The 2024 Amendments to Rule 5(e)

The 2024 amendments to Rule 5(e) expand on the concept of limited legal services and provide new options for attorneys who wish to assist self-represented parties in civil appellate proceedings. They describe three distinct categories of limited legal services: those requiring an entry of appearance and withdrawal at the conclusion of the representation; those requiring disclosure to the court and all other parties of attorney assistance, without the need for an entry of appearance; and those not requiring either a disclosure or an entry of appearance.

The amendments promote transparency and accountability by requiring a certification when an attorney provides drafting assistance to a self-represented party. In addition, they clarify that certain types of assistance, such as filling out forms and providing oral advice, do

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not constitute an appearance or necessitate a disclosure to the court and the other parties. This broad, structured approach to the provision of limited legal services allows for various levels of legal assistance to self-represented parties while maintaining clear boundaries for attorney involvement.

Limited Legal Services Requiring an Entry of Appearance and Withdrawal

The first subsection of the amended rule builds on the previous language of Rule 5(e) by removing the constraints on the scope of the limited legal services that an attorney can provide in a civil appellate proceeding. Attorneys are now permitted to provide limited legal services in all phases of civil appellate proceedings.

The first sentence of the new Rule 5(e)(1) says:

An attorney may make a limited appearance for a self-represented party in a civil appellate proceeding if the attorney files and serves with the court and the other parties and attorneys (if any) a notice of the limited appearance prior to or simultaneous with the part(s) of the proceeding for which the attorney appears.

Unlike traditional unlimited representation of clients in civil appellate proceedings, which requires that the attorney obtain leave of court if the attorney wishes to withdraw before the conclusion of the appeal, under Rule 5(e)(1), "[a]t the conclusion of [the] part(s) of the proceeding" for which the attorney agreed to make a limited appearance on behalf of the client, "the attorney's appearance terminates without the necessity of leave of court, upon the attorney filing a notice of completion of limited appearance."

In addition, Rule 5(e)(1) specifies that "[s]ervice on an attorney who makes a limited appearance for a party will be valid only in connection with the specific part(s) of the proceeding for which the attorney appears." Under the amended rule, the "specific part(s) of the proceeding" could include assistance with a brief, a petition for rehearing, or oral argument.

Limited Legal Services Requiring Disclosure of Attorney Assistance Without an Entry of Appearance

The second subsection of the amended rule allows attorneys to provide drafting assistance to a self-represented party involved in a civil appellate proceeding without filing an entry of appearance. However, the scope of the attorney's involvement must nonetheless be disclosed to

the court and opposing counsel (or the opposing parties if they are unrepresented).

Rule 5(e)(2) states, in relevant part, that “[d]ocuments filed by the self-represented party that were prepared with the drafting assistance of the attorney must include the attorney’s name, address, telephone number, e-mail address, and registration number.” The attorney must provide the self-represented party with “a signed attorney disclosure certification” that the self-represented party must file with the court as “an attachment to the document(s).” The rule specifies that “[t]he certification must indicate whether the attorney provided drafting assistance for the entire document or for specific sections only, and if for specific sections, indicate which sections.”⁵

In addition, Rule 5(e)(2) requires that such certifications contain the following statement:

In helping to draft the document filed by the self-represented party, the attorney certifies that, to the best of the attorney’s knowledge, information, and belief, this document, or specified section(s), is (A) well-grounded in fact based upon a reasonable inquiry of the self-represented party by the attorney, (B) warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and (C) not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

The amended rule also establishes a new Judicial Department Form, JDF 1996 (Certificate and Attorney Disclosure Pursuant to C.A.R. 5(e)), which attorneys can use for this purpose.

Further, Rule 5(e)(2) states that, in providing drafting assistance, the attorney “may rely on the self-represented party’s representation of facts, unless the attorney has reason to believe that such representations are false or materially insufficient” If so, “the attorney must make an independent reasonable inquiry into the facts.” An attorney’s violation of this or other provisions in Rule 5(e)(2) may “subject the attorney to sanctions provided by C.A.R. 38.”

This language is substantially similar to the language used in the version of Colorado Rule of Civil Procedure 11(b) in effect at the time of this writing. This version of CRCP 11(b) permits lawyers to “undertake to provide limited repre-

sentation in accordance with [Colo. RPC 1.2] to a pro se party involved in a court proceeding.” As of this writing, the Civil Rules Committee is considering amending both CRCP 11(b) and the analogous Colorado Rule of County Court Civil Procedure 311(b) to make them substantially similar to the 2024 amendments to Rule 5(e).

Finally, Rule 5(e)(2) states that “[p]roviding limited legal services to a self-represented party” under the subsection “does not constitute an entry of appearance by the attorney for purposes of this rule and does not authorize or require the service of papers upon the attorney.”

Limited Legal Services Not Requiring an Entry of Appearance or a Certification

The third subsection of amended Rule 5(e) allows attorneys to provide limited legal services to a self-represented party in a civil appellate proceeding without the need to file an entry of appearance or a certification. Rule 5(e)(3) specifies three types of assistance that an attorney can provide in an appellate proceeding “without satisfying the requirements of subsections (e) (1) and (2) of this rule”:

- assistance in filling out preprinted or electronically published forms that are issued by the judicial branch;
- oral assistance or advice regarding the individual’s case; and
- short-term, pro bono legal assistance that does not create an expectation by either the client or the lawyer that the legal assistance will continue (including assistance offered through a nonprofit or court-sponsored program).

The subsection further states that “[p]roviding limited legal services to a self-represented party under this subsection (e)(3) does not authorize or require the service of papers upon the attorney.”

This subsection is also similar to language in the versions of CRCP 11(b) (and its county court counterpart, CRCP 311(b)) in effect at the time of this writing, although Rule 5(e)(3) now allows for additional types of assistance aside from filling out preprinted forms.

By allowing attorneys to provide these types of assistance in civil appellate proceedings, the amended rule enables them to support

clients more effectively than under the previous version of the rule. Moreover, unlike the previous version of Rule 5(e), the amended rule expressly authorizes the type of limited legal services that volunteer lawyers currently provide at pro bono clinics, such as the CBA’s Civil Appeals Clinic.

The Provision of Limited Legal Services to a Client Constitutes “Representation”

As Colo. RPC 6.5(a) indicates, providing limited legal services to a client is considered “representation” of the client and implicates the Rules of Professional Conduct governing representation of clients.⁶ Any attorney who represents a client by providing limited legal services authorized under amended Rule 5(e) must comply with Colo. RPC 1.5(b):

Before or within a reasonable time after commencing the representation, the lawyer shall communicate to the client in writing:

- (1) the basis or rate of the fee and expenses for which the client will be responsible, except when the lawyer will continue to charge a regularly represented client on the same basis or rate; and
- (2) the scope of the representation, except when the lawyer will perform services that are of the same general kind as previously rendered to a regularly represented client.

Further, a lawyer providing limited legal services to a client in a civil appellate proceeding must comply with comment [2] to Colo. RPC 6.5: “A lawyer who provides short-term limited legal services pursuant to this Rule must secure the client’s informed consent to the limited scope of the representation.”

Benefits of the Amended Rule 5(e)

Amended Rule 5(e) clarifies the scope of limited representation that attorneys can provide in appeals and allows them more flexibility to meet their clients’ needs than did the previous version of the Rule.

Clarity in Attorney Involvement

By requiring notices of appearance and completion in Rule 5(e)(1) and the certification

specified in Rule 5(e)(2), the amended rule minimizes the risk of confusion about the extent and duration of the attorney's limited representation. In addition, as noted above, attorneys providing limited legal services under the amended Rule 5(e) must comply with Colo. RPC 1.5(b) to ensure that the client understands the scope of the attorney's representation. This clarity reduces the likelihood of disputes over the scope of the representation.

The Broadened Scope of Permissible Assistance

As explained above, the previous version of Rule 5(e) narrowly circumscribed the permissible scope of limited representation in civil appellate proceedings. This limitation impacted the ability of attorneys to adapt their services to the specific needs of their clients. This lack of flexibility was a significant drawback, particularly in cases where the client's needs evolved over the course of the appeal.

The amended rule offers much greater flexibility than did the previous version of the rule, as it allows attorneys to provide different levels of assistance, depending on the nature of the case and the client's needs. This flexibility is particularly beneficial in pro bono cases, in which attorneys can provide valuable assistance to the client without committing to full representation in the appeal.

The Amended Rule Can Help to Close the Access to Justice Gap


There is a gap in access to justice in Colorado and the rest of the country, as noted at the beginning of this article. Allowing attorneys to assist self-represented parties in civil appellate proceedings without requiring the filing of an entry of appearance or a notice of completion in connection with certain types of limited legal services, and without requiring a certification in connection with other types of limited legal services, creates an incentive for attorneys to provide diverse forms of limited legal services to otherwise self-represented parties in civil appellate proceedings. Such services are particularly crucial in appeals, in which the quality of a party's written submissions can significantly affect the outcome of the case. By allowing

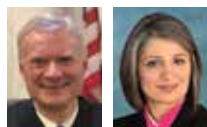
attorneys to focus on the tasks that provide the greatest value to the client, the amended rule ensures that clients can receive high-quality legal services tailored to their specific needs.

Final Thoughts

We encourage attorneys to familiarize themselves with the amended Rule 5(e) and consider how they can employ it to provide limited legal services to appellate clients, including in pro bono appeals. The new flexibility that the Rule 5(e) amendments offer will have minimal impact on the access to justice gap if attorneys are not aware of the amendments. We encourage CLE providers, organizations that assist low-income individuals with their legal matters, and other legal entities throughout the state to provide

training on and publicize the amendments, as well as to offer practical guidance on how to implement limited legal representation in civil appellate proceedings.

We especially draw attention to the opportunity that limited representation in a pro bono appeal offers to make a significant impact on the lives of individuals who might otherwise be unable to navigate the legal system. By providing limited representation under the amended Rule 5(e), attorneys can offer crucial assistance in a way that is manageable and tailored to their expertise. We encourage attorneys to volunteer at the CBA's Civil Appeals Clinic, which offers opportunities, support, and resources for attorneys interested in providing limited legal services in civil appellate proceedings.⁷ 



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NOTES

1. Colorado Access to Justice Commission, *2022 Access to Justice Commission Pro Bono Report 5*, https://www.coloradoaccesstojustice.org/_files/ugd/c659b2_ec0faebe44f04021a9137e58f9bf9151.pdf.
2. Legal Services Corporation, *The Justice Gap: The Unmet Civil Legal Needs of Low-Income Americans* 8, 48 (Apr. 2022), <https://lsc-live.app.box.com/s/xl2v2uraiotbbzrhwtjlgioemp3myz1>.
3. C.A.R. 5(e) does not apply to criminal appeals.
4. The current version of C.A.R. 5(e) and the changes from the previous version of the rule can be found on the Colorado Judicial Branch website at [https://www.courts.state.co.us/userfiles/file/Court_Probation/Supreme_Court/Rule_Changes/2024/Rule%20Change%202024\(11\).pdf](https://www.courts.state.co.us/userfiles/file/Court_Probation/Supreme_Court/Rule_Changes/2024/Rule%20Change%202024(11).pdf).
5. We offer no opinion as to whether an appellate court would liberally construe those portions of a document for which a self-represented party received drafting assistance. See *Gandy v. Williams*, 2019 COA 118, ¶ 8, 461 P.3d 575, 580 (explaining that the Colorado appellate courts liberally construe a self-represented party's filings, while applying the same law and procedural rules applicable to a party represented by counsel).
6. Colo. RPC 6.5(a) uses the word "representation" in discussing limited legal services provided under that rule. Specifically, the rule references "[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." (Emphasis added.) There is a material distinction between merely providing individuals with legal *information* at a program such a clinic and providing legal *advice* at such a program. Only the latter constitutes "representation" for purposes of the Rules of Professional Conduct.
7. For more information about the clinic, visit <https://www.cobar.org/Appellate>.