

SOUTHERN DISTRICT CIVIL PRACTICE ROUNDUP

Limited-Scope Representations in Civil Cases

Traditionally, when an attorney appears on behalf of a client in a matter, federal courts have required that the attorney represent the client in all respects. The Local Rules in the Southern District of New York continue to reflect this approach, and do not provide for limited-scope representations—i.e., representations when an attorney represents a client for only a portion of a case. In criminal cases, limited-scope representations typically are unnecessary and ill-advised, including because counsel is constitutionally guaranteed. In civil cases, however, where counsel is not guaranteed and litigants often cannot afford a full-scope attorney, commentators, bar associations, and courts have recognized the value of limited-scope representations.



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In *Villar v. City of New York*, 2021 WL 2024434 (S.D.N.Y. May 21, 2021), Southern District Judge Jed S. Rakoff recently authorized a limited-scope representation. An attorney sought to appear for the pro se plaintiff solely for purposes of assisting the plaintiff with settlement negotiations. Recognizing the benefits of limited-scope engagements, Judge Rakoff allowed the representation. To avoid confusion, however (including with respect to when defense counsel could and could not contact the plaintiff directly), Judge Rakoff issued a detailed order specifying the precise nature and extent of the limited-scope representation.

‘Villar v. City of New York’

In this ongoing employment discrimination case, the plaintiff

is appearing pro se. On May 20, 2021, however, an attorney from the New York Legal Assistance Group for Pro Se Litigants (the NYLAG Lawyer) filed a notice that she would be appearing to represent the plaintiff on a limited-scope basis (the Notice). Specifically, the Notice stated that the NYLAG Lawyer would appear “for the limited purpose of providing advice and representation in settlement negotiations, a settlement conference and/or a mediation through the Southern District’s Alternative Dispute Resolution Program.”

The Southern District’s Local Rules do not provide for limited-scope representations. See Local Civ. R. 1.4 (“An attorney who has appeared as attorney of record for a party may be relieved or displaced only by order of the Court and may not withdraw from a case without leave of the Court granted by order. Such an order may be granted only upon a showing by affidavit or otherwise of satisfactory reasons for

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withdrawal or displacement and the posture of the case, including its position, if any, on the calendar ...”). After evaluating the pros and cons of limited-scope representations, Judge Rakoff allowed the limited-scope representation, but in doing so, carefully outlined the scope of the NYLAG Attorney’s authorized representation.

The Benefits of Limited-Scope Representations

In identifying the benefits of limited-scope representations, Judge Rakoff first observed that they “may help mitigate access-to-judge problems.” *Villar*, 2021 WL 2024434, at *1. He then cited various sources, including an analysis by the American Bar Association (the ABA), that concluded—through both anecdotal and empirical evidence—that pro se litigants obtain better outcomes when a lawyer advocates for their interests, even if only on specific issues. *Id.* (citing sources). Indeed, one of the cited sources reported that, after reviewing every New Haven foreclosure case during a 16-month period, “homeowners represented by limited-scope counsel on a single day had significantly better outcomes, not only on the counseled motion(s) occurring that day but also on their case as a whole, with a statistically significant increase

in the likelihood that they kept their homes.” *Id.* (citing James G. Mandilk, *Attorney for the Day: Measuring the Efficacy of In-Court Limited Scope Representation*, 127 *Yale L.J.* 1828 (2018)).

In addition to benefiting pro se litigants, limited-scope representations also benefit courts. In its analysis, the ABA observed, “[t]he better [a] litigant is prepared, the more efficiently the court operates. While judges would not doubt prefer fully represented litigants, the choice in most venues is a self-represented litigant who is well prepared or one who is not.” *Id.* (citing A.B.A. Standing Comm. on the Delivery of Legal Servs., *An Analysis of Rules that Enable Lawyers to Serve Self-Represented Litigants* 2-3 (2014)).

Consistent with the benefits of limited-scope representations, Judge Rakoff noted that many states’ ethical rules and several court systems have endorsed such arrangements. *Id.* For example, Rule 1.2(c) of the New York Rules of Professional Conduct provides that “[a] lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances, the client gives informed consent and where necessary notice is provided to the tribunal and/or opposing counsel.” Similarly, by order of the Chief Administrative Judge

of the Unified Court System of the State of New York, “it [is] the policy of the Unified Court System to support and encourage the practice of limited scope legal assistance in appropriate cases.” Administrative Order 285/16 (N.Y. Dec. 16, 2016).

Moreover, unlike the Southern District, the Western District of New York has amended its Local Rules expressly to authorize limited-scope representations. W.D.N.Y. Local Civ. R. 83.8(B) (2) (“The presiding Judge may appoint counsel for a specific limited purpose, such as for participating in mediation pursuant to the Court’s Alternative Dispute Resolution Plan, amending pleadings, conducting discovery, drafting or responding to motions, or for any other purpose the presiding Judge determines will serve the interests of justice.”). Although the Southern District Local Rules do not provide for limited-scope representations, Judge Rakoff noted that the Southern District has “launched programs to appoint limited-scope counsel for pro se litigants in certain cases,” including “for mediation.” *Villar*, 2021 WL 2024434, at *2.

The Risks of Limited Scope Representations

After identifying the benefits of limited-scope representations, Judge Rakoff identified

“confusion” as “one of [its] greatest risks.” *Id.* Whereas “[t]he traditional model of full-scope representation sets clear expectations for all involved regarding the durability of the attorney-client relationship,” a “limited-scope representation does not.” *Id.* Accordingly, Judge Rakoff concluded that “for the sake of not only the limited-scope client and lawyer, but also the client’s adversary, opposing counsel, and the Court, it is imperative that the scope of the attorney-client relationship be described with utmost clarity.” *Id.* Failure to clearly delineate the boundaries of a limited-scope representation could result in, among other things, uncertainty regarding to whom opposing counsel should direct a communication on a particular issue (the limited-scope attorney or the client), as well as disagreements about the nature and extent of the limited-scope attorney’s obligations to his or her client.

Specifying the Scope of a Limited-Scope Representation

Turning to the NYLAG Attorney’s limited-scope Notice, Judge Rakoff concluded that it required “greater specificity and clarity.” *Id.* In particular, Judge Rakoff found that the Notice’s statement of the scope of the proposed representation—to appear for purposes of “settlement

negotiations, a settlement conference and/or a mediation through the Southern District’s Alternative Dispute Resolution Program”—left too much “room for interpretation.” *Id.* Judge Rakoff observed that, “[o]n the one hand, the Notice appears to be overbroad because, read literally, it might mean that the [NYLAG Attorney] will represent [the plaintiff] during *any* settlement negotiations that might occur in this case (including, as an extreme example, if [the plaintiff] proceeds to trial but engages in settlement negotiations during jury deliberations).” *Id.* “On the other hand,” Judge Rakoff noted that “the Notice appears to be unduly restrictive because, read literally, it might mean that if there are multiple settlement conferences before [the] Magistrate Judge ... [the NYLAG Attorney] would only represent [the plaintiff] at ‘a’ singular such conference.” *Id.*

Accordingly, in authorizing the NYLAG Attorney to appear on a limited-scope basis, Judge Rakoff fashioned an order detailing “with greater specificity and clarity” the scope of the representation. *Id.* Among other things, Judge Rakoff’s order detailed what the NYLAG Attorney would and would not be permitted to do in representing the plaintiff (e.g., the NYLAG Attorney would

be permitted to represent the plaintiff at any and all settlement conferences and mediations before the assigned magistrate judge, but not at any proceeding before Judge Rakoff), and the timeframe in which the NYLAG Attorney would be permitted to perform her authorized activities. *Id.* The order also specified that defense counsel could communicate with the plaintiff directly on any matter other than settlement negotiations. *Id.*

Conclusion

Although traditionally disfavored, limited-scope representations can provide meaningful benefits to litigants and courts in civil cases. However, if the scope of a limited-scope representation is not clearly and specifically defined, confusion could arise that could negate the benefits of the representation. Accordingly, in agreeing to and seeking authorization for a limited-scope engagement, counsel should precisely define the scope of the engagement.