



Ohio Board of Professional Conduct



OHIO ETHICS GUIDE **LIMITED SCOPE REPRESENTATION**



NOTE: Ethics Guides address subjects on which the staff of the Ohio Board of Professional Conduct receives frequent inquiries from the Ohio bench and bar. The Ethics Guides provide nonbinding advice from the staff of the Ohio Board of Professional Conduct and do not reflect the views or opinions of the Board of Professional Conduct, commissioners of the Board, or the Supreme Court of Ohio.

Limited Scope Representation

When a client retains a lawyer, generally both the client and the lawyer assume that the lawyer will perform all the legal services necessary to resolve the client's legal issue. This level of service can be referred to as a full-service package or a "full bundle." In offering a "full bundle," a lawyer provides essential services such as fact-gathering, general advice, discovery, legal research, correspondence with opposing parties or counsel, drafting of documents or pleadings, and representation in a court of law.

Limited scope representation or the "unbundling" of legal services is permitted by Prof.Cond.R. 1.2(c). Limited scope representation offers an opportunity for the lawyer and client to agree to the lawyer providing services to complete separate and discrete tasks at different stages of litigation and transactions, or handling only certain types of claims instead of the traditional "full bundle" of legal services.

Examples of limited scope representation include:

- *Legal interview advice during a one-time consultation. See Ohio Adv. Op. 2017-07.*
- *Drafting or reviewing documents to be filed in court by the self-represented litigant.*
- *Coaching the self-represented litigant on how he or she can present his or her case to a court or administrative agency.*
- *Appearing in court on a one-time basis — possibly for an initial hearing or motion hearing; or limiting participation to a certain stage of litigation such as discovery.*
- *Representing the client in a mediation, with the agreement that if the mediation is unsuccessful, the lawyer services will be concluded.*
- *Providing limited representation during a residential real estate transaction such as contract preparation or review, but not attending the closing or conducting a title examination.*

A lawyer should always be mindful that limited scope representation may not be suitable for every client or legal problem, and refusing the limited scope representation may be in the best interests of the prospective client.

Applicable Rules of Professional Conduct

The Ohio Rules of Professional Conduct expressly contemplate and authorize limited scope representation. Lawyers contemplating limited scope representation with their clients should pay close attention to Prof.Cond.R. 1.2(a) as well as specific Rules of Civil Procedure that govern limited appearances in litigation. See *infra* at p. 5. Lawyers should be cognizant that limited scope representation does not:

- *Lessen or relieve a lawyer from professional obligations;*
- *Reduce or limit the quality of the legal services provided;*
- *Insulate a lawyer from consequences of malpractice or discipline relative to the services provided.*

Prof.Cond.R. 1.2

Prof.Cond.R. 1.2(a) provides that a lawyer must abide by a client's decisions concerning the objectives of representation and consult with the client as to the means by which they are to be pursued. In addition, Prof.Cond.R. 1.2(c) states that a lawyer and client may mutually agree to limit the scope of new or existing representation if the limitation is *reasonable* under the circumstances.

A limited scope representation must be communicated to the client, preferably in writing. Informed written consent from the client to the limited scope representation, although strongly recommended, is not required.

General Ethical Considerations

Lawyers providing limited scope representation owe the same duties of competence, diligence, loyalty, promptness, communication, and confidentiality to limited-scope clients that they owe to full service clients.

Competence

Prof.Cond.R. 1.1. requires a lawyer to be competent in the area of the law in which he or she is offering legal services. A lawyer should only accept a limited scope representation in areas where he or she is already competent and skilled. A limited scope representation should not be viewed as an opportunity to explore new areas of the law in which the lawyer has no prior experience or skill.

Communication

Early and effective communication with the client about the nature of the limited scope representation avoids potential problems. At the outset, the lawyer should explain the differences to the client between a lawyer providing only

some, as opposed to all, of the necessary legal services required in a particular legal matter. The lawyer should also take the additional step of explaining and documenting those tasks that the lawyer will not be performing under the limited scope representation. For example, if the lawyer has agreed to only review and explain pleadings that have been filed in a matter, the lawyer should advise the client that it means he or she will not make appearances in court, communicate with the opposing party, or negotiate a settlement on the client's behalf unless the separate legal services are agreed upon. The lawyer should also take time to explore with the client if the limited scope representation is reasonable or unreasonable under the circumstances. This conversation should raise the inherent risks inherent in pro se litigation and the possible alternatives to limited scope representation that may be available. This may include explaining the benefits of full-service representation over limited scope representation.

An important aspect of the initial interview with a client should involve a review of all issues and remedies that are readily apparent, even if they fall outside of the agreed upon scope of the representation. For example, if the lawyer is retained solely to represent a client in a workers' compensation claim, the lawyer has a duty to alert the client to ancillary legal issues, such as a potential intentional tort claim and the need to secure separate representation to address that claim. Ancillary issues discussed with the client should be documented and communicated to the client in writing.

It is also important for the lawyer to advise the client that in exchange for agreeing to a limited scope of representation there will be situations when the client will encounter complex issues or problems that he or she will not be able to fully comprehend. For example, the client may encounter issues involving the application of the Rules of Evidence during a hearing, need to determine and prove the requisite legal elements

in a case, consider the effect of stipulations at trial, or need to timely respond to a motion filed by the opposing party.

The client and lawyer should also agree to the method and frequency of communication during the limited scope representation. For instance, the lawyer may suggest that texting rather than telephonic communication is a suitable mode for some routine client inquiries. However, the lawyer should ensure that the client is comfortable with the communication method chosen and understands any limitations that the lawyer imposes due to the limited nature of the representation.

Conflicts-of-interest

Limiting the scope of representation does not diminish the need to consider possible conflicts of interest. A lawyer being retained by a client for a limited scope representation must perform a standard conflicts check even if the lawyer does not make a formal appearance in a court case, or decides not to inform opposing parties or counsel that he or she has been retained in a limited capacity. *See also* Prof.Cond.R. 6.5 (conflicts of interest analysis in the context of short-term limited legal services provided in conjunction with courts or nonprofit organizations.)

Determining When Limited Scope Representation Is Reasonable Under the Circumstances

Prof.Cond. R. 1.2, Comment [7] helps in determining whether a limited scope representation is reasonable under the circumstances. If the client's objective is limited to securing general information about the law that the client needs in order to handle a common and uncomplicated legal problem, the lawyer and client may agree that the lawyer's services will be limited to a brief, one-time consultation.

However, if the time allotted is not sufficient to yield sufficient advice upon which the client could rely, the limitation would not be reasonable under the circumstances.

Whether the limitation is reasonable under the circumstances should be determined by examining the complexity of the legal problem and capacity of the client.

Complexity of the Legal Problem

A lawyer should consider whether the legal problem or matter is substantively, strategically, and procedurally capable of being divided into discrete tasks that can be assigned to either the lawyer or the client. Other considerations include whether there are complex legal issues requiring a requisite level of legal education and skill, whether the parties to the matter can be clearly identified, and if there will likely be service of process or other procedural issues at the outset of the litigation. *Limited Scope Representation Toolkit*, The Chicago Bar Foundation (2018).¹

Capacity of the client

All clients have different capacities to assist a lawyer in an unlimited scope representation. When examining the reasonableness of the representation, the lawyer should determine whether the client has realistic expectations of his or her own skills and capabilities to perform certain tasks as a *pro se* litigant. In addition, the lawyer should determine whether the client has the mental, physical, and emotional capacity to handle certain stages of the legal matter on his or her own, can appear independently in court

¹ The Ohio Board of Professional Conduct is grateful to the Chicago Bar Foundation for granting permission to cite to and use forms from its publication *Limited Scope Representation Toolkit*.

before a judicial officer, and can follow instructions from both the court and the lawyer. Lastly, if a court has e-filing requirements, a lawyer should consider whether the client has the technological skills and resources to comply with the requirements. *Id.*

If the lawyer is unable to answer in the affirmative to any of the questions posed concerning the complexity of the legal problem or the capacity of the client, the lawyer should carefully evaluate whether the scope of the limited representation would be unreasonable under the circumstances and should be declined. *Id.*

Written Agreement Recommended

Written confirmation of the limited scope representation is recommended but not required. Prof.Cond.R. 1.2(c). The written agreement (Appendix A), when used in conjunction with a written checklist of tasks discussed *infra*, avoids any ambiguity as to the responsibility for individually assigned tasks and memorializes the understanding of both the lawyer and client. More importantly, a written engagement agreement helps resolve disagreements that might arise about the scope of the representation during the course of the client-lawyer relationship.

Lawyers should be aware that the scope of representation over the course of time may change for a variety of reasons. For example, the client may decide that a particular task is too complicated and would rather the lawyer assume responsibility. Consequently, the written agreement should be drafted to permit amendment of the checklist when additional services may be required that were not previously contemplated by either party at the outset of the representation.

At a minimum, the written agreement should include provisions that state:

- 1 The lawyer has fully explained the nature and risks of the limited services;
- 2 The “lawyer’s services are limited by express agreement,” at “the client’s direction” as “specifically delineated by the task checklist;”
- 3 That the client has read and understood the provisions defining the scope of representation;
- 4 The client understands the potential consequences of self-representation.

Use of a Task Checklist

Prof.Cond.R. 1.2(a), Comment [7A] recommends the use of a form or checklist that specifies the scope of the client-lawyer relationship. A checklist (Appendix B) can ensure that all matters required for the limited scope representation are covered by either the lawyer or client, or both, and that the parties understand their respective responsibilities and assignments. On a periodic basis, the checklist with the tasks that have been completed should be transmitted by the lawyer to the client. As new tasks are identified during the course of the representation, an amended checklist should be prepared and signed by both lawyer and client. Failure to amend the checklist increases the risk that the lawyer will assume additional ethical responsibility.

Disengagement

Contemporaneously with the termination of the limited scope representation, the lawyer should send a disengagement letter to the client with a final checklist documenting those items that were assigned and completed by the lawyer.

Rules of Civil Procedure and Limited Scope Representation

The Rules of Civil Procedure enhance the availability of limited scope representation in Ohio. Lawyers intending to provide limited scope representation related to litigation should be familiar with the following Civil Rules amended in 2018:

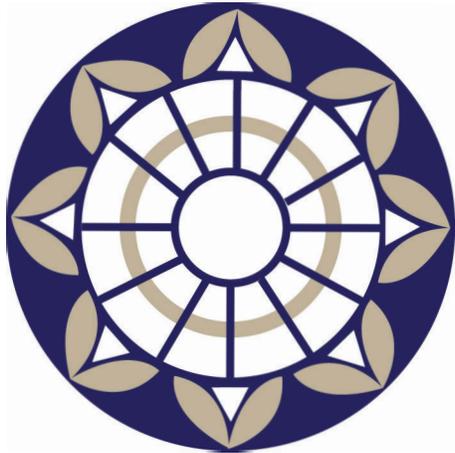
- Civ.R. 3(B): If a lawyer’s role is limited in litigation, the lawyer must disclose the scope in a “Notice of Limited Appearance.” The notice should state the limited appearance is authorized by the party for whom the appearance was made. The lawyer’s appearance can terminate without leave of court, upon the lawyer filing a “Notice of Completion of Limited Appearance,” unless an objection is filed. *See Appendix C.*
- Civ.R. 5: When a notice of limited appearance has been filed, service will be made upon both the lawyer and the party.

“Ghostwriting” Pleadings

Unlike some jurisdictions, Ohio has not amended Civ.R. 11 to accommodate situations when limited scope representation may involve the preparation of pleadings by a lawyer for the signature of a *pro se* client, also known as “ghostwriting.” Currently, it is not known whether a lawyer, who has prepared the document for a *pro se* litigant but has not personally signed it, will be held responsible in the event of a finding by a court of a violation of Civ.R. 11. If a lawyer has filed a notice of limited appearance and has prepared a pleading, motion, or other document for the *pro se* client, the lawyer should follow the Civ.R. 11 standard in preparing the document for the client.

Advertising Limited Scope Representation Services

A lawyer may advertise that he or she provides legal services on a limited scope basis to clients as long as the advertisement is in compliance with Prof.Cond.R. 7.1 – 7.3. Specifically, the lawyer’s advertisements or communications about the offered limited scope legal services must not be false, misleading, or nonverifiable and should convey enough information for the prospective client to understand the scope and conditions of the offered services. The lawyer should also be clear and accurate about what fees and costs may be charged and avoid using terms like “cut-rate,” “low-cost,” or “discount” in conjunction with limited scope representation. These terms are misleading and nonverifiable and cannot be factually substantiated.



APPENDIX A

SAMPLE AGREEMENT: Engagement Agreement for Legal Services

Engagement Agreement for Legal Services

This agreement (Agreement) is made between Client, _____ (Client), and Lawyer, _____ (Lawyer). Lawyer only represents Client. Lawyer does not represent any other person in this matter.

- 1. The Client's Goals.** Client has engaged Lawyer to help them achieve certain goals. Client's goals in this case include:

- a. _____
- b. _____
- c. _____

- 2. The Scope of the Representation.** To accomplish Client's goals, Lawyer will provide legal services that are limited to the following (describe scope of representation – be specific):

_____.

Client and Lawyer have discussed the difference between full representation and limited scope representation and agree that limited scope representation is an appropriate option for Client at this time based on Client's case, abilities, goals, and budget.

- 3. Lawyer Responsibilities.**

- a. **Assigned Services.** Client and Lawyer have completed the Lawyer and Client Task Assignment Checklist (Checklist) and attached it to this document. Lawyer is only responsible for completing the services marked "Yes" in the "Lawyer To Do" column of the Checklist. Client is responsible for completing all other tasks, including, but not limited to, those tasks marked "Yes" in the "Client To Do" column of the Checklist.
- b. **Additional Services.** If Lawyer is requested or required to provide additional services, Lawyer and Client will complete and sign a new Checklist and Engagement Agreement for Legal Services. Client will pay additional fees (to be agreed upon by Client and Lawyer) for additional services.

4. Client Responsibilities and Control. Client will handle all parts of the case or matter except those that are assigned to Lawyer in the Checklist. Client will be in control of the case and will be responsible for all decisions made during the case. Client agrees to:

- a. Cooperate with Lawyer and Lawyer's staff by promptly giving them all information he or she reasonably requests about the case or matter.
- b. Promptly inform Lawyer anything he or she knows about the case or matter, including any concerns or questions he or she has, and to update Lawyer about any new information.
- c. Promptly provide Lawyer with copies of all court documents and other written materials that Client receives or sends about the case or matter.
- d. Immediately provide Lawyer with any new court documents, including pleadings or motions, received from the other party or the other party's Lawyer.
- e. Maintain all documents related to the case together and organized in a file for Lawyer to review as needed.
- f. Maintain an active phone number and email address by which Lawyer can communicate with Client about the representation and where Client can receive documents and notifications from Lawyer, the court, or the clerk of court in litigated matters.

5. Method of Payment for Services.

a. **Legal Fees.** In exchange for the legal services provided by Lawyer, Client agrees to pay a fee of \$_____. Client has initialed the payment option below that works best for them.

_____ Client will pay the entire flat fee listed above when this Agreement is signed.

_____ Client will pay a partial fee of \$_____ when this agreement is signed. Client will pay the remaining \$_____ by or before_____.

_____ Client will pay off the flat fee listed above in installments as described here:

Or, the Client will be charged at an hourly rate of _____ in increments of tenths of an hour to be paid within thirty (30) days of receipt of an associated invoice.

b. **Costs.** The fee does not include costs and expenses incurred to provide legal services. In addition to the fee above, Client agrees to pay any costs and expenses including, but not limited to, fees associated with filing the case, private investigators, expert witnesses, court reporters and transcripts, service of subpoenas, and travel expenses which Lawyer considers necessary and proper for the preparation and execution of the Lawyer's commitments. Lawyer will seek Client's approval before incurring these costs. Client agrees to pay costs within thirty (30) days of receiving an associated invoice.

6. **Right to Seek Advice of Other Counsel.** Client has the right to ask another Lawyer for advice and professional services at any time during or following this Agreement.

7. **No Guarantees.** Client agrees that Lawyer has not made any promises or guarantees that his or her involvement in the case will cause a certain outcome or result.

8. **Termination.** Client and Lawyer have entered into a voluntary relationship and may end that relationship at any time. Client may end the relationship for any reason. Lawyer may end the relationship if Lawyer learns that Client has misrepresented or failed to disclose material facts to Lawyer, if Client fails to follow Lawyer's legal advice, if Client fails to cooperate in the representation, if Client fails to make the agreed upon payment(s), or for any other reason allowed by the **Ohio Rules of Professional Conduct**. If the relationship ends, Client has a right to request a copy of their file, which includes all of the information given by Client to Lawyer and any legal work completed by Lawyer on Client's behalf.

Client is responsible for payment of all outstanding costs and expenses incurred prior to termination.

9. **Withdrawal of Lawyer.** Lawyer's obligation to Client is over once Lawyer has completed all of the services identified in the attached Checklist. If Lawyer has made a limited scope appearance on behalf of Client, that appearance should be terminated or withdrawn in a timely manner. In addition, Lawyer may withdraw from the representation at any time as permitted under **Ohio Rules of Professional Conduct 1.16**. Even if Lawyer withdraws, Client must pay Lawyer for all services provided and must reimburse Lawyer for all out-of-pocket costs incurred prior to the withdrawal.

10. **Release of Client's Papers and Property.** Once all of Lawyer's services are performed, or at termination, Lawyer will return the Client's file, including original documents, papers, and property.

11. Client has carefully read this Agreement and understands all of its provisions, including the scope of representation. Client agrees with the following statements by initialing each one:
- a. Lawyer has accurately described my goals in Paragraph 1.
 - b. I am responsible for my case and will be in control of my case at all times as described in Paragraph 4.
 - c. The lawyer’s services are limited by express agreement. The services that I want Lawyer to perform in my case are identified by the word “YES” in the “Lawyer To Do” column of the Checklist that is attached to this Agreement. I take responsibility for all other aspects of my case, including, but not limited to, those tasks assigned to me under the “Client To Do” column in the Checklist.
 - d. Lawyer has fully explained the difference between full representation and limited scope representation and the associated risks and consequences. I understand and accept the limitations on the scope of Lawyer’s responsibilities identified in Paragraphs 2 and 3.
 - e. I will pay Lawyer for services as described in Paragraph 5.
 - f. I understand that any amendments to this Agreement must be in writing as described in Paragraph 3.
 - g. I acknowledge that I have been advised by Lawyer that I have the right to consult with another independent Lawyer to review this Agreement and to advise me on my rights as a client before I sign this Agreement.

Client Signature _____

Date: _____

Lawyer Signature _____

Date: _____

APPENDIX B

CHECKLIST: Attorney and Client Task Assignment

SERVICES TO BE PERFORMED (TASKS)	LAWYER TO DO	CLIENT TO DO
Legal Advice		
Provide advice about legal rights, responsibilities, procedures, and/or strategy on a one-time basis. <i>Describe:</i>		
Provide advice about legal rights, responsibilities, procedures, and/or strategy on an ongoing basis. <i>Describe:</i>		
Document Preparation		
Draft documents on behalf of client. <i>Describe:</i>		
Review documents prepared by client. <i>Describe:</i>		
Draft discovery requests on behalf of client. <i>Describe:</i>		
Review discovery requests on behalf of client. <i>Describe:</i>		
Draft or review correspondence. <i>Describe:</i>		
File and serve documents. <i>Describe:</i>		

Case Preparation and Investigation		
Conduct a factual investigation (e.g. contact witnesses and/or expert witnesses, obtain documents, public record searches). <i>Describe:</i>		
Prepare discovery responses on behalf of client. <i>Describe:</i>		
Review discovery responses prepared by client. <i>Describe:</i>		
Take or defend depositions. <i>Describe:</i>		
Settlement Negotiations		
Review an outstanding settlement offer or agreement. <i>Describe:</i>		
Negotiate specified issue(s) for settlement. <i>Describe:</i>		
Trial Preparation		
Draft or review subpoenas for trial. <i>Describe:</i>		
Draft or respond to motions for trial. <i>Describe:</i>		
Outline witness testimony and/or argument for trial. <i>Describe:</i>		
Court Appearances		
Appear in court on a one-time basis. <i>Describe:</i>		
Appear in court on an on-going basis. <i>Describe:</i>		
Represent Client at trial. <i>Describe:</i>		
Miscellaneous		
Other (describe):		

Any other task not set out in this Checklist is the responsibility of Client.

Client Initials _____

Lawyer Initials _____

Date _____

APPENDIX C

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

_____	:	
Plaintiff/Appellant	:	Case No.
	:	
v.	:	Judge
	:	
_____	:	<u>NOTICE OF LIMITED SCOPE</u>
Defendant/Appellee	:	<u>APPEARANCE</u>
	:	

1. Now comes Attorney _____ and hereby gives notice to this Court of limited scope representation of Party _____, who is Plaintiff Petitioner Defendant Respondent [circle one] in this matter. The Party and Attorney have agreed that the Attorney will provide limited scope representation to the Party in the above-captioned matter as provided in Paragraph 2.

2. The attorney appears pursuant to Civ.R. 3(B). This appearance is limited in scope to the following matter(s) in which the attorney will represent the Party [check and complete all that apply]:
 - In the court proceeding (identify) _____ on the following date(s): _____
 - And in any continuance of that proceeding
 - At the trial on the following date: _____
 - And in any continuance of that trial
 - And until judgment
 - At the following deposition(s): .

Other (specify the scope and limits of representation):

3. The attorney may withdraw following completion of the limited scope representation specified in this appearance upon the attorney filing a “Notice of Completion of Limited Appearance.”

4. By signing below, the Party being represented under this Limited Scope Appearance agrees to the delivery of all court papers to the addresses specified below; and agrees to inform the court, all counsel of record, and all parties not represented by counsel of any changes to the Party’s address information listed below during the limited scope representation.

Signature of Attorney

Name of Attorney

Attorney's Address

Attorney's Telephone Number

Attorney's Email Address

Attorney Registration Number

Signature of Party

Name of Party

Party's Address

Party's Telephone Number

Party's Email Address

Date

CERTIFICATE OF SERVICE

In accordance with Civ.R.3(B), a copy of the foregoing **Notice of Limited Scope Appearance** was sent to the Party I am representing, all counsel of record, and all parties not represented by counsel, in the above-captioned action via regular U. S. Mail on _____, namely:

Name [Attorney Reg. No]
Address
Attorney for _____ / Party [Title]

Name [Attorney Reg. No]
Address
Attorney for _____ / Party [Title]

Name [Attorney Reg. No]
Address
Attorney for _____ / Party [Title]

Respectfully submitted,

Attorney Name [Attorney Reg. No.]

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

_____	:	Case No.
Plaintiff/Appellant	:	
	:	
v.	:	Judge
	:	
	:	
_____	:	<u>NOTICE OF COMPLETION</u>
Defendant/Appellee	:	<u>OF LIMITED SCOPE</u>
	:	<u>APPEARANCE</u>

1. Now comes Attorney _____ and hereby gives notice to this Court of the completion of limited scope representation of Party _____, who is Plaintiff Petitioner Defendant Respondent Appellant Appellee in this matter.

2. I have completed all services within the scope of the Notice of Limited Scope Appearance filed on _____, and I have completed all acts ordered by the court within the scope of that appearance.

NOTICE TO PARTY _____: You have the right to object to my withdrawal as your attorney if you believe that I have not completed all tasks I agreed to undertake. To object, you must file an objection with the Court within ten (10) days of receipt of this notice. On the same day that you file any objection with the court, send copies to me, to the other counsel of record, and parties not represented by counsel.

3. Pursuant to Civ.R. 3(B), if there is no objection within ten days of service of this notice, then no entry by the court is necessary for the termination of the limited appearance to take effect.

If no objection is filed, service of documents upon me under Civ.R. 5 will no longer be required as of ten (10) days after service of this Notice.

Service of documents on Party _____ continues to be required.

Signature of Attorney

Name of Attorney

Attorney's Address

Attorney's Telephone Number

Attorney's Email Address

Attorney Registration Number

Signature of Party

Name of Party

Party's Address

Party's Telephone Number

Party's Email Address

Date

CERTIFICATE OF SERVICE

In accordance with Civ.R.3(B), a copy of the foregoing **Notice of Completion of Limited Scope Appearance** was set to the Party I am representing, all counsel of record, and all parties not represented by counsel, in the above-captioned action via regular U. S. Mail on _____, namely:

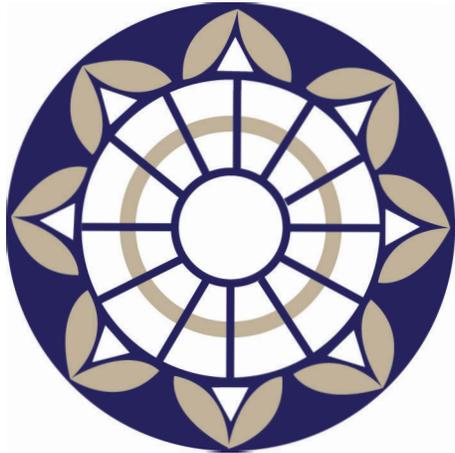
Name [Attorney
Reg. No] Address
Attorney for _____ / Party [Title]

Name [Attorney
Reg. No] Address
Attorney for _____ / Party [Title]

Name [Attorney
Reg. No] Address
Attorney for _____ / Party [Title]

Respectfully submitted,

Attorney Name [Attorney Reg.
No.]





Published by
Ohio Board of Professional Conduct
March 2020



Ohio Board of
Professional Conduct

65 South Front Street • Columbus Ohio • 43215-3431