

## Introduction

Case management should begin before a practitioner-client relationship is formed, and there is no one-size-fits-all approach. When establishing case management systems, practitioners must consider, at a minimum, the population they serve, types of services offered, and level and experience of staff. This resource introduces one important part of case management: consultations. This resource first defines “consultation” and differentiates “consultation-only” interactions and those that include “limited consultation services.” Next, it explains why consultation agreements are an important part of case management and provides sample language to incorporate into consultation agreements, identifying where language may differ in these agreements based upon the practitioner’s preferred type of consultation. Finally, this resource describes how a practitioner may incorporate consultation agreements as part of their practice, including sample policy and procedure language.

## What Is a Consultation?

Consultation is a term used colloquially to mean an initial meeting between a practitioner and a prospective client. During the consultation, the prospective client gives information to the practitioner and discusses the possibility of entering into a practitioner-client relationship. According to the American Bar Association’s Model Rules of Professional Conduct (“MRPC” or “Model Rules”), consultations are “limited in time and depth and leave both the prospective client and the lawyer free (and sometimes required) to proceed no further.” MRPC R. 1.18, cmt.1. In practice, a consultation may be a more in-depth interaction and may result in forming a practitioner-client relationship. Consequently, it is important that a practitioner identifies the scope of a consultation before meeting with a prospective client. In other words, a practitioner will need to decide whether the interaction is a consultation-only interaction or one that includes limited consultation services.

## What Is a Consultation-Only Interaction?

The Model Rules contemplate a consultation-only interaction where the limited purpose of the interaction is for the practitioner to decide whether to accept the case and represent the person or decline representation. Under this framework, the consultation does not result in forming a practitioner-client relationship. Instead, the practitioner gathers information about the legal matter and discusses the possibility of accepting the prospective client’s case. If the practitioner declines representation, they generally also will refrain from providing personalized legal advice, thereby avoiding the creation of a limited practitioner-client relationship. In summary, in a consultation-only interaction, the practitioner will simply be listening to the consultee’s facts and deciding whether to accept the case.

## What Are Limited Consultation Services?

Many initial consultations are not so “limited in time and depth” that the person can remain classified as a “prospective client.” While the Model Rules recognize that some advice may be given to a prospective client without creating an attorney-client relationship (see MRPC R. 1.18, cmt.1), in those where the practitioner gathers facts, analyzes them, and explains possible actions, a practitioner-client relationship has been formed. In those situations, the practitioner must make it clear to the prospective client if they intend to limit the scope of this interaction to limited consultation services. While the relationship can remain limited in scope, the creation of the practitioner-client relationship creates additional duties that the practitioner owes to the client.

## Why Is It Important to Differentiate Between a Consultation-Only Interaction and an Interaction That Includes Limited Consultation Services?

It is important to differentiate — and understand the differences — between a consultation-only interaction and one that includes limited consultation services because ethical duties attach once an interaction expands beyond consultation only. Additionally, program managers must contemplate the consequences of forming practitioner-client relationships

and determine the appropriate case management document. If the program wishes to avoid the creation of an attorney-client relationship, consultations must be limited to deciding whether to take the case. If the program wishes to provide meaningful legal advice during the consultation, a limited practitioner-client relationship forms. In both instances, it is important to review and sign a consultation case management document.

## What Is the Purpose of a Consultation Case Management Document?

A consultation case management document memorializes the intent of the meeting and provides written proof of the parties' mutual understanding. Practitioners frequently converse with people, many of whom are prospective clients. Not all will become clients, of course. During the conversations, people reveal facts about their unique situations to a practitioner. Then, a practitioner may provide a limited, general response, as occurs in consultation-only interactions. Alternatively, a practitioner may give a personalized analysis with recommendations on strategy, as occurs in a limited consultation service interaction. Regardless of the consultation type, while the practitioner may intend for this to be the end of their interaction, the person with whom the practitioner spoke may understand this differently. Whether an ongoing practitioner-client relationship exists is governed by contract and agency law.

According to the Restatement of the Law Governing Lawyers, a practitioner-client relationship exists when:

1. A person manifests to a lawyer the person's intent that the lawyer provides legal services for the person; and either
  - (a) the lawyer manifests to the person consent to do so; or
  - (b) the lawyer fails to manifest lack of consent to do so, and the lawyer knows or reasonably should know that the person reasonably relies on the lawyer to provide the services; or
2. A tribunal with power to do so appoints the lawyer to provide the services.

Restatement of the Law Governing Lawyers, § 14. Courts may recognize a practitioner-client relationship when the practitioner's conduct would lead a reasonable person to believe that they were being represented by a practitioner.

Using this framework, a consultation-only interaction will not give rise to a practitioner-client relationship. In situations where there may be disagreement — possibly including a claim of malpractice — a court or malpractice tribunal would look to evidence of written communications between the parties. Written communication that the interaction was limited in scope to consultation-only ensures clear communication between the prospective client and the practitioner and protects the agency, the program, and the practitioner.

In an interaction with limited consultation services, a practitioner-client relationship has likely formed, with ethical duties attached. Even in these sorts of interactions, though, the Model Rules allow practitioners to limit the scope of representation so that the practitioner is not obligated to represent the client in any matters beyond the provision of legal advice. Specifically, Rule 1.2(c) says practitioners “may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.” For these interactions, the practitioner should utilize a consultation service agreement. Because of the possibility that a full-scope relationship can be implied by operation of law when a client reasonably relies on the practitioner's assistance, the limited consultation services agreement confirms that the practitioner and the client agree that the legal advice provided during consultation is the only service the practitioner has agreed to provide. This is a reasonable way to limit the scope of services; reading the document to the prospective client and asking them to sign it is evidence of informed consent.

## What Should a Consultation-Only Agreement Include?

A consultation-only agreement is a case management document that sets forth the terms and conditions of the initial meeting between the practitioner and the prospective client and limits the interaction to information gathering and only general advice. It clarifies that the agency does not agree to provide representation. Instead, the practitioner agrees only to interview the prospective client, evaluate the merits of the legal matter, and provide general information. It is a standard form that the practitioner and prospective client sign during the consultation. Proper use of consultation-only agreements help practitioners and their programs avoid misunderstandings about the extent of the service and protects against unintentionally creating a practitioner-client relationship. The following is a **[Sample Consultation-Only Agreement](#)**.

## CONSULTATION-ONLY AGREEMENT

You understand that [ABC AGENCY “ABC”] does not agree to represent you and that ABC is simply providing a consultation. ABC is providing this legal consultation to determine your eligibility for a potential immigration benefit. ABC does not agree to represent you now; rather, ABC will evaluate the information you provide to determine whether it is possible to accept representation. The following sets forth the terms and conditions of the consultation:

1. **Purpose.** The purpose of the consultation is for ABC to:
  - a. Learn about you and your particular legal needs based on information you provide;
  - b. Identify your options and, to the extent possible, generally analyze the costs and benefits of those alternatives; and
  - c. Discuss our fees and terms of representation if a practitioner-client relationship is to be established in the future.
2. **Expectations.** This is what ABC needs from you:
  - a. Provide honest answers to our questions; and
  - b. Provide information about any past encounters you may have had with immigration or the police.
3. **Confidentiality.** All information and documents you provide shall remain confidential, except as authorized by you or otherwise provided under the applicable ethics rules.
4. **Scope of Relationship.** This consultation is a limited service that ABC provides to help all parties decide whether it is possible to enter a practitioner-client relationship. At the conclusion of this consultation, there is no obligation for you to retain ABC, and ABC has no obligation to provide additional services to you. ABC will not provide in-depth or personalized legal advice during the consultation meeting.
5. **Contract for Legal Representation Required.** Following the consultation, if ABC agrees to represent you and you agree to contract with ABC, you and a representative of ABC will sign a “Client Service Agreement” that sets forth terms and conditions of representation, including scope of services and fees. The Client Service Agreement will then supersede this Consultation-Only Agreement. You are not a client of ABC unless we sign a Client Service Agreement.
6. **Cost of Consultation.** This consultation is provided to you at the agreed-upon fee of \$\_\_\_\_\_. Once a consultation meeting commences, consultation services are non-refundable.

### Important

If you choose to use consultations as a means to determining a prospective client’s eligibility and wish to avoid the creation of a practitioner-client relationship, it is important that the consultation agreement unambiguously establish that the practitioner does not agree to representation during the consultation. Otherwise, the practitioner risks that their actions during the consultation reasonably create an implied relationship.

### Important

ABA Model Rule of Professional Conduct 1.18 establishes the duty of confidentiality to prospective clients. Consult your local ethics rules and reporting statutes to understand the extent of the duty and when you may or must reveal the confidential information of a prospective client.

**By signing below, you are stating that you understand the foregoing, you agree to the terms and conditions set forth above concerning the consultation only meeting, and you understand that this meeting will not establish a practitioner-client relationship.**

Date: \_\_\_\_\_

Client's Name: \_\_\_\_\_

Client's Signature: \_\_\_\_\_

ABC Representative: \_\_\_\_\_

ABC Representative's Signature: \_\_\_\_\_

### **Interpretation/Translation**

This document was explained in full to Prospective Client in the \_\_\_\_\_ language, and Client confirmed they understood its contents.

Date: \_\_\_\_\_

Interpreter's Name: \_\_\_\_\_

Interpreter's Signature: \_\_\_\_\_

Prospective Client's Signature: \_\_\_\_\_

## **What Should a Limited Consultation Services Agreement Include?**

The Limited Consultation Services Agreement should establish the limited nature of the interaction, outline the practitioner's ethical duties to the prospective client, and establish mutual expectations. It is a variation of a limited-scope client service agreement. The agreement contemplates the creation of a limited practitioner-client relationship through a more in-depth initial meeting, including the provision of personalized legal advice. A Limited Consultation Services Agreement is a variation of a limited-scope client agreement that uniformly limits the scope of representation to providing only legal advice and consultation.

The language in the agreement must comply with your local ethics rules. The most important language to include is that which confirms it is not you or your agency's intent to enter an ongoing practitioner-client relationship. Rather, you are providing a service that is limited in scope to only a consultation. Additionally, it will be critically important to confirm that the person understands this through reading the agreement to them and asking them to execute the agreement. The following is a **Sample Limited Consultation Services Agreement**.

## LIMITED CONSULTATION SERVICES AGREEMENT

You understand that [ABC AGENCY “ABC”] agrees only to provide legal advice and consultation. ABC is providing this legal consultation to help you determine your eligibility for a potential immigration benefit. ABC does not agree to provide ongoing representation in the matter(s) discussed during the consultation; rather, ABC will simply evaluate the information you provide and advise you about your potential legal options. The following sets forth the terms and conditions of the consultation:

1. **Purpose.** The purpose of the consultation is for ABC to:
  - a. Learn about you and your particular legal needs based on information you provide;
  - b. Answer your questions to the best of our ability;
  - c. Identify your options and, to the extent possible, analyze the costs and benefits of those alternatives;
  - d. Help you determine your course of action, if any;
  - e. Discuss our fees and terms of representation if an ongoing practitioner-client relationship is to be established in the future; and
  - f. Determine the next steps in the process, as appropriate.
2. **Expectations.** This is what ABC needs from you:
  - a. Provide honest answers to our questions; and
  - b. Provide information about any past encounters you may have had with immigration or the police.
3. **Confidentiality.** All information and documents you provide shall remain confidential, except as authorized by you or otherwise provided under the applicable ethics rules.
4. **Reliance Limited.** Because it may be impossible to fully assess a matter within the time frame allotted for this consultation or with the information or documents that you provide during this consultation, any legal opinion we provide will be based solely on the information you provide during this consultation.
5. **Limited Scope.** This consultation is a limited-scope service ABC provides to help you determine your legal options. At the conclusion of this consultation, there is no obligation for you to retain ABC, and ABC has no obligation to provide additional services to you.
6. **Contract for Legal Representation Required.** Following the consultation, if ABC agrees to represent you and establish an ongoing practitioner-client relationship, and you agree to contract with ABC, you and a representative of ABC will sign a separate “Client Service Agreement” that sets forth terms and conditions of that relationship, including scope of services and fees. The Client Service Agreement will then supersede this Limited Consultation Services Agreement.

### Important

The sections on the following page ensure compliance with ABA Model Rule 1.2 on limiting scope. Under the rule, the prospective client must give informed consent to the limitation. Practitioners should also memorialize their consultation with the prospective client using contemporaneous notes in a case management system. The notes should explain the extent to which the consultation agreement was discussed.

7. **Cost of Consultation.** This consultation is provided to you at the agreed-upon fee of \$\_\_\_\_\_. Once a consultation meeting commences, consultation services are non-refundable.

**By signing below, you are stating that you understand the foregoing, you agree to the terms and conditions set forth above concerning the consultation, and you understand that this meeting is limited in scope and will not establish an ongoing practitioner-client relationship.**

Date: \_\_\_\_\_

Client's Name: \_\_\_\_\_

Client's Signature: \_\_\_\_\_

ABC Representative: \_\_\_\_\_

ABC Representative's Signature: \_\_\_\_\_

**Interpretation/Translation**

This document was explained in full to Client in the \_\_\_\_\_ language, and Client confirmed they understood its contents.

Date: \_\_\_\_\_

Interpreter's Name: \_\_\_\_\_

Interpreter's Signature: \_\_\_\_\_

Client's Signature: \_\_\_\_\_

## How Do I Incorporate Consultation Agreements Into My Practice?

It is important for program managers and supervisors to incorporate a policy into the program's policies and procedures regarding utilization of consultation agreements.

### **The following is a Sample Consultation-Only Policy:**

*When a practitioner of [ABC AGENCY] meets with a prospective client about an immigration issue for the first time, a Consultation-Only Agreement must be reviewed and signed. The practitioner conducting the consultation must fill out the Consultation-Only Agreement and read it to the individual receiving the consultation. Then, both the practitioner and consultee must sign and date the Consultation-Only Agreement. The practitioner must make a copy of the executed Consultation-Only Agreement and summarize the conversation in the case management system. The practitioner must keep the original in the hard file and upload a scan of the original into the case management system. The practitioner must give a copy to the consultee. Practitioners should not give personalized legal advice to the prospective client and should only conduct the initial meeting as an interview to gather sufficient information to determine whether ABC can accept future representation.*

### **The following is a Sample Limited Consultation Services Policy:**

*When a practitioner of [ABC AGENCY] meets with a prospective client about an immigration issue for the first time, a Limited Consultation Services Agreement must be reviewed and signed. Because, during the conversation, the practitioner has given personalized legal advice, a full-scope relationship can be implied by operation of law if the client reasonably relies on the practitioner's assistance. To avoid this implication and confirm the interaction is limited in scope to consultation services, the practitioner conducting the consultation must fill out the Limited Consultation Services Agreement and read it to the individual. Then, both the practitioner and consultee must sign and date the Limited Consultation Services Agreement. Reading and signing the Limited Consultation Services Agreement confirms that the practitioner and client agree that the legal advice provided during consultation is the only service the practitioner has agreed to provide. The practitioner must make a copy of the executed Limited Consultation Services Agreement and summarize the conversation in the case management system. The practitioner must keep the original in the hard file and upload a scan of the original into the case management system. The practitioner must give a copy to the consultee.*

Keep in mind, the policy is only as good as the accountability measures in place to ensure compliance. For example, when supervisors conduct technical reviews or audit practitioners' files, this would ideally be on their checklist of things to audit for compliance.

Paramount to ensuring clarity regarding the limited-scope nature of this interaction is the need to review the agreement with the client in a language they understand. The prospective client should have the opportunity to ask questions and be given the opportunity to affirm their understanding that the practitioner does not agree to provide any assistance or representation beyond consultation. Program managers and supervisors should train staff practitioners on the document's purpose and importance.