

ABA/ NLADA 2008 Equal Justice Conference (May 2008)

**Limited Scope Representation:
Helping More Clients, Attracting More Volunteers**

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Brief Description: Limited scope (unbundled) representation allows representation for one hearing, service or issue. It permits a triage of clients and a continuum of service in which clients receive as much help as they need. This aids legal services providers by eliminating the need to provide each client her own attorney for an entire case. Additionally, volunteers are attracted by the opportunity to do something with less commitment. Come learn about the ethics questions, models currently working in several areas of law, and how to put this important service delivery model to work in your community.

I. Introduction and definitions

- A. “A relationship between an attorney and a person seeking legal services in which it is agreed that the scope of the legal services will be limited to the defined tasks that the person asks the attorney to perform.”
- B. Other terms: unbundling, limited legal assistance, limited scope representation, discrete task representation.
- C. Duties imposed
- D. Limitation on liability?

II. Continuum of Services

- A. Advice and counsel
- B. Ghostwriting and document assistance
- C. Negotiation, role playing and coaching
- D. Representation for specific services not involving court appearance

E. Representation for one or more specific court appearances or issues

III. The “Big Four” ethical rules (aka “No-Brainers”):

- A. Limitations must be informed and in writing.
- B. Limitations must be reasonable under the circumstances.
- C. Changes in scope must be documented.
- D. Attorneys must advise on related issues, even if not asked.

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IV. Best Practices - Pro Bono Project - Domestic Violence Limited Scope Representation (“DVLSR”)

- A. DVLSR provides pro bono attorneys to represent parties involved in domestic violence restraining order hearings in Santa Clara County. The limited scope nature of the program allows us to predict approximate time commitments for each case. DVLSR provides experienced mentors and training to support the attorneys.
- B. DVLSR provides equal access to justice by offering services to both Petitioners and Respondents (utilizing conflicts check and conflicts panel). Attorneys trained to understand and recognize domestic violence can assist parties’ unique needs, with a goal towards establishing solid orders that protect the parties and address the children’s needs.
- C. Q: Why is this representation so important? A: There is a huge need and limited resources out there. According to judicial officer’s statistics, approximately 95% of parents in domestic violence cases in Family Court are self-represented, and approximately 75% of the cases on the Domestic Violence calendar involve children under the age of 6. Many self-represented litigants go through the process without a complete understanding of their rights and obligations under the law.
- D. Typical process:
 - i. Once the TRO is issued, DVLSR will assign a volunteer attorney to the Petitioner.
 - ii. DVLSR will monitor the service on the Respondent. If service is not accomplished, the volunteer will help with the re-issuance of the TRO.
 - iii. Once service is obtained, the volunteer attorney will appear at the hearing to help the Petitioner.
 - iv. The volunteer attorneys will provide representation, prepare the order after hearing and provide after-order counseling.
 - v. The limited scope representation will then be terminated.
- b. Attorney’s responsibilities:
 - i. Meet with Client;
 - ii. Represent client at the Hearing(s);
 - iii. Aftercare (what just happened in court, what does the order mean, how to enforce the order, referrals, etc.)
- c. During the hearing:

- i. Ideally both parties are represented by attorneys and the matter goes forward. The typical contested hearing takes about 25-30 minutes out of a three-hour court calendar. Longer hearings must be requested and set on a different calendar.
- ii. Depending on the relative strength of each party's case, the matter may proceed simply by offer of proof (an efficient way to submit your client's testimony) and cross-examination of the parties.
- iii. The court needs to find by a preponderance of the evidence that domestic violence has occurred. This proof burden is akin to 51%, much lower than the "reasonable doubt" standard of criminal court.
- iv. If witness testimony is required, the court will set the matter at the end of the calendar and hear it, if there is time based on attorney estimates.
- v. Besides addressing the RO issue, the issues that could be resolved at those hearings include:
 1. Custody (temporary order);
 2. Visitation (temporary order);
 3. Child support (temporary order);
 4. Spousal support (temporary order).

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V. Best Practices - Volunteer Legal Services Program – Courthouse Landlord/Tenant Project)

- A. Provides pro bono attorneys to represent defendants in eviction actions for the settlement conference only. Over 90% of cases settle at the conference.
- B. Represent every single person facing eviction.
- C. Pre-settlement conference: Clients have already received self-help services to prepare responsive pleadings, from partner agency, so we know something about case already. Court sends out notice to all litigants with Notice of Settlement Conference, informing them that counsel will be available at courthouse, and suggesting that they appear one hour early at self-help center to meet with attorney. We get calendar from court a week in advance so lawyers can do conflicts check.
- D. Day of: We meet with volunteers (who have already been trained) and go over case, then volunteers meet clients, sign retainer agreement and notice of appearance, go over facts. Then volunteers represent clients in settlement negotiations before volunteer pro tem judges (and in the hall). Most cases settle with written agreement drafted from a template by hand in the hall.
- E. Services also provided to low-income landlords and master-tenants, but they must call ahead so we can line up landlord’s counsel.

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VI. Best Practices - Volunteer Lawyers Network – Client Workshops

- A. Description: Assist self-represented litigants with completing, filing and serving court forms. Four separate workshops which assist clients with:
 - i. Civil Forms (Answer, Motion to Vacate, Garnishment Exemptions, Collecting Judgments, etc.)
 - ii. Debt Buyer Defense (responsive pleadings in lawsuits initiated by debt buyers)
 - iii. Divorce Summons & Petition and Marital Termination Agreements
 - iv. Eviction Expungement Petitions.
- B. Procedures before the workshops: Clients are scheduled by our intake workers, pursuant to a list of criteria. For Civil Forms and Debt Buyer Defense, they are instructed to send in their paperwork (any court papers) before the workshop.
- C. Procedures at the workshops:
 - i. Law students/paralegals review client acknowledgement form with clients
 - ii. Supervising attorneys sit with the clients, review their paperwork (if any) and provide legal advice
 - iii. Law students/paralegal volunteers complete the forms on their laptop computers (or sometimes, fill-in-the-blank forms) pursuant to advice and instructions by the supervising attorneys.
 - iv. Clients receive advice, the completed forms, and written instructions for next steps.
- D. After the workshops – some follow up.
 - i. If the person qualifies for waiver of court fees, we file the papers and serve the paperwork on the other side. (Service is a huge benefit to our clients and so easy for us!)
 - ii. If the person might not qualify, we draft the Affidavit and Order requesting waiver of court fees and send the client to the signing judge to ask for the fee waiver. We give the clients the paperwork to file – and instructions that they either need the fee waiver or the \$252 filing fee. In any event, we serve the papers on the other side.
 - iii. Sometimes, a clinic attorney will take part of the case back with him or her, and (ideally) sign a separate agreement for that service. This might include negotiating a payment plan with the other side, helping them to

prepare for the court hearing, trying to find a private attorney to assist with part of their case, etc.

- iv. Divorce Workshop: all clients come back for a second workshop to draft, serve, and file the Marital Termination Agreement.
- v. Other workshops: Some clients come back to the workshop several times for different services.
- vi. Challenges:
 - 1. Client follow up –
 - 2. Knowing whether you really made a difference (good to shadow some cases to find out how effective your work has been)
 - 3.

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VII. Summary of Lessons Learned

- A. Volunteer attorneys love well-organized programs which make efficient and effective use of their time; do everything possible to make sure they are well-utilized when they are there, including:
 - 1. All the client's paperwork so the attorney understands the client's situation;
 - 2. Clear procedures that they have been taught (and maybe law students help them remember);
 - 3. Resources for them to consult (hard copy or online)
 - 4. Onsite forms and paperwork to streamline the process;
 - 5. Volunteer law students or paralegals to provide all kinds of support,
- B. Workshops can be a great way to train and involve attorneys fresh from law school. Create and distribute resources and spend some time teaching the attorneys.
- C. Be realistic about what clients can do (e.g., if the process is too complex, clients won't be able to follow through and the service will be useless). Some limited scope programs have not "succeeded," e.g., VLN Criminal Expungement Clinic where the client's follow up was overwhelming to most clients.
- D. Clearly explain what you are doing and what you are not doing (including providing a written form which clearly (and simply) sets forth what you are doing and for what the client remains responsible). If you go outside your original agreement, be sure to do a new agreement. Generosity can be dangerous if its limits are not clear. (The client's understanding will prevail if you had different understandings of what services you would provide.)
- E. Have standardized forms, including written instructions for clients to help them remember what they need to do next. This is both practical (will make it more likely that your service will make a concrete difference) and also helps fulfill your responsibility to make sure client has the ability to carry on that part of the service you are not providing.
- F. Volunteer students love to interact directly with clients and attorneys; workshops in which they are trained to effectuate the attorneys' advice and leverage the attorney's time are popular (with both the law students and the attorneys)
- G. When running workshops, plan for the likelihood that the number of volunteers and the number of clients won't match. Have a staff person on-hand to fill in as an "extra volunteer" if needed.
- H. If possible, get to know the preferences of your volunteer attorneys. For example, at VLN, one attorney might do a motion to vacate in a set of circumstances that another attorney would not.

- I. It takes a while to train attorneys to do limited scope service – invest in your attorneys and also see if good volunteers might bring a “shadow” attorney to learn the ropes and eventually become a new volunteer.
- J. Get firms to volunteer as a group. This adds “team-building opportunity” and “chance to see your associates at work” to the business case for pro bono, and makes it more like Christmas in April and food bank volunteering.
- K. Have an expert attorney there to support the volunteers, whether it’s another volunteer or a staff attorney from your program.
- L. Because the help is so short-term, having a social worker present and available for clients is very helpful in making a difference.
- M. Enlist the Court’s support and buy-in. Include opposing camps, if possible (e.g. landlords’ attorneys, collection attorneys).
- N. Create a smooth path for volunteers to “graduate” from the limited scope matters to the full scope cases, so excellent volunteers don’t get stuck.
- O. If it’s negotiation or filling out papers, transactional lawyers can do it.

Thoughts from Workshop Participants

VIII. Why it is a win/win/win/win.....

- A. Client gets skilled legal assistance, legal services spend less money serving more people, law firm attorneys get to go to court, learn new skills, and help clients in need.
- B. In the legal services context, limited scope has allowed us to expand our resources, recruit more volunteer attorneys, and serve more people.
- C. Law firms love to take limited scope cases because they like to know how much time their associates are going to spend on pro bono cases.
- D. Creates more empowered clients who part-take in their court cases, thereby increasing access to justice and creating a greater understanding of the system.
- E. Creates more grateful clients because they are getting their needs met.

Thoughts from Workshop Participants

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Volunteer Legal Services Program – Eviction Settlement Conference Program

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Unbundling Web Links

- **Handbook on Limited Scope Legal Assistance** A report of the Modest Means Task Force (ABA Section of Litigation) (2003)
- **Standards for the Provision of Legal Aid** ABA Standing Committee on Legal Aid and Indigent Defendants (August 2006).
- **Risk Management Materials** The California Commission on Access to Justice has developed a complete set of risk management materials for use in family law limited scope representation, including checklists, best practices, four variations on fee agreements, and the official California court forms. It can be located on the California State Bar website by clicking on CalBarJournal and locating the archived issue for February 2004. It is available in either pdf or Word. To get a pdf copy, go to the website at <http://calbar.ca.gov>. From the home page, click public services, then assistance programs, then access to justice and follow the links to the risk management materials. For a Word version, email Chris.Zupanovich@calbar.ca.gov and she will get it to you. This is an essential resource for anyone contemplating limited scope family law representation. California adopted court rules and forms for civil limited scope representation effective January 1, 2007. A companion set of civil risk management materials is available at the same site or the Judicial Council below.
- **California Judicial Council Website** <http://www.courtinfo.ca.gov/programs/equalaccess/ethiss.htm#limited> This is the link to a wealth of unbundling materials on the California Judicial Council website. This has direct links to some of the materials listed here, as well as the **Report of the Limited Representation Committee of the California Commission on Access to Justice (2001)** many more resources.
- **Ethics Primer** The California State Bar's Committee on Professional Responsibility and Conduct has posted an Ethics Primer on Limited Scope Representation at http://calbar.ca.gov/calbar/pdfs/ethics/COPRAC/COPRAC_02-0005_11-17-04.pdf
- **Colorado Ethics Opinion** <http://www.cobar.org> This is the Colorado Bar Association web site. Look for **Ethics Opinion 101** for a comprehensive discussion of the ethical issues, and citations to opinions in other states.
- **Los Angeles County Ethics Opinion** <http://www.lacba.org> This is the Los Angeles County Bar web site. Look for **Ethics opinion 502**. It is the only California opinion, and was very thoughtfully written by some ethics and malpractice experts.
- **Access to Justice Commission Report and Appendix** http://calbar.ca.gov/calbar/pdfs/accessjustice/Risk-Management-Packet_2004-01-12.pdf This is the California State Bar web site, where you can read the **Report on Limited Scope Legal Assistance with Preliminary Recommendations by the Limited Representation Committee of the Commission on Access to Justice**. It's very thorough and supportive, and the recommendations were unanimously approved by the Board of Governors in 2001. Don't miss the appendix, which has lots of other cross links and resources.

- **Webinar and Resource Library** <http://www.selfhelpsupport.org> This library contains a wealth of information designed to assist litigants and the attorneys assisting them. Check it frequently for updates. It has an excellent resource library which is continually being updated. There is also a free webinar on limited scope representation.
- **Unbundledlaw.org** <http://www.unbundledlaw.org> This was the original unbundled website set up by the Maryland Legal Assistance Network (MLAN). It has not been updated for some time, but was recently taken over by M. Sue Talia, who plans to update it for easy reference to the status of rules and ethics opinions around the country. Keep checking in.
- **ABA Unbundling Resource Center** <http://www.abanet.org/legalservices/delivery/delunbund.html> This is the ABA's resource center maintained by the Standing Committee on the Delivery of Legal Services.