
As many as 80% of litigants in family law courts represent themselves. Many would like the assistance of an attorney for parts of their cases even if they cannot afford full representation. The Board of Governors of the State Bar recently adopted recommendations made by the California Commission on Access to Justice aimed at encouraging attorneys to provide limited scope representation of pro per litigants. The Judicial Council also adopted new rules and forms to enable limited scope representation, effective July 1, 2003.

20 things judicial officers can do to encourage attorneys to provide Limited Scope Representation

How judges can get more attorneys to draft intelligible declarations and enforceable orders for self-represented litigants.

Support the General Idea

Limited Scope Representation Committee of the California Commission on Access to Justice

1) **Make positive comments** about limited scope representation and how it's great to have attorneys involved in self-represented cases—you appreciate getting forms you can understand, orders you can enforce, and having attorneys for appearances. Let it be known that you think it is not only okay, but beneficial for attorneys to provide limited scope representation. Let litigants know that they may get limited scope assistance if they are unable to afford (or choose not to have) full representation.

This is a win/win/win (court, litigant and attorney) and it helps everyone if done correctly.

2) **Hold a training for other judicial officers** on the issue of limited scope representation. Offer similar sessions to the local bar.

Consider an annual training in limited scope representation put on by the local bar in each county so that new forms, procedures and "bugs" can be addressed. This can also serve as a vehicle to address concerns that arise between bench and bar and train new lawyers.

3) **Mention 'unbundling'** as you also mention pro bono when doing public speaking to lawyers or the public.

4) **Encourage the Bar Association** to set up a limited representation panel and have at least a listing of persons who will help with prepar-

ing and negotiating judgments, especially in low asset cases.

5) **Get the local Bar Board of Directors** to pass a resolution in favor of Limited Scope of Representation and have it publicized in their newsletter. Having it come from the Bench will add credibility to the resolution. Consider a joint resolution.

6) **Educate.** Rather than complaining of problems with the narrow scope of the work, make suggestions to help counsel improve the quality of the "package" of services they supply in certain areas.

7) **Show that you understand** and believe that partial representation is helpful to the court. (Tell the lawyers that the years they spent sweating through law school do make a difference.)

Modify Courtroom Conduct

8) **If the client has agreed to limited** representation, you've got to let the attorney out once the scope of the representation is completed. If the word gets out that you are not honoring these agreements, attorneys will feel they're being held hostage for their good intentions and attempts to help, and won't want to make limited appearances in the future. That means you won't be able to get attorneys to assist when you need them to.

9) **If an attorney is appearing on only one** issue in a matter, try to bifurcate that in the hearing so that the attorney isn't either sitting through issues he or she is not authorized to address (and not getting paid for) or being tempted to expand the scope of representation beyond that which the attorney and client have negotiated. If the attorney decides that he or she can't keep quiet on the other issues, consider taking a break in the hearing and giving the attorney the opportunity to revise the scope of the representation with his or her client.

10) **Recognize that clients** who have consulted with an attorney may not present that attorney's advice fully or even accurately. Trust that it is unlikely that the attorney told them "not to bother with service" or similar misconceptions. If there appear to be consistent problems, consider addressing them as general issues with the local bar.

Limited Scope Representation, *continued*

11) **Resist attempts by opposing counsel** to broaden the scope of the representation.

12) **Be open to discussing with counsel**, when necessary, clarification of the issues so that opposing counsel will know which issues require contact through counsel and which issues permit contact with the client..

Review Forms, Papers and Processes

13) **Review your local rules** to modify any that may contradict limited scope of representation rules.

14) **Work out procedures with the court clerk's office** to make sure they know how to reflect the representational status of the litigant in their case management system. They are on the front line in dealing with many of the issues surrounding limited scope representation and need to be aware of the issues and techniques for dealing with them.

15) **Use the Judicial Council form** or a similar draft while that form is in the comment process. Have a copy provided to the other side. Get a clear understanding of the limitations on scope from the attorney.

16) **Send comments on the proposed Judicial Council form** so that it can be made as useful as possible. Let the Administrative Office of the Courts staff attorneys know as issues and problems come up so that they can be considered and addressed with the State Bar.

17) **When problems arise**, work with the local bar to develop practical solutions. For example, if you want to be sure that settlement conferences don't have to be continued so the self-represented litigants can consult with their advisory counsel, let them know that they are responsible for notifying their consulting/advisory counsel and making

arrangements for them to be available on standby or otherwise as appropriate. It is most effective if you meet periodically with the bar to discuss these issues and work out solutions which work for both of you.

Monitor Quality

18) **Convene meetings of the family law bar** and legal service programs to discuss limited scope representation and suggest that they continue a working group to develop standards of care (as in Contra Costa), informational materials for litigants, fee agreements and office tools, and develop working relationships, referral systems and protocols.

Financial Issues

19) **Award attorneys fees for limited scope services** when otherwise appropriate and let attorneys know what forms or information they need to provide to substantiate the claim for fees. This is especially important if the attorney is not appearing of record, but assisting in the preparation of forms, declarations and the like.

20) **Be sensitive to the economic issues.** For example, if an attorney is in court for limited scope, even a routine continuance can impose a real hardship by pricing the service outside the client's reach. If there's only money for one appearance, and it is wasted, no net benefit is acquired and the funds which might have been properly applied to a limited appearance are wasted. Likewise, be sensitive when opposing counsel is delaying or otherwise obstructing for tactical reasons.

Lawyers and litigants are looking to you for guidance and approval, and they will pick up on subtle signals. By letting them know that you are aware of the practical problems they face, you are creating a climate of creative innovation and mutual problem solving. ■