

Report on Limited Representation Pilot Projects

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“We know that in difficult economic times the public need for access to the courts does not diminish. In many instances, the need to access the courts actually increases. At the same time, the ability to afford legal representation has become increasingly more difficult for some parties. Over the past several years, the number of self-represented litigants appearing in our district courts has increased substantially. “

State of the Judiciary 2009
Chief Justice Robert Davis

The Kansas Supreme Court established the Self Represented Study Committee in June 2007. The Committee was converted into the Access to Justice Committee in December of 2010. One of the Committee’s first objectives was to develop recommendations to encourage self-representing litigants to consult with and use the services of attorneys to the level to which they can afford those services. The Committee believes that limited representation would be the best method to accomplish this objective and recommended that pilot projects be established to evaluate this process.

Recently the Committee made recommendations to the Supreme Court to formalize the rules concerning the provision of limited representation. Those recommendations are currently being considered by the Court. Last fall the Court did change Rule 226 Kansas Rules Of Professional Conduct, Rule 1.2 Scope Of Representation, to read, “A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent in writing.”

The goal of the pilot projects was to evaluate the use of the best practice procedures and forms developed by the committee. Pilots were established in the 3rd, 7th, 10th, 18th, and 23rd Judicial Districts. The Committee was instructed to report back to the Supreme Court at the end of the pilot project.

The pilot project procedures stressed that limited representation should be used only when an attorney reasonably believes that the client can adequately represents himself or herself in the balance of the matter. The procedures also encouraged attorneys to consider the complexity of the matter and the ability of the parties to do the work, with limited assistance, before agreeing to provide limited representation.

Lawyer Training

The pilot projects required that training be provided for the local attorneys and judges on the procedures for providing limited representation. The training included the ability to use common statewide forms. The project material included the initial agreement to provide limited representation and forms to end the limited representation. The training for judges was intended to address attorneys' concerns that a judge might expect a limited representation lawyer to engage in full-service representation despite a retainer agreement that expressly limited representation. Stan Hazlett, Disciplinary Administrator, participated in four of the training seminars. Additional seminars were provided in non-participating counties because lawyers there provided legal services in pilot districts. The committee developed judicial guidelines to educate judges about the process. Approximately 350 attorneys took the limited representation training and a few more watched the American Bar Association or the Sue Talia on-line CLE seminars on providing limited representation.

The Office of Judicial Administration (OJA) posted information on the Supreme Court's website for attorneys who want more information about providing limited representation. The cover page is attached. The Committee is planning to add an online training component to the webpage in the future.

Material for the Self Represented

The committee recommended that OJA provide information to encourage self-represented litigants to understand what is involved in representing themselves and to encourage using a limited representation attorney. The OJA approved putting material for the self-represented on the court website in a special "Self Help" section.

The committee developed brochures for self represented litigants on their risks and responsibilities. The information provided in brochure format to local courts includes:

- Should I Represent Myself;
- How to Use an Attorney to Represent Yourself in Court
- The Risks and Responsibilities of Representing Yourself
- General Tips for Representing Yourself;
- Things to Know and Can Court Staff Help;
- Finding Legal Assistance;
- Types of Courts in Kansas;
- Understanding How State Courts Work.

The Office of Judicial Administration also put this information on the Self Help Website as separate pages. Posters were distributed alerting the self-represented to the Self Help Website. All of this information included encouragement to use limited representation attorneys.

The Kansas Bar Association's (KBA) Lawyer Referral Service began to record which of their lawyer referral service members provide limited representation. The Johnson County law library developed a brochure on the limited representation pilot project and put it on their website. The Douglas County District Court put a description of the pilot on their website and the Topeka Bar Association developed brochures.

KBA Legal Ethics Opinion No. 09-01

In May 2009, a Kansas attorney requested an ethics opinion from the Kansas Bar Association, asking if he could provide "unbundled" legal services and, if so, under what circumstances and with what limitations and requirements. He wanted to use the process outside the five pilot projects. The KBA issued Legal Ethics Opinion No. 09-01 which states:

- An attorney in Kansas may represent a client on the basis of a limited scope, so long as the limitation is reasonable under the circumstances and the client gives informed consent. The scope of the representation should be stated in a written engagement letter, specifying the tasks to be performed by the attorney, and confirming the consultation which led to the client's informed consent.
- The attorney's duty to communicate under Rule 1.4 compels the attorney to make adequate disclosure, to insure the client's understanding of the limited scope of the representation, as well as the risks and available alternatives to the limited representation.
- The attorney's duty of competence under Rule 1.1 compels the attorney to make sufficient inquiry of the client, to obtain all the facts necessary to give good legal advice.
- On any pleadings or documents prepared by the attorney or with the assistance of the attorney, the following legend shall be clearly stated: "Prepared with Assistance of Counsel." This also avoids the possibility of encouraging or aiding the unauthorized practice of law, by disclosing the involvement of an attorney in the preparation of the pleadings or documents.
- The attorney's duty to avoid conflicts of interest prohibits him from providing unbundled assistance to a *pro se* party while simultaneously representing the opposing party, or while owing obligations to another client, a former client, or the lawyer's own interests.

- An attorney who receives pleadings or documents marked with the legend “prepared with the assistance of a licensed Kansas attorney” has no duty to refrain from communicating directly with the *pro se* party, unless and until the attorney has reasonable notice that the *pro se* party is actually represented by another lawyer in the matter beyond the limited scope of the preparation of pleadings or documents, or the opposing counsel actually enters an appearance in the matter.

Comments from Participating Attorneys

The committee regularly asked for comments from the participating attorneys. A short survey was sent out to the participating attorneys in three of the districts. Most of the responding attorneys had six years or more legal experience and most were sole practice lawyers. All but one indicated that they were satisfied with the process of offering limited representation. The responding attorneys reported providing a variety of services including consultation, help with preparing documents, ghost writing, drafting pleadings and affidavits, and coaching and appearing in court for hearings. Over 85% received their referral from the court. A number of clients decided to hire the attorney to do all of the case after the attorney explained the process.

There were some general themes which came from the attorneys’ survey and the comments to a judge from the attorneys in another district:

1. Limited Scope Representation (LSR) is a valuable tool, and makes at least some legal representation available to people who otherwise would not have any.
2. LSR is a good way to get clients in the door, some ultimately choose full representation.
3. Both clients and attorneys sometimes have problems respecting the boundaries of LSR and a good services agreement, while time consuming, is quite necessary.
5. Both clients and attorneys are new to LSR, and somewhat tentative because of this.

Conclusion:

Comment from Participating Judge:

I believe it is very much in the interest of the Judicial Branch to have these services available. Thus, it is also important for the Courts to give attorneys sufficient guidelines so that they are willing to employ what, to them, is a new concept, and to give attorneys support in the form of continuing education and materials, such as model forms, to make the practice easier. I also believe that public education is an important factor in making the public aware that there is a

relatively simple, effective means of getting some help, even if full representation is too expensive. Most people, I am sure, still believe that their choices are limited to hiring an attorney at an exorbitant sum, representing themselves, or doing nothing and thus defaulting on their legal rights. A properly managed public information effort can help change this. Once the pump is primed, this will become an important thing for both the courts and the public.

The Self Help web site is at:

<http://www.kscourts.org/programs/Self-Help/default.asp>

The limited representation web site has the following cover page:

Limited Representation

The following information is to be used exclusively by lawyers participating in the Self Represented Study Committee Limited Representation Pilot Project. A qualified attorney may limit the scope of his or her representation of a client if the limitation is reasonable under the circumstances and the client gives informed consent. Procedures and forms related to Limited Representation are made available as links below.

This site does not provide legal advice.

Limited Representation Procedures

Procedures and rules that govern Limited Representation in the Kansas court system.

Limited Notice of Appearance form

Must be filed by attorney making a limited appearance on behalf of an otherwise unrepresented party.

Limited Notice of Withdrawal form

Attorney must file a Notice of Withdrawal of Limited Appearance for each court event for which the attorney has filed a Notice of Limited Appearance.

Sample Client Forms

[Notice and Consent to Limited Representation](#) (PDF)
[Limited Scope Representation-Agreement](#) (PDF)
[Attachment to Limited Scope Fee Agreement Issues to be Apportioned](#) (PDF)
[Follow-up Checklist](#) (PDF)
[Tickler Checklist](#) (PDF)
[Sample Change in Scope Letter](#) (Word)
[Sample Closing Letter](#) (Word)
[Risks and Responsibilities of proceeding without Professional Legal Representation](#) (Word)