Limited Scope Representation

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By Laurie W. Jones

The number of self-represented litigants has skyrocketed in the past ten years. California reports that 67 percent of petitioners in family law cases, 22 percent in probate cases, and 16 percent in general civil cases are self-represented; 47 percent of domestic relations and 98 percent of small claims cases in Utah involve no attorneys; and in New Hampshire, 85 percent of cases brought in its district courts (misdemeanors, juvenile, domestic violence, small claims) involve at least one party who is self-represented.¹ No statistics are currently available for Oklahoma, but anecdotal reports from judges indicate that the number of self-represented litigants is on the rise and is significant. The causes for self-representation include an inability to afford lawyers, decreasing government funds for legal aid services for those of limited means; and a preference for self-representation, aided by the availability of online information and forms.

Whatever the causes, the increased number of self-represented litigants adversely affects the administration of justice. Unfamiliar with the judicial process, self-represented litigants require time-consuming attention from court personnel. Procedural or substantive missteps may require additional court proceedings, which can be frustrating to the litigant who can ill-afford the expense of repeated trips to the courthouse. A litigant may perceive or request that the judge play a more active role in his or her case.

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Substantive rights may be lost, and questions of access to justice as well as securing fair and reasonable justice arise.

Forty-one states, including Oklahoma, have adopted ABA Model Rule 1.2(c) which states, “A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.” Limited scope representation (LSR), also known as “unbundled legal services,” is the provision of legal services by a lawyer on only some portions of a client’s legal matter. This representation differs from traditional representation in which a lawyer handles all aspects of a legal matter from its beginning to its conclusion. Limited scope services are not second-class services as the lawyers must still provide competent representation and comply with all ethical and procedural rules in his or her jurisdiction.²

LSR can take many forms, such as advising a client on certain aspects of a transaction or a proposed course of conduct, reviewing or drafting pleadings to be filed by the client, participation at depositions or court hearings, or coaching a client on how to respond to or proceed in particular circumstances. In recent years, state judiciaries, bar and legal commentators have focused increased attention on LSR — particularly in the litigation context — due to the great increase in the number of self-represented litigants, especially in high-volume courts such as traffic court, small claims, housing and family law. Limited scope representation can benefit clients on both sides, the courts and the lawyers. The benefits of LSR are clear, although some prac-
tical issues affecting its full implementation are worthy of consideration.

The benefits of LSR are many. Clients benefit from the legal expertise of lawyers while paying for only the services needed most. Self-represented litigants gain a better understanding of the legal process and the substantive aspects of their case, and more concise and accurate legal and factual presentations result. The involvement of court personnel for assistance or guidance is reduced, thereby saving valuable staff time and resources. The need for judges to step in and render individualized attention decreases. The unauthorized practice of law is limited as legal consumers are discouraged from using non-lawyers and generic forms providers as sources of legal information and advice. Lawyers have the opportunity to obtain clients who would otherwise represent themselves, and thus the lawyers may reach an untapped market and generate additional income.

Limited scope representation positively impacts access to justice and administration of justice issues.

Critics of LSR note a professional reluctance to offer or provide less than a full traditional representation as it seems inconsistent with longstanding concepts of a lawyer's professional and ethical duties to a client. Concerns have been voiced about the quality of service LSR may offer. And finally, there may be practical impediments relating to procedures for properly appearing and withdrawing from a case, ensuring candor to the tribunal, communicating with represented parties, and professional liability. Recently, two states, Mississippi and Alabama, joined 18 other states that adopted specific court rules that provide additional guidance on LSR to address these concerns and to facilitate the provision of LSR.

The American Bar Association provides a number of resources on limited scope representation. These resources include the Handbook on

Limited Scope Legal Assistance, a whitepaper on unbundling, an unbundling training video and risk management materials, and the Pro Se/Unbundling Resource Center located online at www.okbar.org/s/unbundling. In Oklahoma, as the number of self-represented litigants continues to grow and implicates access to justice and administration of justice issues, innovation in the delivery of legal services must be considered.

Ms. Jones is an OBA Access to Justice Committee member. She serves as interim associate dean for Academic Affairs at OCU School of Law.


2. See Okla. RPC Rule 1.2(c) stating "A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent. See also, Cmts. 6, 7 (discussing when appropriate).