

Limited Scope Representation: The Changing Landscape of Legal Services

Presented by:

Angie Dorsch, J.D.
Executive Director
Wyoming Center for Legal Aid

Mark W. Gifford
Bar Counsel
Wyoming State Bar

October 24, 2014

What is LSR?

Limited Scope Representation

- Breaking down legal services into discrete tasks

Limited Scope Representation

- Breaking down legal services into discrete tasks
- Attorney limits the representation to agreed upon tasks

Limited Scope Representation

- Breaking down legal services into discrete tasks
- Attorney limits the representation to agreed upon tasks
- Fee-for-service payment structure increases access to essential legal services

Limited Scope Representation

- Breaking down legal services into discrete tasks
- Attorney limits the representation to agreed upon tasks
- Fee-for-service payment structure increases access to essential legal services
- Also referred to as “unbundling legal services”

Limited Scope Representation

- Breaking down legal services into discrete tasks
- Attorney limits the representation to agreed upon tasks
- Fee-for-service payment structure increases access to essential legal services
- Also referred to as “unbundling legal services”
 - See comment 6 to Rule 1.2, W.R.P.C.

What it's NOT

Limited Scope Representation is NOT:

What it's NOT

Limited Scope Representation is NOT:

- Limited liability

What it's NOT

Limited Scope Representation is NOT:

- Limited liability
- Unethical

What it's NOT

Limited Scope Representation is NOT:

- Limited liability
- Unethical
- Inherently dangerous

What it's NOT

Limited Scope Representation is NOT:

- Limited liability
- Unethical
- Inherently dangerous
- Good for every case, issue, or client

What it's NOT

Limited Scope Representation is NOT:

- Limited liability
- Unethical
- Inherently dangerous
- Good for every case, issue, or client
- Just for poor people

Reasons for Current Trend

Reasons for Current Trend

- Growing justice gap

Reasons for Current Trend

- Growing justice gap
- Increasing number of pro se litigants

Reasons for Current Trend

- Growing justice gap
- Increasing number of pro se litigants
- Low to moderate income population that cannot afford full range of legal services

Reasons for Current Trend

- Growing justice gap
- Increasing number of pro se litigants
- Low to moderate income population that cannot afford full range of legal services
- Access to information

Reasons for Current Trend

- Growing justice gap
- Increasing number of pro se litigants
- Low to moderate income population that cannot afford full range of legal services
- Access to information
- Way to increase access to the courts

Delivery of Services to Low-Income

Delivery of Services to Low-Income

- Legal Aid Programs

Delivery of Services to Low-Income

- Legal Aid Programs
- Pro Bono Attorneys

Delivery of Services to Low-Income

- Legal Aid Programs
- Pro Bono Attorneys
- Pro Se Litigants

Delivery of Services to Low-Income

- Legal Aid Programs
- Pro Bono Attorneys
- Pro Se Litigants
 - Limited scope representation is essential

Level of Access to an Attorney

In Wyoming:

Level of Access to an Attorney

In Wyoming:

- There is one *private attorney* in practice for every 250 Wyoming residents

Level of Access to an Attorney

In Wyoming:

- There is one ***private attorney*** in practice for every 250 Wyoming residents
- There is only one ***legal aid attorney*** for every 7,500 poor Wyoming residents

Effects of Increased Pro Se Litigants

Effects of Increased Pro Se Litigants

- Inefficiency in the court system caused by ill-prepared pro se litigants

Effects of Increased Pro Se Litigants

- Inefficiency in the court system caused by ill-prepared pro se litigants
- Increased amount of time which court personnel must spend with pro se litigants

Effects of Increased Pro Se Litigants

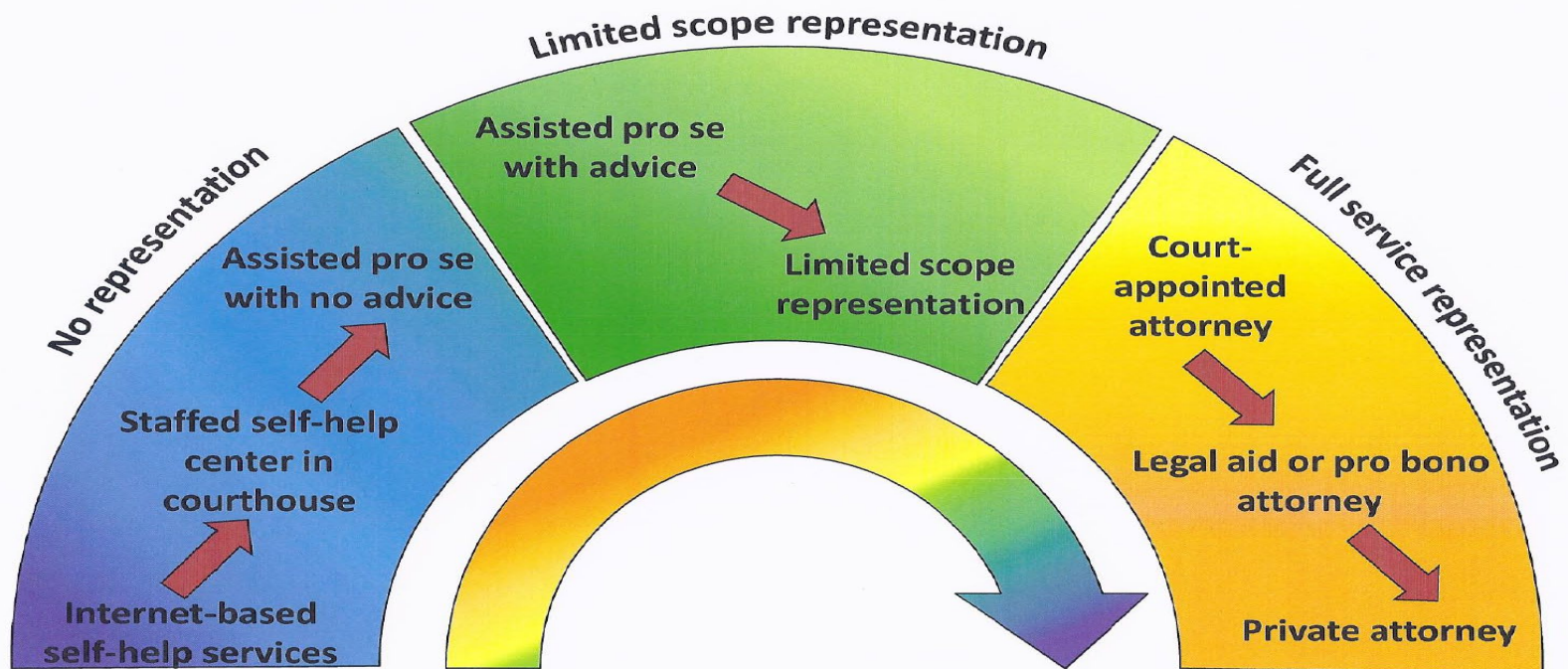
- Inefficiency in the court system caused by ill-prepared pro se litigants
- Increased amount of time which court personnel must spend with pro se litigants
- Attorneys with excess capacity

Effects of Increased Pro Se Litigants

- Inefficiency in the court system caused by ill-prepared pro se litigants
- Increased amount of time which court personnel must spend with pro se litigants
- Attorneys with excess capacity
- Loss of public confidence in the justice system

Bridging the Justice Gap

Helping Pro Se Litigants



Searching for Solutions

Limited Scope Representation:

Searching for Solutions

Limited Scope Representation:

- Is a tool to be used in addressing these major shifts in the justice system

Searching for Solutions

Limited Scope Representation:

- Is a tool to be used in addressing these major shifts in the justice system
- When used appropriately can benefit all stakeholders – clients, attorneys, and courts

Searching for Solutions

Limited Scope Representation:

- Is a tool to be used in addressing these major shifts in the justice system
- When used appropriately can benefit all stakeholders – clients, attorneys, and courts
- Will not solve every problem faced by the justice system, but is a key to increasing access to justice

Benefits of Limited Scope Representation

For Clients:

Benefits of Limited Scope Representation

For Clients:

- Reduces the overall costs of legal services

Benefits of Limited Scope Representation

For Clients:

- Reduces the overall costs of legal services
- Increases access to essential legal services

Benefits of Limited Scope Representation

For Clients:

- Reduces the overall costs of legal services
- Increases access to essential legal services
- Gives clients options – Not all or nothing

Benefits of Limited Scope Representation

For Lawyers:

Benefits of Limited Scope Representation

For Lawyers:

- New market of litigants

Benefits of Limited Scope Representation

For Lawyers:

- New market of litigants
- Potential to increase client base

Benefits of Limited Scope Representation

For Lawyers:

- New market of litigants
- Potential to increase client base
- Focus practice

Benefits of Limited Scope Representation

For Courts:

Benefits of Limited Scope Representation

For Courts:

- Increases Court efficiency

Benefits of Limited Scope Representation

For Courts:

- Increases Court efficiency
- Lowers the number of pro se appearances

Benefits of Limited Scope Representation

For Courts:

- Increases Court efficiency
- Lowers the number of pro se appearances
- Better prepared pro se litigants

Case Selection

- Remember, limited scope representation is NOT right for every case, client, or situation

Case Selection

- Remember, limited scope representation is NOT right for every case, client, or situation
- Limitations on representation must be reasonable

Case Selection

- Remember, limited scope representation is NOT right for every case, client, or situation
- Limitations on representation must be reasonable
- Nothing is a substitute for your professional judgment

Case Selection

- Work within your areas of expertise

Case Selection

- Work within your areas of expertise
 - Although you may limit the scope of your representation, you have a duty to alert a client to related matters that are reasonably apparent

Case Selection

- Work within your areas of expertise
 - Although you may limit the scope of your representation, you have a duty to alert a client to related matters that are reasonably apparent
- Do not be pressured by emergencies

Case Selection

- Work within your areas of expertise
 - Although you may limit the scope of your representation, you have a duty to alert a client to related matters that are reasonably apparent
- Do not be pressured by emergencies
 - Instead consider advising the client on ways to try to move the deadline if possible

Case Selection

- A good diagnostic interview is essential

Case Selection

- A good diagnostic interview is essential
- Clearly address fee structure and expectations in the initial interview

Case Selection

- A good diagnostic interview is essential
- Clearly address fee structure and expectations in the initial interview
- Advise the client of their right to seek outside advice on issues outside the limited scope of representation

Client Selection

- Avoid clients with unreasonable expectations

Client Selection

- Avoid clients with unreasonable expectations
- Consider carefully before accepting clients who have involved multiple attorneys on the same case

Client Selection

- Avoid clients with unreasonable expectations
- Consider carefully before accepting clients who have involved multiple attorneys on the same case
- Clients with limited capacity or language barriers may not be good candidates for LSR

Accepting a Case for LSR

- Use a clear fee agreement so there will be no surprises or misunderstandings

Accepting a Case for LSR

- Use a clear fee agreement so there will be no surprises or misunderstandings
- Use checklists to make sure you and the client both know who is responsible for each task or issue

Accepting a Case for LSR

- Use a clear fee agreement so there will be no surprises or misunderstandings
- Use checklists to make sure you and the client both know who is responsible for each task or issue
- Explain choices and limitations of the representation clearly to the client

Accepting a Case for LSR

- Notice and Consent form no longer required

Accepting a Case for LSR

- Notice and Consent form no longer required
- Fully advise clients of inherent risks

Accepting a Case for LSR

- Notice and Consent form no longer required
- Fully advise clients of inherent risks
- Document your file

Accepting a Case for LSR

- Notice and Consent form no longer required
- Fully advise clients of inherent risks
- Document your file
 - Document discussions and advice provided to pro se litigants

Accepting a Case for LSR

- Notice and Consent form no longer required
- Fully advise clients of inherent risks
- Document your file
 - Document discussions and advice provided to pro se litigants
- Provide information or handouts to clients

Defining the Scope of Representation

Defining the Scope of Representation

- Work can be divided between the lawyer and the client by:

Defining the Scope of Representation

- Work can be divided between the lawyer and the client by:
 - Tasks

Defining the Scope of Representation

- Work can be divided between the lawyer and the client by:
 - Tasks
 - Issues

Defining the Scope of Representation

- Work can be divided between the lawyer and the client by:
 - Tasks
 - Issues
- Be clear in defining the scope of representation

Defining the Scope of Representation

- Work can be divided between the lawyer and the client by:
 - Tasks
 - Issues
- Be clear in defining the scope of representation
- Use good judgment in defining the scope of the representation

Defining the Scope of Representation

- An attorney does NOT have to represent the client on related issues outside the scope of representation . . .

Defining the Scope of Representation

- An attorney does NOT have to represent the client on related issues outside the scope of representation, BUT the attorney must advise the client of the existence of the related issues that are reasonably apparent so that the client's agreement to decline representation on those issues is informed

Common LSR Assistance

Common LSR Assistance

- Provide advice and counsel on a particular issue or issues

Common LSR Assistance

- Provide advice and counsel on a particular issue or issues
- Assist in drafting or reviewing pleadings or other documents

Common LSR Assistance

- Provide advice and counsel on a particular issue or issues
- Assist in drafting or reviewing pleadings or other documents
- Make a limited court appearance

Assistance with Drafting Pleadings

Assistance with Drafting Pleadings

- *See* comment 7 to Rule 1.2

Assistance with Drafting Pleadings

- *See* comment 7 to Rule 1.2
- If an attorney provides assistance drafting a pleading for a pro se client, the document shall include a statement that the document was prepared with the assistance of counsel and shall include the name and address of the lawyer

Assistance with Drafting Pleadings

- See comment 7 to Rule 1.2
- If an attorney provides assistance drafting a pleading for a pro se client, the document shall include a statement that the document was prepared with the assistance of counsel and shall include the name and address of the lawyer
- Such a statement does NOT constitute an entry of appearance

Making a Limited Court Appearance (Rule 102, U.R.D.C.)

Making a Limited Court Appearance (Rule 102, U.R.D.C.)

- May limit a court appearance to a particular proceeding or matter (only in civil cases)

Making a Limited Court Appearance (Rule 102, U.R.D.C.)

- May limit a court appearance to a particular proceeding or matter (only in civil cases)
- MUST limit the appearance in writing and file with the court

Making a Limited Court Appearance (Rule 102, U.R.D.C.)

- May limit a court appearance to a particular proceeding or matter (only in civil cases)
- MUST limit the appearance in writing and file with the court
- If not properly limited in writing and filed with the court, the attorney is making a general appearance (see Rule 102(a)(2), U.R.D.C.)

Ending Representation

Ending Representation

- It is essential that the attorney be clear in ending the representation

Ending Representation

- It is essential that the attorney be clear in ending the representation
- Let the client know, in writing, that the representation has ended

Ending Representation

- It is essential that the attorney be clear in ending the representation
- Let the client know, in writing, that the representation has ended
- Remind the client of any known deadlines or other tasks that are still the client's responsibility

Ending Limited Court Appearance

Ending Limited Court Appearance

- Attorney shall be deemed to have withdrawn when the attorney has fulfilled the duties of the limited entry of appearance

Ending Limited Court Appearance

- Attorney shall be deemed to have withdrawn when the attorney has fulfilled the duties of the limited entry of appearance
 - See Rule 102(c), U.R.D.C.

Ending Limited Court Appearance

- Attorney shall be deemed to have withdrawn when the attorney has fulfilled the duties of the limited entry of appearance
 - See Rule 102(c), U.R.D.C.
- If you entered a limited court appearance, let the court and opposing parties know you have completed your representation and are no longer on the case

Ending Limited Court Appearance

- Attorney shall be deemed to have withdrawn when the attorney has fulfilled the duties of the limited entry of appearance
 - See Rule 102(c), U.R.D.C.
- If you entered a limited court appearance, let the court and opposing parties know you have completed your representation and are no longer on the case
- Though not required, file a notice of completion and withdrawal of counsel

Basic Ethical Considerations in LSR

Basic Ethical Considerations in LSR

- Limiting scope of services requires informed consent

Basic Ethical Considerations in LSR

- Limiting scope of services requires informed consent
 - See Rule 1.2(c), W.R.P.C.

Basic Ethical Considerations in LSR

- Limiting scope of services requires informed consent
 - See Rule 1.2(c), W.R.P.C.
- Limitation on scope of representation must be reasonable under the circumstances

Basic Ethical Considerations in LSR

- Limiting scope of services requires informed consent
 - See Rule 1.2(c), W.R.P.C.
- Limitation on scope of representation must be reasonable under the circumstances
- Attorney has a duty to advise clients fully about issues, even if not asked, if they are reasonably apparent

Compliance with General Rules

Compliance with General Rules

- Avoid conflicts of interest and run conflict checks, BUT

Compliance with General Rules

- Avoid conflicts of interest and run conflict checks, BUT
 - Attorney may provide limited services as part of a non-profit legal clinic under Rule 6.5

Compliance with General Rules

- Avoid conflicts of interest and run conflict checks, BUT
 - Attorney may provide limited services as part of a non-profit legal clinic under Rule 6.5
 - Before providing further services, it is important to run a thorough conflict check

Compliance with General Rules

- Avoid conflicts of interest and run conflict checks, BUT
 - Attorney may provide limited services as part of a non-profit legal clinic under Rule 6.5
 - Before providing further services, it is important to run a thorough conflict check
- Do NOT provide assistance to two adverse parties in the same action

Compliance with General Rules

- Maintain confidentiality

Compliance with General Rules

- Maintain confidentiality
- Comply with the general rule not to communicate with another represented party

Compliance with General Rules

- Maintain confidentiality
- Comply with the general rule not to communicate with another represented party
- Must provide competent and diligent representation

Compliance with General Rules

- Limiting the scope of the work does NOT limit your exposure to liability for the work you agree to perform

Compliance with General Rules

- Limiting the scope of the work does NOT limit your exposure to liability for the work you agree to perform
- It is not permissible to prospectively limit your liability in your agreement with your client

Follow Best Practices

Follow Best Practices

- Document your file

Follow Best Practices

- Document your file
- Use checklists to ensure tasks are completed

Follow Best Practices

- Document your file
- Use checklists to ensure tasks are completed
- Use good judgment in defining the scope of representation

Follow Best Practices

- Document your file
- Use checklists to ensure tasks are completed
- Use good judgment in defining the scope of representation
- Be clear in defining the scope of representation

Follow Best Practices

- Document your file
- Use checklists to ensure tasks are completed
- Use good judgment in defining the scope of representation
- Be clear in defining the scope of representation
- REMEMBER: LSR is not right for every case

Why Market LSR Services?

Why Market LSR Services?

- Grow your client base

Why Market LSR Services?

- Grow your client base
- Tap into a huge unmet market

Why Market LSR Services?

- Grow your client base
- Tap into a huge unmet market
- Increase revenue

Why Market LSR Services?

- Grow your client base
- Tap into a huge unmet market
- Increase revenue
- Get paid for the work you do

Why Market LSR Services?

- Grow your client base
- Tap into a huge unmet market
- Increase revenue
- Get paid for the work you do
- Increase access to justice

Effectively Market LSR

Effectively Market LSR

- Lawyer directory

Effectively Market LSR

- Lawyer directory
- Lawyer referral service

Effectively Market LSR

- Lawyer directory
- Lawyer referral service
- Wherever you normally advertise

Effectively Market LSR

- Lawyer directory
- Lawyer referral service
- Wherever you normally advertise
- Word of mouth from clients that used your unbundled services