

Limited scope representation

includes a range of attorney-client relationships where the attorney handles part, but not all, of a legal matter. Limited scope representation is also sometimes called unbundled or unbundling of legal services or limited assistance representation. It can include a variety of services including the lawyer providing advice and counsel, or assistance with drafting or reviewing documents or pleadings, or even making a limited appearance in court in a legal proceeding.

Limited scope representation takes the traditional model of full representation and breaks the legal services into discrete tasks. The attorney and client then agree to limit the attorney's role only to those agreed upon tasks or issues. Usually this unbundling of legal services is billed on a fee-for-service basis. The client pays only for those tasks that the attorney performs.

LIMITED SCOPE REPRESENTATION

WHAT IF THE JUDGE DOESN'T
LET ME OUT OF THE CASE?

ARE THE RULES STRAIGHTFORWARD?

WHAT ARE THE ETHICAL CONSIDERATIONS?

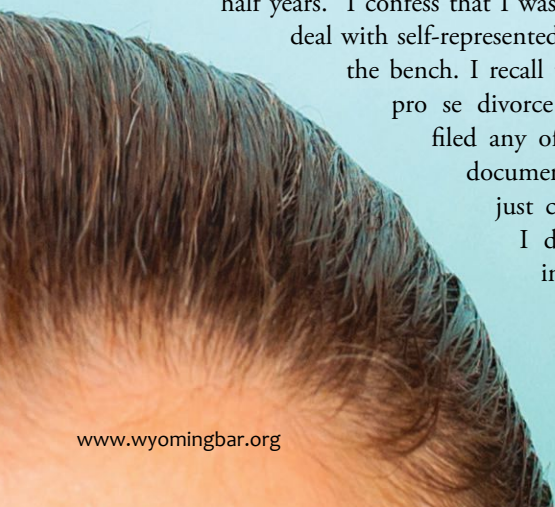
BY HON. MICHAEL K. DAVIS,
ANGIE M. DORSCH,
JENNIFER P. HANFT
AND MARK W. GIFFORD



A VARIETY OF PERSPECTIVES

A PERSPECTIVE FROM THE BENCH

HON. MICHAEL DAVIS



I was a district judge in Laramie County for about four and a half years. I confess that I was totally unprepared to deal with self-represented litigants when I took the bench. I recall the couple in my first pro se divorce vividly. Neither had filed any of the required pretrial documents. I was tempted to just continue the case, but I doubted things would improve with time. I asked one of the more experienced judges in the district how

to approach the trial, and he said, “Just go in and tell the plaintiff to call the first witness.”

I did just that, and the poor woman plaintiff nearly burst into tears. She had no idea that she could be a witness herself, or even generally what to do. She had waited for months to get a hearing, and now thought all was lost because the judge expected her to present her case like an attorney would.

Whether I should have done so or not, I swore both parties in and coaxed them through an explanation of their situation. They didn’t really have any disagreement about custody, visitation, or child support, and they had very little property to divide. With just a little help, this couple could have arrived at a stipulated decree, which would have saved them months of delay and stress. Instead, their

case had to wait its turn on a busy docket, and then took an hour of court time in which the judge was in the very awkward position of trying to elicit evidence rather than just listening to it. This was a typical scenario, and needless to say, the divorce decrees the self-represented litigants submitted after hearings usually left a great deal to be desired.

It is apparent that those who must represent themselves, particularly in domestic relations cases, need at least some help. We will never be able to fund a civil justice system which will provide a lawyer for all of those who can't afford one. However, there appears to be a consensus that we can improve access to the courts for those with little income through a combination of devices. Limited scope representation is one of these solutions. A litigant who cannot afford full representation may be able to scrape together a few hundred dollars to pay a qualified attorney to explain the process and help with drafting documents. This could make a tremendous difference to a couple like the one I described above. That much help can be enough to achieve a just and speedy result, and to assure that the decree of divorce or other ruling adequately documents the outcome.

Limited scope representation is a change, and change is frightening. But whether we like it or not, we must make our courts more accessible to those who cannot afford full representation. We must assure that justice is more than an empty promise for these litigants. Limited scope representation is one of the ways our system can become more transparent, more accessible, and therefore more just. I hope that qualified Wyoming attorneys will consider offering limited scope representation in their practices, not only for the revenue they may receive, but also for the benefit they can provide to litigants and the court system.

LIMITED SCOPE REPRESENTATION: THE CHANGING LEGAL LANDSCAPE

ANGIE DORSCH
WYOMING CENTER FOR LEGAL AID

Limited scope representation (LSR) is not a new concept and attorneys have been offering LSR for years without giving it a name. Attorneys have always provided limited scope services, such as reviewing legal documents or advising a client about the legal process. Although not an entirely new concept, LSR has been given renewed attention because of its potential to address the growing justice gap and issues presented by the increasing number of pro se litigants.

Ill-prepared pro se litigants create inefficiency in the courts and take up an increased amount of court personnel's time. And, even as civil case filings increase each year, there is a disconnect between clients trying to get the help of an attorney and attorneys trying to attract clients. LSR is one way to bridge that gap.

LSR is beneficial to the public because it reduces the overall cost of legal services, therefore increasing access to essential services. The reduced cost is the result of a fee-for-service payment structure that allows the client to pay for tasks or parts of the case that they can afford and which are the most essential, and the attorney can still charge his normal hourly rate. It also gives clients options, rather than an all or nothing approach to legal representation.

LSR is not right for every case, client, or situation. The attorney must work with the client to determine if LSR is right under the circumstances. Attorneys who offer LSR should also follow best practices. This includes working within one's area of expertise, using clear fee agreements from the outset, clearly defining the scope of the representation in writing, and maintaining appropriate documentation.

Most would agree that full representation is ideal, but the reality is most individuals that seek LSR are not choosing between full representation and limited representation, but rather their choice is between limited assistance and no assistance at all.

The Wyoming Center for Legal and the Wyoming State Bar have partnered to provide information, resources, and training to help attorneys more easily offer LSR as part of their practice with the hope that this will benefit lawyers, courts, and the public. Check the Bar's website at www.wyomingbar.org for Limited Scope Representation Materials for Wyoming Attorneys.

A PRIVATE PRACTITIONER'S VIEWPOINT JENNIFER P. HANFT

Representing clients on a limited scope basis can be a powerful tool to grow your business as well as provide legal services to people that cannot afford full representation. Entering into a limited scope agreement is a great way to initiate an attorney-client relationship without taking great risks or charging big bills.

Not all clients are suited for limited scope representation. Limited scope clients must have both initiative and capacity. In order to use limited scope representation effectively, it is essential that the attorney implement policies and procedures to quickly discern whether a potential client is a good candidate for limited scope representation. Once an attorney has completed a conflict of interest check, spend a few minutes instructing the potential clients to prepare their own intake sheet. Specify the information that you must have, but also request that the potential client write one or two sentences about why she is seeking an attorney, and request that she include anything else she believes is important. Reviewing her self-made intake sheet gives you insight into her skill level, as well as her motive and commitment in participating in her own representation. Thus, if a potential client does not prepare her intake sheet prior to coming in for her appointment, this is usually a good indication that the potential client is not



a good candidate for limited scope representation. If the potential client lacks the ability to retain you for full representation, the best approach for dealing with potential clients that come unprepared is probably to cancel the appointment, and tell them they are free to contact you to make another appointment once they have written up the requested information. In other words, if you want to utilize limited scope representation in a cost-effective manner, it is important to communicate from the beginning through your words and actions that the potential client's time is not more valuable than yours.

It is also imperative from the on-set that an attorney create an expectation with the client that he or she must pay for your services. Limited scope representation is not free representation. Best practice is for all of your clients to sign a fee agreement. Even if at the end you choose to reduce or waive some or all of your fees, you make sure that clients walk into your office with the expectation that they will be paying your regular billable rate. This also helps eliminate some clients who are not well suited for limited scope representation. In order for limited scope representation to benefit your practice, you must be able to represent them in a cost-efficient manner.

Business organizations are good candidates for limited scope representation. Many people want to start a business, but they lack the vision or resources to create an operating agreement that reflects their business practices. By utilizing limited scope representation, an attorney can assist a client by creating a corporate structure using the Secretary of State's forms. In so doing, the attorney can talk about the differences between technically forming a company or corporation and actually creating liability protection. Then if the client has success with his business, he is much more likely to come back to the attorney for additional legal needs of the business.

THE ETHICS OF LIMITED SCOPE REPRESENTATION

MARK GIFFORD
BAR COUNSEL

In an effort to encourage Wyoming lawyers to do limited scope representation, the Wyoming Supreme Court several years ago adopted a modified version of Rule 1.2(c) of the ABA Model Rules of Professional Conduct. The ABA model rule says simply, "A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent." Wyoming's Rule 1.2(c) is more involved:

- (c) A lawyer may limit the scope of the representation pursuant to Rule 6.5 or if the limitation is reasonable under the circumstances and the client makes an informed decision.
 - (1) The limitation(s) must be fully disclosed and explained to the client in a manner which can reasonably be understood by the client.
 - (2) Unless the representation of the client consists solely of telephone consultation, the disclosure and consent required by this subsection shall be in writing.
 - (3) The use of a written notice and consent form approved by, or substantially similar to, a form approved by the Board of Judicial Policy and Administration shall cre-

ate the presumptions that:

- (i) the representation is limited to the attorney and the services described in the form; and
- (ii) the attorney does not represent the client generally or in any matters other than those identified in the form.

Thus, in Wyoming it is required that all LSR engagements (except those that are solely telephone consultations) be in writing. The “notice and consent form” referenced in the rule is found in the appendix to the Wyoming Rules of Professional Conduct (see opposite page). It is a straight-forward, user-friendly form. An attorney is not bound to use this particular form, and many attorneys who are growing their practices through limited scope representation have developed their own notice and consent forms. So long as the attorney uses a form which matches in substance the one approved by the Board of Judicial Policy and Administration, he or she will be in compliance with the very specific requirements of Rule 1.2(c).

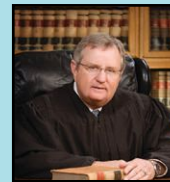
Comment 7 to Wyoming Rule 1.2 provides additional clarification regarding the intended uses of Rule 1.2(c):

[7] Subsection (c) is intended to facilitate the provision of unbundled legal services, especially to low-income clients. “Unbundled” means that a lawyer may agree to perform a limited task for a client without incurring the responsibility to investigate or consider other aspects of the client’s matter. Accordingly, a lawyer and a client may agree, in writing, that the lawyer will perform discrete, specified services. The agreement need not be in writing if the representation consists solely of telephone consultation between the lawyer and the client. In such circumstances, the lawyer should maintain a written summary of the conversation(s), including the nature of the requested legal assistance and the advice given. Pursuant to paragraph (c), therefore, a lawyer and a client may agree that the lawyer will: (1) provide advice and counsel on a particular issue or issues; (2) assist in drafting or reviewing pleadings or other documents; or (3) make a limited court appearance. If a lawyer assists in drafting a pleading, 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 who provided the assistance. Such a statement does not constitute an entry of appearance or otherwise mean that the lawyer represents the client in the matter beyond assisting in the preparation of the document(s). Further, any limited court appearance must be in writing pursuant to Rule 102 of the Uniform Rules for the District Courts of Wyoming, and must describe the extent of the lawyer’s involvement. See also, Rule 6.5, Non-profit Limited Legal Services Programs.

Thus, Wyoming lawyers who undertake limited scope representation of a client in a litigation setting are assured that if they follow the rule, they will be able to withdraw from the case once the intended scope of their work is complete. ⁶

Hon. Michael K. Davis...

was a district judge for Judicial District 1 (Laramie County) from April of 2008 until October of 2012, when he became a justice of the Wyoming Supreme Court. Before taking the bench, he practiced law with the Sheridan firm of Yonkee and Toner for 27 years.



Angie M. Dorsch...

is the Executive Director of the Wyoming Center for Legal Aid. Angie attended law school at Texas Tech University School of Law where she completed a joint degree program. She was awarded a J.D. with honors and an M.S. in financial planning in December 2004. While working as an attorney, she also received her MBA from Texas Tech University Rawls College of Business in May 2008. Angie practiced law with the firm of Legal Aid of NorthWest Texas from 2005 until beginning her employment with the Wyoming Center for Legal Aid in August 2012.



Jennifer P. Hanft...

received her B.A. in Speech Communications from University of North Carolina at Chapel Hill in 1990, and her J.D. from University of Wyoming in 1996. She has been practicing law in Wyoming for the past 17 years. As a sole practitioner, Ms Hanft has effectively utilized limited scope representation in a variety of situations, including assisting low-income clients. In 2012, she was the recipient Wyoming State Bar’s annual Pro Bono Award.

Mark W. Gifford...

is a Casper native who received his bachelor’s degree in accounting from the University of Wyoming in 1978 and his law degree from Stanford University in 1981. After thirty years of practice as a trial lawyer and mediator, Gifford took the position of Bar Counsel on a part-time basis in 2011. He recently left private practice to become full-time Bar Counsel. In addition to attorney discipline, Gifford’s responsibilities include unauthorized practice of law, fee dispute resolution and Clients’ Security Fund.

