

Limited Scope Representation, a Handy Tool for the DIY Litigant

by Mary Kay Hansen & George D. Lyford



We are a do-it-yourself nation as evidenced by the crowded aisles at Home Depot, a DIY television network, self-help books and web sites that walk consumers through every imaginable type of project and Pro Se legal forms provided by the Nebraska Supreme Court's online Self Help Center. Budgets are tight and access to free or low cost legal services is limited. Consumers are seeking cost effective options, thus increasing the need for limited scope representation. A recent posting of cases from the Volunteer Lawyer's Project was five pages long, evidencing the growing need for low cost legal assistance. Many attorneys are uncomfortable with providing limited scope representation, myself included. However, with the proper safeguards and a clear understanding of the attorney's role, limited scope representation can provide a much needed, effective, and low cost legal service.

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dispute resolution services. She serves as special counsel to the University of Nebraska-Lincoln's Academic Rights and Responsibilities Committee and as general counsel to Region II Human Services. Mary Kay is a 1985 graduate of the University of Mississippi College of Law.

My first experience in providing limited scope representation occurred when I was contacted by a potential client who, together with his spouse, mediated the terms of their Property Settlement Agreement. The client wanted to hire an attorney who would file for and obtain a Decree of Dissolution that would incorporate the parties' mediated agreement. The client made it clear that he did not want me to review or provide him any guidance or advice regarding the agreement. My instructions were specific and limited. I provided the appropriate disclaimers to the client, we entered into a limited engagement agreement and I provided the required notice to the Court.

Upon preparing the Decree, I reviewed the mediated agreement to determine if there were any judgments or other information that needed to be included in the Decree. In doing so, I noticed a provision regarding the division of the parties' retirement accounts. The division was flawed and could cause



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Interest working on the health care access project.

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challenges for one or both of the parties in the future. I had a dilemma! This client did not hire me to review the agreement and made it abundantly clear that he did not want me to do so. How could I assist in presenting an agreement to the court knowing that it was flawed and likely to cause challenges later on? At the same time, if I provided guidance and advice on retirement, would the client believe that I had reviewed his entire agreement and was providing him guidance and advice regarding all provisions? Would I then become accountable for the contents of that entire agreement?

After some thought and a carefully drafted letter to my client, I was able to reach a resolution on how to bring this flawed provision to the mediator's attention, with my client's consent, without accepting the responsibility for a review and evaluation of the entire agreement. After this uncomfortable experience, I told myself that I did not need to be handling these types of matters. However, it only took a little time for me to realize that the focus should not be on what I need; it should be on what the consumer needs and they need low cost, efficient legal services which includes limited scope representation.

As a family law mediator, I see an increasing need for limited scope representation. Increasing numbers of consumers are seeking out mediation to assist them on all issues involved in a divorce. They do not have the funds and/or interest in having attorneys involved in their divorce. When mediation is completed, the parties can use the Pro Se forms provided by the Nebraska Supreme Court Pro Se Committee to handle the divorce themselves, but many seek out an attorney to represent them via limited scope representation to "process" their mediated divorce through the court system. This is a very cost effective alternative to the traditional way of handling a divorce, in which both parties obtain legal counsel to represent them throughout the entire matter. As a mediator, I do advise the mediating parties to obtain legal representation to provide them guidance and advice regarding all matters relating to their pending divorce. However, the reality is that many consumers simply cannot afford this representation – it is a luxury and limited scope representation is a financial necessity. It is better for these consumers to receive limited scope representation, than no representation at all.

Limited scope representation has risk and rewards for both the consumer and the attorney. Both need to proceed with caution. However, it is a much needed and valuable service to the consumer. Thus, we are providing some guiding principles for the lawyers who provide this much needed service.

Unbundling of Legal Services—Best Practices

The procedures for unbundling legal services are clearly laid out in the Nebraska Court Rules of Professional Conduct

§§ 3-501.2 and 3-504.2. Dennis Carlson examined the specific requirements of these procedures in the November/December 2008 issue of *The Nebraska Lawyer*.¹ In a nutshell, limiting the scope of representation of a client requires that the lawyer determine whether the limitation is reasonable under the circumstances and the client must give informed consent. The lawyer may prepare documents to be filed with the court, indicating that they were prepared by the lawyer and signed by the litigant designated as "pro se".² The lawyer may also enter a "limited appearance" on behalf of the litigant and must file a "Certificate of Completion of Limited Representation" upon completion of the limited representation.³

While the Rules of Professional Conduct clearly express the procedural requirements for limiting the scope of representation of a client, there is little guidance regarding how to avoid potentially sticky situations that may arise during the course of limited scope representation that could result in the loss of the client or even malpractice allegations. First it must be said that many lawyers probably engage in limited scope representation without even realizing it. For example, a lawyer may agree to help prepare documents for a closing or a tenant eviction but not attend the closing or eviction hearing. Were something to go wrong at the closing or the eviction hearing, the client would likely blame the lawyer – possibly with good reason assuming the lawyer didn't take proper precautions. What follows are some recommended best-practice tips when taking on limited scope representation cases.

Thoroughly document everything in writing. If there are issues in your client's case that they want to handle on their own, you may not want to handle, or you don't feel competent in handling, you must thoroughly explain this in your engagement letter and assure that your client understands the consequences of limiting their representation. Assuming that your client intends on handling certain aspects of their case, it is also advisable to include a detailed list of responsibilities, delineating which responsibilities belong to you and which responsibilities belong to your client. This level of clarity will not only help to protect you, but it will also help your client better understand what their responsibilities are in their case.

Amend representation agreement if need be. One of the most common complaints among lawyers who accept limited scope cases is that during the course of the case the lawyer begins to take on more responsibilities than they agreed to. This could be at the client's request, but more often than not it is the result of the lawyer acting on their own behalf either out of habit or because they see their client struggling with the case and want to forestall a disaster. While the lawyer's intention is usually good, it is critical that they amend the representation agreement and explain the consequences of any changes in representation to the client.

Leave the courtroom during your client's portion of the case,

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when appropriate. Due to the fact that limited scope representation is a fairly recent, albeit quite popular, phenomenon, some judges and opposing attorneys may not yet be accustomed to the practice in the courtroom setting. Consequently, you may be faced with an awkward situation if you remain seated next to your client during their pro se portion of the case, unable to offer advice or answer questions. If you find yourself in this situation, it is advisable to excuse yourself from the courtroom during your client's pro se portion of the case to avoid inadvertently acting outside the scope of your agreed upon limited scope representation.

Ethical Concerns Surrounding "Ghostwriting"


Related to the topic of limited scope representation is the ethical dilemma surrounding "ghostwriting"—where a lawyer provides limited representation to a client but does not disclose their involvement to others. At first glance, the practice of ghostwriting appears at odds with the Nebraska Rules of Professional Conduct, which require that a lawyer indicate on the document that it is "Prepared By" the lawyer and include their name, address and bar number.⁴ Nevertheless, there is a significant disagreement nationally among judges and lawyers regarding whether such a practice constitutes an ethical violation: Are attorneys being candid to the tribunal? Is it prejudicial to the administration of justice for a client to appear as though they are pro se while receiving the assistance of a lawyer in drafting documents and preparing for litigation? These issues, while extremely relevant, are outside the scope of this article and merit further review.

Concluding Remarks

It is more clear now than ever that during periods of economic downturn, such as we are currently experiencing, clients may be unable or unwilling to pay for legal services. Offering

unbundled legal services, if done properly, can be a win-win situation for lawyers and clients alike. Such an arrangement will provide clients who are hesitant to go it alone with an opportunity to be represented on some of the more complicated or technical aspects of their case. Likewise, the legal community can benefit from an expanded client base as well as solidifying an image of helping people who need it. Chief Justices John T. Broderick Jr. of New Hampshire and Ronald M. George of California summed it up best in a recent New York Times Op-Ed by stating, "[l]awyers make a difference and clients know that . . . at least some limited, affordable time with a lawyer is a valuable option we should all encourage."⁵

Helpful Resources:

- ABA's Unbundling Resource Center is available online at: <http://www.abanet.org/legalservices/delivery/delunbund.html>
- ABA's Handbook on Limited Scope Representation, available at <http://www.abanet.org/litigation/taskforces/mod-est/report.pdf>
- The Practising Law Institute (PLI) has sponsored a series of free three-hour webcast trainings on limited scope representation. Links to these are available at: <http://www.unbundled-law.org/links.html>
- *Report of the Nebraska Supreme Court Committee on Pro Se Litigation* (Nov 2002), available at http://supremecourt.ne.gov/community/adminreports/pro_sereport.pdf 

Endnotes

- ¹ See, Dennis Carlson, *Amendments to Rules Facilitate Unbundling of Legal Services* 35-36 THE NEBRASKA LAWYER, Vol. 11 No. 11 (2008).
- ² Nebraska Court Rules of Professional Conduct § 3-501.2(c).
- ³ Nebraska Court Rules of Professional Conduct §§ 3-501.2(d)-(e).
- ⁴ Nebraska Court Rules of Professional Conduct § 3-501.2(c).
- ⁵ John T. Broderick Jr. and Ronald M. George, *A Nation of Do-It-Yourself Lawyers*, N.Y. TIMES, Jan. 2, 2010, at A21.

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