

Limited Scope Legal  
Assistance (Unbundling) --  
Request to Release Proposed  
Resolution for Public Comment

DATE: February 3, 2009

TO: Members of the Board Committee on Stakeholder Relations

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Development  
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SUBJECT: Limited Scope Legal Assistance (Unbundling) – Proposed Resolution to  
Encourage Expansion of use of Unbundling as an Effective Delivery  
Model; Request to Release Proposed Resolution for Public Comment

**EXECUTIVE SUMMARY**

During the 2009 Board of Governors Planning Retreat, the Board focused on issues related to increasing Access to Justice for low and moderate income Californians. Limited Scope Legal Assistance (“unbundling”) was discussed as a vehicle for members of the legal profession to address the increased legal needs of the public. Specific areas of focus included outreach and education re the nature and scope of “unbundled” services, limited scope practice by attorneys, promoting “unbundling” among Sections and Committees, promoting the creation of limited scope panels among certified Lawyer Referral Services, and encouraging law schools to incorporate limited scope practice in their practical training of law students. Following the Retreat, Limited Scope Legal Assistance was identified as one of the possible priority areas for impacting the increased delivery of legal services. A resolution has been drafted for review and approval by the Stakeholder Committee, promoting limited Scope Legal Assistance. This item seeks approval of the draft language and approval to circulate the resolution for a 45-day public comment, coming back to the Stakeholder Committee and full board at the May 2009 Meeting.

## **INTRODUCTION- Brief History of Limited Scope Legal Assistance**

Limited scope legal assistance, also known as “unbundling”, has been available in California and across the country for at least the past 20 years. Initial efforts to encourage its use were made by California attorney Forrest “Woody” Mosten, mediator and trainer, who has been recognized nationally for his pioneering efforts. In sum, “unbundling” involves offering to potential clients the option of engaging the lawyer for part of a case, such as handling one hearing or drafting specific documents, with the client being responsible for the balance of the matter.

Most attorneys “unbundle” in some ways, for example, offering to do trial work but not taking on an appeal, or handling most matters in a Family Law case except the division of a pension plan. But the expansion of limited scope legal assistance over the past decade has made a major breakthrough with efforts to increase legal help to low and moderate income Californians who otherwise could not afford any legal help at all.

### **Prior Resolutions; Adoption of Rules and Forms**

In 2001, the State Bar Board of Governors approved the Report on Limited Scope Legal Assistance with Initial Recommendations, prepared by the Limited Representation Committee of the California Commission on Access to Justice. The Report emphasized that the focus was on the limitation of the scope of engagement, as opposed to the limitation of the ethical obligations of attorneys. All of the recommendations of the Report are attached to this agenda item, and each of these recommendations has been accomplished. See Attachment B.

The following excerpts from the Report provide further background to a discussion of limited scope legal assistance:

#### **Statement of Principle**

After analyzing many of the issues raised and receiving input from different perspectives, the Committee adopted the following statement of principle:

The Committee finds that consumers of legal services need and are seeking a continuum of legal services that includes both full service representation and limited scope legal assistance. The State Bar should support the expansion of such limited scope legal assistance as part of its ongoing effort to increase access to legal services.

To be effective in this effort, it is necessary to educate attorneys, judges, insurers, and the public about the benefits, risks, obligations, and structure of these arrangements. The committee therefore recommends a collaborative program with the State Bar, Judicial Council, and other interested parties to design and implement that outreach effort and to develop policies and procedures for the appropriate use of limited scope legal assistance.

## **What is “Limited Scope Legal Assistance”?**

The definition of limited scope legal assistance adopted by the Committee is:

“A relationship between an attorney and a person seeking legal services in which it is agreed that the scope of the legal services will be limited to the defined tasks that the person asks the attorney to perform .

There are three general categories of services involved:

1. Advice and counsel
2. Limited court or administrative appearances
3. Assistance with documents and pleadings

Some limited scope legal assistance is provided in such a way that there is no court appearance and no contact with opposing counsel. This may include legal research or advice and counsel. Other services involve one or more court appearances or contact with opposing counsel.

Limited scope legal assistance does not involve limiting the liability of attorneys, or the duties attorneys owe their clients with regard to competence, confidentiality, or avoidance of conflicts.

Limited scope legal assistance has been an accepted practice for many years, particularly in certain areas of the law such as bankruptcy, and corporate law – and has recently expanded substantially in the area of family law. Insurance companies have long followed the practice of paying for counsel for specific issues that are covered by their policy. Courts promote limited representation when they appoint an attorney for part of a case, such as to represent a party for one issue in a case, for example child custody. The issues raised by this type of legal assistance are complex and go to the heart of what it means to practice law, and the essence of the attorney-client relationship – as well as the authority of judicial officers to control the cases before them.

This report can be found on the State Bar’s website at:

[http://calbar.ca.gov/calbar/pdfs/reports/2001\\_Unbundling-Report.pdf](http://calbar.ca.gov/calbar/pdfs/reports/2001_Unbundling-Report.pdf)

In July of 2001, the Board of Governors approved the Commission’s recommendations:

“The State Bar should support the expansion of such limited scope legal assistance as part of its ongoing effort to increase access to legal services.”

## **Judicial Council Rules and Forms**

In July of 2003, the Judicial Council of California adopted new Rules of Court 5.71, et seq., and developed Family Law forms that included notice of limited scope representation and a process for a limited scope attorney to withdraw from the matter after the agreed-upon task has been completed.

In 2007, the Judicial Council approved forms to expand limited scope representation for general civil matters beyond family law. See Rules of Court 3.36 et seq. Also that year, the Access to Justice Commission issued its Action Plan for Justice. As part of the 27 recommendations, limited scope legal assistance was identified as a nationally-accepted method of providing for some legal services to moderate income people who did not qualify for pro bono legal services. The Commission went on to recommend that this delivery method be promoted through the State Bar's certified lawyer referral services and urged the Judicial Council to continue its work in developing forms and rules to facilitate these efforts.

(See [http://calbar.ca.gov/calbar/pdfs/reports/2007\\_Action-Plan-Justice.pdf](http://calbar.ca.gov/calbar/pdfs/reports/2007_Action-Plan-Justice.pdf))

### **Role of the Rules Revision Commission**

As further background information, the State Bar's Rules Revision Commission has been specifically charged to also consider the work that has occurred at the local, state and national level with respect to unbundling (also called "discrete task representation" and "limited scope representation"). This charge also extends to considering developments related to Multi-Disciplinary Practice ("MDP"), Multi-Jurisdictional Practice ("MJP"), unauthorized practice of law ("UPL"), court facilitated propria persona assistance, and to other subjects that have a substantial impact upon the development of professional responsibility standards.

### **Trainings and Resource Manuals**

Since 2001, dozens of educational programs have been presented at a number of forums, including the American Bar Association/National Legal Aid Defenders Association's Equal Justice Conferences, the State Bar's Annual Meetings, the State Bar's Pathways to Justice Conference in 2005 and 2008, and at various County Bar Associations, including San Diego, San Luis Obispo, Contra Costa, among others. Most of these training programs were sponsored by the Standing Committee on the Delivery of Legal Services and were developed and presented primarily by M. Sue Talia, a member of the Standing Committee on the Delivery of Legal Services, a former member of the Access to Justice Commission and a private family law judge from Contra Costa County.

A "Family Law Risk Management Packet" developed by the Access to Justice Commission includes the Judicial Council Forms, as well as model materials designed to help attorneys do "unbundling" competently and ethically. The packet can be found at [http://www.calbar.ca.gov/calbar/pdfs/accessjustice/Risk-Management-Packet\\_2004-01-12.pdf](http://www.calbar.ca.gov/calbar/pdfs/accessjustice/Risk-Management-Packet_2004-01-12.pdf).

The State Bar is currently partnering with Practising Law Institute (PLI) to produce a series of educational programs to train attorneys on limited scope practice. The sessions will be presented live and will be video recorded, with sessions archived and accessible online at any time and with free MCLE credit available. Additional portions of the trainings will be designed to produce more trainers to help expand the concept at the local level.

While the concept of limited scope representation has become increasingly accepted as a method of providing legal assistance, more work needs to be done to educate attorneys and judges about its need and effectiveness in providing legal services to moderate income Californians. It is also important to address any issues or difficulties encountered by lawyers and judges as the use of the concept has been expanded.

**Proposed Board Resolution**

Through this resolution, the State Bar encourages Section Membership, particularly the Family Law, Solo and Small Firm, Business, Real Property, and Trust & Estates Sections, to develop education for their membership in the various aspects of their practice areas to serve clients in limited scope or discrete tasks. Law Schools which promote and teach limited scope in their clinics are recognized and acknowledged for their pioneering efforts in providing legal services and are asked to share their expertise with other law schools. The Certified Lawyer Referral Services are encouraged to expand their subject matter panels to include limited scope representation in a greater number of their primary fields, with training for attorney panel members. E&O Insurance carriers will be encouraged to endorse limited scope representation as a part of the normal practice of law and to support additional training in this area. Finally, the courts will be included in a coordinated education strategy to promote greater use of limited scope representation, particularly for the moderate income population.

**LENGTH OF PUBLIC COMMENT PERIOD & REASON:**

The forty-five-day comment period would run from March 7, 2009 through April 23, 2009. This period of time is adequate to collect comments and feedback from members, local bars, lawyer referral services, Section and Committee members, legal services programs and law schools that would be impacted by the proposed resolution, as well as from other interested stakeholders. The feedback from public comment and final draft resolution will be submitted for review and approval by the Board Committee on Stakeholder Relations and the full Board of Governors at the May 2009 Board Meeting. Outreach and distribution of the resolution would occur following approval at the Board Meeting.

**FISCAL AND PERSONNEL IMPACT:**

No additional fiscal impact. Outreach and coordination to be provided by current staff.

**BOARD BOOK/ADMINISTRATIVE MANUAL IMPACT:**

None

**RULE AMENDMENTS:**

None

**ALIGNMENT WITH STRATEGIC PLAN:**

This proposal is aligned with Long Range Issue 3: Equal Access to Justice

Goal 3. All people have access to high quality legal services regardless of financial or other circumstances.

Strategy 3.5: Limited Scope Representation Legal Services:

Identify ways in which attorneys can appropriately provide “unbundled” legal services to provide limited and specific services to litigants without undertaking full case representation

**RECOMMENDATION:**

It is recommended that Attachment A: A Statement in Support of Limited Scope Legal Assistance (Unbundling) resolution be circulated for public comment:

**PROPOSED BOARD COMMITTEE RESOLUTION:**

Should the Board Committee on Stakeholder Relations agree to release for public comment the proposed resolution (Attachment A) promoting limited scope legal assistance (“Unbundling”), the following resolution would be in order:

**RESOLVED** that the Board Committee on Stakeholder Relations approves the release of the draft resolution (Attachment A) promoting Limited Scope Legal Assistance for a forty-five day public comment period from March 9, 2009 through April 23, 2009, for a report back to the Board of Governors at its May 2009 meeting, and it is

**FURTHER RESOLVED** that authorization for public comment is not, and shall not be construed as, a statement or recommendation of approval by the Board Committee.