

AGENDA ITEM

MAY 164

Limited Scope Legal Assistance
(Unbundling) –
Return from Public Comment

DATE: April 24, 2009

TO: Members of the Board of Governors
Members of the Board Committee on Stakeholder Relations

FROM: Howard Miller, Chair, Board Committee on Planning, Program Development
Patricia Lee, Director, Office of Legal Services, Access & Fairness Programs,
Rodney Low, Program Developer, Program Development Unit
Mary Lavery Flynn, Director, Legal Services Outreach

SUBJECT: Limited Scope Legal Assistance (Unbundling) – Proposed Resolution to
Encourage Expansion of Use of Unbundling as an Effective Delivery Model

EXECUTIVE SUMMARY

This agenda item is a preliminary report on the public comment received on the proposed resolution regarding the State Bar's support of Limited Scope Legal Assistance. This resolution would reaffirm the State Bar's position in support of Limited Scope Legal Assistance as expressed in its resolution in July of 2001, as well as encourage State Bar sections, 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 would be recognized and acknowledged for their pioneering efforts in providing legal services and asked to share their expertise with other law schools. The Certified Lawyer Referral Services would be 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. Errors & Omissions Insurance carriers would 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 would be included in a coordinated education strategy to promote greater use of limited scope representation, particularly for the moderate income population.

At the March 6, 2009, Board meeting, the Board authorized a 45-day public comment distribution of the Board statement in support of Limited Scope Legal Assistance. The deadline was set for April 23, 2009. As of the date of this memorandum, eleven comments have been received (Attachment B). Any timely comments subsequently received will be provided to the Board prior to its meetings on May 14-15, 2009 and accompanied by a supplemental staff memorandum. This supplemental memorandum will include a recommendation and proposed Board Committee and Board resolutions. Board members with questions about this matter may contact Rodney Low at (415) 538-2219.

This agenda item presents a preliminary report on the public comments received on the proposed Board resolution in support of Limited Scope Legal Assistance (Unbundling). (The text is provided as **Attachment A.**)

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. This resolution was drafted to reflect past actions taken in support of Limited Scope Legal Assistance by this Board, the Judicial Council, and the Standing Committee on the Delivery of Legal Services, and propose additional avenues of support, education and implementation of Limited Scope.

As of April 23, 2009, there were eleven (11) comments. These comments are summarized in table format in **Attachment B.** The full text of comments is contained in **Attachment C.** Any comments subsequently received will be provided to the Board Committee and the Board prior to its meetings on May 14-15, 2009 and accompanied by a supplemental staff memorandum. All comments timely received have been reviewed by staff. A recommendation and proposed resolution for Board Committee and Board action is presented in this agenda item.

SUMMARY OF RESOLUTION

There is a developed history of support for the implementation of the 2001 Report on Limited Scope Legal Assistance with Initial Recommendations, prepared by the Limited Representation Committee of the California Commission on Access to Justice. 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.”

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. Further, 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.

Finally, 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.

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. This training would naturally include information regarding how applying limited scope to their practice will enhance and benefit their practice.

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. The State Bar's Office of Legal Services Access & Fairness Programs, which certifies lawyer referral services, is encouraged to continue its work in providing technical assistance to lawyer referral services in developing unbundling panels. OLSAFP also staffs the Standing Committee on the Delivery of Legal Services and will continue presenting Unbundling MCLE programs at the State Bar's Annual Meeting and at local bar associations statewide.

Professional Liability 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, particularly the Judicial Council, which promulgated new Rules of Court and Court Forms, will continue to be included in a coordinated education strategy to promote greater use of limited scope representation, particularly for the moderate income population.

In all education programs of limited scope representation, it must be clearly stated that limits on the scope of legal assistance do not limit the ethical obligations of the attorney to the client nor the obligations of counsel to other parties or to the court. In addition, the attorney's exposure to liability for the work he or she agreed to perform is not limited, nor is such a limitation permissible. Ultimately, the attorney continues to have an obligation to warn a client about issues outside the scope of representation which the client should address, and for which the client should consider seeking counsel.

Attorneys and clients must be thoughtful in their approach to establishing the scope of the services to be provided, and an attorney should not undertake such an engagement without a careful analysis of the client's capabilities, the complexity of the case, as well as the alternatives available.

REPORT ON PUBLIC COMMENTS RECEIVED:

The 45-day public comment period began on March 7, 2009 and ended on April 23, 2009. As previously indicated, eleven (11) written comments have been received to date. This agenda item reports on eleven public comments received as of the date of this memorandum. The extracted text of the written comments is provided as **Attachment B**, along with staff comments. The full text of comments are provided as **Attachment C**.

EFFECTIVE DATE OF PROPOSAL

May 15, 2009

FISCAL AND PERSONNEL IMPACT

The Board's adoption of the proposed new rule does not involve any unbudgeted fiscal or personnel impact.

RULE AMENDMENTS

None.

BOARD BOOK/ADMINISTRATIVE MANUAL IMPACT

None.

RECOMMENDATION AND PROPOSED BOARD COMMITTEE AND BOARD RESOLUTIONS

If the Board of Governors concurs with the recommendation of the Board Committee on Stakeholder Relations, the following resolution is suggested:

RESOLVED, that the Board of Governors on recommendation from the Board Committee on Stakeholder Relations, adopts the Statement in support of Limited Scope Legal Assistance as contained in **Attachment A**.