

Attachment B
PUBLIC COMMENTS

Proposed Resolution in Support of Limited Scope Legal Assistance

No.	Date Received	Name, Title & Affiliation of Respondent	Comments	Staff comments
1	March 10, 2009	Randall Caudle, American Immigration Lawyers Association, Santa Clara Valley Chair	Personally, I believe that limited scope legal assistance is a dangerous thing in immigration legal services.	Resolution amended to include comment that Limited Scope is not taught and/or promoted as a technique that works for every case and client. Text from Hon. S. Austin of Access to Justice Commission added, "Attorneys and clients must be thoughtful in their approach to establishing the scope of services, 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." Limited Scope does require a client who understands and knowingly agrees what legal services the attorney will and will not be performing.
2	March 11, 2009	Helen O. Page, President, Amador County Bar Association	Many family law facilitators have created limited scope representation forms. I believe Orange County was at the forefront in this area, I believe. I am happy to see the State Bar taking in interest in this area. Please keep me on the list for notification. When there are some forms to comment on, then I will gather the family law attorneys in Amador County to comment	No change recommended.
3	March 11, 2009	Jerry Oce, Esq.	Does anyone have an understanding of the fiscal impact this will have on the increased or decreased value to solo practitioners? Is this program a blend in between lawyers and paralaawyrs? While it appears to be a political program of the state bar to benefit the goals of the bar leadership's philanthropy, is the program in the best interest of the members of the bar?	Language has been added to include education that will address how Limited Scope can benefit a member's practice. Regarding the economics of the practice, contrary to the commentator's implication that the State Bar is encouraging Limited Scope to fulfill its philanthropic impulses, Limited Scope is viewed as a way of not only serving the moderate income, but a way for all private attorneys to supplement their practice. This satisfies the consumer, who pays for services requested, without being "sold" increased services that can be performed by the client.

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4	March 12, 2009	Ken Gorman	<p>Good idea. What does the proposal mean by “encourage professional liability insurers to <i>endorse</i>...”? Have the carriers been consulted about this? If so, how have they responded? Most attorneys would be reluctant to engage in limited representation if they did not have malpractice coverage for it.</p>	<p>No change recommended. Carriers have been providing some education in their risk management courses. The State Bar encourages this approach. By educating their insureds to practice Limited Scope responsibly, attorneys will not be reluctant to offer these services.</p>
5	April 7, 2009	Margaret Draper, Attorney at Law	<p>This proposal, while it appears to define the concept of limited concept, does not spell out the possible risks to the membership from undertaking such representation. It should.</p> <p>I disagree with the report where it states that amendments to the <i>rules of professional conduct</i> should not be addressed in connection with this support.</p> <p>While the benefits to society may be large, the cart is before the horse. Perhaps <i>after</i> the rules of professional conduct have been amended to cover the concept of "competence" and scope in this context, (thus protecting Bar members) such support would be helpful. However, if members of the bar are not clearly advised via free CEB and MCLE, funded by the State Bar, as to how to avoid pitfalls, I think it is irresponsible to promote this idea.</p> <p>In principle, it's a great idea, but the guidance must be extremely clear - and not solely from insurance carriers but from the State Bar itself...if it is actively promoting such a change.</p>	<p>Amendment to resolution addresses the concern of the commentator. The resolution reminds the membership and the public 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, the attorney's exposure to liability for the work he or she agreed to perform is not limited, and that 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,</p> <p>Regarding the issue of ethics, the Access to Justice Commission concluded, in its 2001 Report, that “No modifications to the Rules of Professional Conduct are necessary to implement the recommendations of this report.” It went on to further state “The attorney-client relationship, unless established by court appointment, is based on an agreement between the parties. That agreement defines the essential elements of the relationship, the scope of services to be provided by the attorney. There is nothing in California law that circumscribes the ability of the attorney and client to reasonably limit the scope of services in any way acceptable to them” The Commission is careful to note, however, that “limits on the scope of legal assistance do not limit the ethical obligations of the attorney to the client...” The commentator felt that additional training on risk management is necessary to mitigate the potential</p>

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				<p>dangers and education and training (provided by the State Bar and its counterparts at the local level) is contemplated in this resolution.</p> <p>Further, the State Bar's Committee on Professional Responsibility and Competence (COPRAC) considered the risks and benefits of Limited Scope and published its opinion at: http://calbar.ca.gov/calbar/pdfs/ethics/COPRAC/COPRA_C_02-0005_11-17-04.pdf</p>
6	April 13, 2009	Lauren Zorfias, Chair, San Mateo County Bar Association's LRS Committee	As chair of the San Mateo County Bar Association's Lawyer Referral Committee, I would like to express our committee's full support of the proposed resolution in support of Limited Scope Legal Assistance.	No change recommended.
7	April 20, 2009	M. Sue Talia, Private Judge, Member of SCDLS	<p>I strongly support the Board of Governor's resolution in favor of limited scope representation. The latest Judicial Council statistics indicate that in family law matters, 70% of litigants are unrepresented when they begin their proceeding and 80% are unrepresented when they conclude it. Stated differently, 100% of family lawyers in California represent at best, 30% of the population. These statistics are staggering. Since it is unlikely to increase the number of family lawyers sufficiently to serve all citizens (and many of those in practice now are, as a practical matter, struggling to remain economically viable), it is critically important that we innovate ways to provide quality legal services to those who are currently unrepresented.</p> <p>Limited scope, while not the only answer, is an important component of the solution. We simply</p>	No change recommended.

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			<p>must find ways to make it economically possible for the private bar to step in and assist in the resolution of this problem. Pro bono and legal services, while important, simply can't begin to meet the overwhelming need. As holders of a monopoly on the delivery of legal services, it is incumbent on the State Bar to support lawyers in providing necessary services to all citizens. I commend the Board of Governors for recognizing this important responsibility. If we, as lawyers, don't serve these people, someone less qualified will step into the void, to the detriment of the litigants, the courts, the profession, and society as a whole.</p> <p>I am reminded of my favorite access to justice quotation:</p> <p>"Lest the citizenry lose faith in the substance of the system and the procedures we use to administer it, we can ill afford to confront them with a government dominated by forms and mysterious rituals and then tell them they lose because they did not know how to play the game or should not have taken us at our word." <u>Moore v. Price</u>, 914 S.W. 2d 318, 323 (Ark. 1996), Mayfield, J., Dissenting.</p>	
8	April 21, 2009	Roger Gordon, ED, HALT	<p>As a national 50,000-member advocacy group working towards greater accessibility and accountability in the civil justice system, HALF would like to add its support to the State Bar of California's proposal to expand the use of limited scope representation. Given the large number of people in California who cannot afford to hire a lawyer, improving services for the unrepresented is essential for increasing access to justice. Attorneys who are willing to "unbundle" their</p>	No change recommended.

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			<p>services may help those who would otherwise be forced to the pro per route to get the help they need to win their cases or handle specific legal matters on their own.</p> <p>We applaud the Board of Governors' efforts to encourage its civil practice attorneys, law school clinics, attorney referral networks, professional liability insurance companies and courts to embrace limited scope representation and to do their part to ensure its success in California. (excerpt)</p>	
9	April 21, 2009	Toby Rothschild and Luz Herrera, co-chairs of Los Angeles County Bar Association's Access to Justice Committee	<p>On behalf of the Los Angeles County Bar Association's Access to Justice Committee, we write to express our support for the proposed resolution supporting Limited Scope Representation as recommended by the Limited Representation of the California Commission on Access to Justice. Over the course of the last eight months, our committee has reviewed the limited number of programs in Los Angeles County that offer legal services assistance to low- and moderate-income individuals who do not qualify for legal aid and cannot afford an attorney. Our research confirmed our suspicions. Other than scattered efforts throughout the county, we do not have a program in place that helps address the great need for legal services for this population. Like others across the state, we know we have to do more.</p> <p>Limited Scope Representation offers us a tool that can help increase legal service provision to limited means clients while at the same time facilitating the engagement of more attorneys through discrete tasks. While family law practitioners are using limited scope</p>	No change recommended.

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			<p>representation more systemically, we are also seeing it used by attorneys who practice in the areas of employment, landlord-tenant and general civil litigation. We believe that many more attorneys would offer limited scope representation if they knew more about it. Our bar will greatly benefit from more information about the need for these services and their effectiveness. (excerpt)</p>	
10	April 23, 2009	Michele Morley, former Director of Public Services for San Fernando Valley Bar Association	<p>As you know, the San Fernando Valley Bar Association has had a Limited Scope Family Law program for several years. I began the program when I was the Director of Public Services for the SFVBA. I personally know it is quite successful and fills a genuine need. The local Judicial officers are very supportive of the program which has contributed to its success.</p> <p>Right before I retired, we had wanted to expand the program into the area of civil litigation. I had spoken with the Judicial officer in charge of training for the Valley judges and had arranged for Sue Talia to provide the training. Unfortunately, we were not able to finalize this training before my retirement. However, the SFVBA'S Attorney Referral Service interest in doing the training and implementing the program remains.</p> <p>We feel that it is important to train the judicial officers first and then recruit the attorneys. Limited Scope Civil Litigation does not seem as easy to implement as the family law was and it will require more education of attorneys and perhaps the judiciary too. I am in full support of the concept being tried and encourage the Judicial Council to develop and implement training programs for judicial officers and</p>	No change recommended. Training of judges in limited scope representation is a priority for both the State Bar of California and the Judicial Council.

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			<p>attorneys.</p> <p>From my conversations with LRIS staff and attorneys, legal fees are more difficult to pay during these financially difficult times. If Limited Scope Civil helps in addressing the fee issue then it will be a benefit and will increase access to justice. I do know that the Limited Scope Family Law program has done just that.</p> <p>Thank you for the opportunity to comment.</p>	
11	April 23, 2009	Hon. Steven K. Austin, Chair, California Commission on Access to Justice	<p>On behalf of the California Commission on Access to Justice, I am writing to wholeheartedly endorse the Bar's renewed effort to support and expand the availability of limited scope legal representation, and to thank the Board of Governors for its leadership on this issue. We also make some minor suggested changes, as noted below.</p> <p>We are extremely pleased that most of our recommendations have been enacted, and we particularly would like to acknowledge the Judicial Council for the tremendous amount of work that went into the series of court rules and court forms that were adopted and have set the standard nationally for how to support and expand the availability of limited scope legal services. The enormous amount of work that has done to expand the use of unbundling has gone a long way toward institutionalizing this method of serving those who could not otherwise afford legal representation. Setting up court rules, training lawyers, developing sample materials</p>	The suggested comments have been incorporated into the resolution.

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to help practitioners – all of these efforts have made a difference. But more needs to be done to truly realize the promise of unbundling, and the steps included in the recommendation are important steps that are needed.

There are three concepts that need to be included in all training about limited scope legal assistance, and we suggest that a reference to these issues could be included in the section of the statement addressing proposed training. First, we believe that it is important to mention the need to warn clients of issues outside the scope of representation, as required in Nichols v. Keller, 15 Cal App 4th 1672 (1993). Also, we believe that there should be a statement added to emphasize that limited scope legal assistance is not appropriate for every individual and for every case. In addition, because there can be misunderstanding about what is “limited” when lawyers are performing limited scope services, we believe that a clarifying statement should be added. All three of these issues could be addressed by adding the following paragraphs to the final policy statement:

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

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			<p>not limited, nor is such a limitation permissible. Finally, 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.</p> <p>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.</p>	
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