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

ATTACHMENT C

Public Comments on Proposed Resolution Regarding Limited Scope Legal Assistance

Dayao, Michael

From: Randall Caudle [randall@caudleimmigration.com]
Sent: Tuesday, March 10, 2009 2:59 PM
To: AILA SCV Chapter Distribution List
Cc: Low, Rodney
Subject: Fw: CA State Bar - Public Comment - Limited Scope Legal Assistance

Hi All -

Personally, I believe that limited scope legal assistance is a dangerous thing in immigration legal services. You are free to comment, whether you agree with me or not, to Rodney Low. See below for more info.

Have a wonderful week!
Randall

Randall Caudle

American Immigration Lawyers Association (AILA)
Santa Clara Valley Chapter Chair

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--- On **Tue, 3/10/09, Bar Relations <*Bar.Relations@calbar.ca.gov*>** wrote:

From: Bar Relations <Bar.Relations@calbar.ca.gov>
Subject: Public Comment - Limited Scope Legal Assistance
To:
Date: Tuesday, March 10, 2009, 9:54 PM

The **State Bar Board of Governors** approved the request to release the proposed resolution for public comment on **Limited Scope Legal Assistance** (also known as **Unbundling**). The Resolution can be found at:

http://calbar.ca.gov/state/calbar/calbar_generic.jsp?cid=10145&n=95211

Because Limited Scope Legal Assistance is such a valuable tool for the delivery of legal services to all Californians but especially low and moderate income clients, we urge you to share this item with all bar association boards, bar association members, pro bono attorneys, the judiciary, law students and faculty, and other members of the legal community interested in this topic.

All comments are due by April 23, 2009. Comments or a request for a hard copy of the resolution should be submitted to Rodney Low, telephone 415-538-2219, email: rodney.low@calbar.ca.gov

Rodney Low

Program Developer

Office of Legal Services, Access & Fairness Programs

The State Bar of California

180 Howard Street

San Francisco, CA 94105-1639

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E-mail: rodney.low@calbar.ca.gov

Website: www.calbar.ca.gov

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Dayao, Michael

From: Helen O Page [hpagelaw@sbcglobal.net]
Sent: Wednesday, March 11, 2009 9:48 AM
To: Low, Rodney
Subject: Limited Scope Legal Assitance recommendations

Rodney Low:

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.

HELEN O. PAGE SBN 96558
President, Amador County Bar Association
ATTORNEY AT LAW
114 MAIN STREET, SUITE 300
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Telephone: 209-223-0553

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Dayao, Michael

From: jerryocesq@aol.com
Sent: Wednesday, March 11, 2009 10:35 AM
To: Low, Rodney
Subject: Limited Representation and the impact on the solo practitioner

Hi:
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 paralawyers?
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?
Jerry

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Dayao, Michael

From: Ken Gorman [Ken@lomgil.com]
Sent: Thursday, March 12, 2009 9:13 AM
To: Low, Rodney
Subject: RE: limited representation

Excellent, thanks.

From: Low, Rodney [mailto:Rodney.Low@calbar.ca.gov]
Sent: Thursday, March 12, 2009 9:12 AM
To: Ken Gorman
Subject: RE: limited representation

We are aware that some insurance carriers are actually providing training on Limited Scope Representation. Generally, unless a specific practice is excluded from coverage, the practice of law, which limited scope representation is, is covered by the policy.

We are inviting comment from carriers, as well as attorneys and the public.

Rodney Low
Program Developer
Office of Legal Services, Access & Fairness Programs
The State Bar of California
180 Howard Street
San Francisco, CA 94105-1639
Telephone: 415-538-2219
Fax: 415-538-2552
E-mail: rodney.low@calbar.ca.gov
Website: www.calbar.ca.gov

From: Ken Gorman [mailto:Ken@lomgil.com]
Sent: Thursday, March 12, 2009 9:05 AM
To: Low, Rodney
Subject: limited representation

Mr. Low:

Good idea.

What does the proposal mean by "encourage professional liability insurers to *endorse*…."?
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.

Ken Gorman

Dayao, Michael

From: maggi draper [maggi@humboldt1.com]
Sent: Tuesday, April 07, 2009 1:41 PM
To: Low, Rodney
Subject: Support of Limited Scope Representation

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.

I disagree with the report where it states that amendments to the *rules of professional conduct* should not be addressed in connection with this support.

While the benefits to society may be large, the cart is before the horse. Perhaps *after* 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.

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.

Respectfully,

Margaret Draper
Attorney at Law
POB 176
Bayside, CA 95524
707.826.9072

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Dayao, Michael

From: Lauren Zorfas [LZorfas@sanmateocourt.org]
Sent: Monday, April 13, 2009 8:18 PM
To: Low, Rodney
Cc: Kemper, Deborah
Subject: Public Comment re: the resolution in support of Limited Scope Legal Assistance

Dear Mr. Low:

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.

Sincerely,
Lauren Zorfas

Save Paper. Think Before You Print.

Dayao, Michael

From: M. Sue Talia [sue@privatefamilylawjudge.com]
Sent: Monday, April 20, 2009 11:22 AM
To: Low, Rodney
Subject: Comment on BOG Resolution

Rodney,
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. Limited scope, while not the only answer, is an important component of the solution. We simply 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.

I am reminded of my favorite access to justice quotation:

"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."

Moore v. Price, 914 S.W. 2d 318, 323 (Ark. 1996), Mayfield, J., Dissenting.

Please pass these comments on to the Board of Governors.
M. Sue Talia
P.O. Box 2335
Danville, CA 94526-7335
Telephone: 925-838-2660
Fax: 925-743-1614

HALT *Simple · Affordable · Accountable · Justice for All*

April 21, 2009

Mr. Rodney Low
Office of Legal Services, Access & Fairness Programs
The State Bar of California
180 Howard Street
San Francisco, CA 94105

RE: Support of Limited Scope Representation

Dear Mr. Low:

As a national 50,000-member advocacy group working towards greater accessibility and accountability in the civil justice system, HALT 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,[1] improving services for the unrepresented is essential for increasing access to justice. Attorneys who are willing to "unbundle" their services may help those who would otherwise be forced to go the *pro per* route to get the help they need to win their cases or handle specific legal matters on their own.

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.

We also support stepped up efforts to educate legal consumers about limited scope representation because it will give them more options when they seek legal assistance and more opportunities to obtain affordable help when they need it.

Sincerely,

Roger Gordon
HALT Executive Director

[1] See, for example, *Action Plan for Justice*, The California Commission on Access to Justice, April 2007 which explains:

> "The majority of Californians do not have the resources to obtain legal representation for the myriad legal problems affecting them every year, such as divorce, child support, child custody, domestic violence, loss of housing and employment, and discrimination."

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WRITERS DIRECT LINE:

April 21, 2009

Via U.S. Mail

Rodney Low
Office of Legal Services, Access &Fairness Programs
The State Bar of California
180 Howard Street
San Francisco, CA 94105

Re: Support of Limited Scope Representation

Dear Mr. Low:

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 Committee 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.

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 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.

In the next couple of months, our subcommittee will provide a report to the Board of Trustees of the Los Angeles County Bar Association which will highlight on-going limited scope representation efforts and propose new collaborations to increase the availability of legal services to low- and moderate-income clients. Having a resolution by the State Bar already in place helps us garner support for local efforts. We look forward to working with you and other state bar leaders to continue to advance this effort.

Toby Rothschild

Chair, Access to Justice Committee

Luz Herrera

Luz Herrera (HR)

Co-Chair, Access to Justice Committee

Dayao, Michael

From: Michele Morley [mmorley1@socal.rr.com]
Sent: Thursday, April 23, 2009 1:35 PM
To: Low, Rodney
Subject: Limited Scope Civil

Dear Rodney,

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.

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.

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 attorneys.

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.

Thank you for the opportunity to comment.

Michele C. Morley, Esquire*

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CALIFORNIA COMMISSION ON ACCESS TO JUSTICE

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April 21, 2009

Rodney Low
Office of Legal Services, Access & Fairness Programs
The State Bar of California
180 Howard Street
San Francisco, CA 94105

Comment in Support of Limited Scope Representation, with suggested edits

Dear Mr. Low:

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.

In 2001, at the request of State Bar President Palmer Madden, we studied the question of whether there were any ethical or other barriers to "unbundling". We reported back in October of 2001 that limited scope legal assistance is entirely appropriate under current ethics rules, and set out a series of recommendations of ways to expand and support the use of unbundling. http://calbar.ca.gov/calbar/pdfs/reports/2001_Unbundling-Report.pdf

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.

More recently, this issue was addressed in our *Action Plan For Justice*, published in 2007 to provide a blueprint for ways to significantly improve access to our judicial system for vulnerable Californians. As we said in that Action Plan:

> Many people who cannot afford the full price of legal representation can afford to pay something less. Limited-scope representation and other modest-means programs not only reduce fees for eligible clients and thus broaden access – they also expand practice opportunities for attorneys, and enable them to become part of the "solution," helping provide access for those who would otherwise not have it. (*Action Plan For Justice*. 2007, at page 76) http://calbar.ca.gov/calbar/pdfs/reports/2007_Action-Plan-Justice.pdf

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 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.

Before the full potential of limited scope legal assistance can be realized, renewed efforts must be undertaken, as outlined in your proposed statement. However, we also have the following suggestions for amending the proposed statement:

- 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. As stated in our 2001 report:

  > "...limits on the scope of legal assistance do not limit the ethical obligations of the attorney to the client, including the duty to maintain confidentiality [B&P Code Section 6068] and to act competently [California Rules of Professional Conduct 3-110]. ...In addition, such a limited representation does not limit the obligations of counsel to other parties or to the court. Finally, it should be noted that limiting the scope of representation does not limit the attorney's exposure to liability for the work he or she agreed to perform, nor is such a limitation permissible." [at page 9, emphasis 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 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.**
  >
  > **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.**

- Attorneys who offer limited scope assistance have been able to expand their practice by reaching many individuals who could not have afforded full representation; therefore, we believe the last "Whereas" clause should be amended by adding a phrase at the end that emphasizes the ways that unbundling can help State Bar members.

- The paragraph addressed to "State Bar Section members" should be modified to suggest that the Sections can help by educating their members about the potential benefits to their practice.

- The paragraph addressing the Judicial Council should be modified to acknowledge with gratitude the amount of work the Council has already undertaken, and to suggest that they "continue" those efforts in the future.

- Similarly, the paragraph addressing the State Bar should be modified to acknowledge with gratitude the amount of work the Bar has already undertaken, particularly the Office of Legal Services, Access & Fairness Programs, and to suggest that the "continue" those efforts.

This statement about the importance of limited scope legal assistance will help expand legal assistance to those who cannot afford full representation, making our system more just and equitable -- a result that would truly benefit us all.

Thank you again for the leadership of the Bar on this issue, and thank you for the opportunity to comment.

Respectfully submitted,

Hon. Steven K. Austin
Chair
California Commission on Access to Justice