Limited Assistance Representation

The concept of Limited Assistance Representation is known by many names, including unbundled legal services and limited scope representation, and represents a departure from full service representation. Limited Assistance Representation permits attorneys to assist a self-represented litigant on a limited basis in a civil case without undertaking a full representation of the client on all issues related to the legal matter for which the attorney is engaged. The related issue of ghostwriting will be addressed in a second article.

Given that few civil litigants qualify for free legal services and many cannot afford full representation, there has been a rise in the number of *pro se* litigants. In response, courts have studied and ultimately embraced Limited Assistance Representation as a way of assisting litigants and expanding access to justice. With clear ethical and court rules, Limited Assistance Representation can be an effective method of delivering legal services, and while it is not appropriate in all cases or in all practice areas, it can provide benefits to clients, courts, and lawyers.

Before discussing in some detail Limited Assistance Representation, it is important to note that the concept and practice of limiting the scope of representation is not new at all in certain practice areas. Mass. R. Prof. C. 1.2(c), allowing for limited representation with client consent, has been in effect since January 1, 1998. Attorneys handling commercial transactional matters have traditionally limited the scope of their representation, as have some insurance attorneys (all with their clients' informed consent). See Comment [4] to Mass. R. Prof. C. 1.2. It is also important to note that in a limited scope representation, whether under Rule 1.2(c) or under Limited Assistance Representation, discussed below, an attorney must always adhere to all of the ethical rules found at Supreme Judicial Court Rule 3:07 (Massachusetts Rules of Professional Conduct and Comments).

The Massachusetts Supreme Judicial Court issued an order[1] allowing the implementation of Limited Assistance Representation in any Department of the Trial Court[2] effective May 1, 2009. That month, the Probate and Family Court Department adopted Limited Assistance Representation; and in May 2010, the Boston Municipal Court

[1] See the Supreme Judicial Court's Order on Limited Assistance Representation, dated April 10, 2009, at http://www.mass.gov/courts/courtsandjudges/courts/probateandfamilycourt/documents/limitedrepresentationstandingorder.pdf.

[2] Under the Supreme Judicial Court's Order on Limited Assistance Representation dated April 10, 2009, each Trial Court Department Chief Justice, in his or her discretion and with the approval of the Chief Justice for Administration and Management, may implement Limited Assistance Representation in such Divisions and in connection with such matters as they may prescribe.

Department adopted it for civil cases. Later in 2010, the Housing Court Department adopted Limited Assistance Representation, followed shortly by the District Court Department in January 2011. Finally, in January 2013, the Land Court Department adopted Limited Assistance Representation. As of the date of this article, the Superior Court and appellate courts have not adopted Limited Assistance Representation, and it is not available in criminal or juvenile cases.

The Supreme Judicial Court in its 2009 Order set forth procedures that apply to all instances of Limited Assistance Representation. Each participating court has also set forth procedures that vary from court to court. For updated information on which courts currently permit Limited Assistance Representation and what the specific protocols and procedures are for each participating court, see http://www.mass.gov/courts/programs/legal-assistance/lar-gen.html and http://www.lawlib.state.ma.us/subject/about/prose.html.

Any attorney who wishes to practice Limited Assistance Representation must first complete a mandatory training and certification in order to become a "qualified attorney." At this time, information sessions and training materials on Limited Assistance Representation are available at the Boston Bar Association, MCLE, and on line at http://www.vlpnet.org/resources/folder.261320-Limited_Assistance_Representation_LAR. Once the training is completed, the attorney must certify in writing that he or she has completed the training and submit the certification to the court, if the court requires that the certification be provided. Lists of qualified attorneys are available at some court websites, clerks' offices, and bar associations.

A client must clearly understand what part of the representation the attorney will be responsible for and what part of the representation the client will be responsible for in any given case. If a client doesn't understand how the work has been divided, Limited Assistance Representation will not be successful. If the client's portion of the case is too complex for the client to fully understand, Limited Assistance Representation is not appropriate, practical, or fair to the client. An attorney must use experience and good judgment to determine whether the work can be divided, how to divide it, and what is reasonable under the circumstances.

The client must give informed consent to Limited Assistance Representation, and the attorney has the burden of ensuring that a client understands the Limited Assistance Representation agreement. Since January 1, 2013, Massachusetts Rule of Professional Conduct 1.5(b) has required written fee arrangements in all cases for which a fee is charged, with few exceptions. Limited Assistance Representation in and of itself falls within the strictures of the rule, unless an exception (total fee of under $500, for example) applies.

Absent an exception, the lawyer must put in writing precisely what the lawyer and the client will each do, and attorneys must draft and execute clear and unambiguous fee agreements, or do the same in a fee letter or memo, describing when the attorney will appear and when the attorney will withdraw. The scope of the representation and the basis or rate of the fee (for example, whether it is a flat fee or an hourly rate) must be in the agreement. In *pro bono* cases, a written fee agreement is not required, but the best practice would be to have a writing clearly delineating the scope of the limited representation and confirming the client's informed consent.

Attorneys appearing in court must file a Notice of Limited Appearance at the outset, using a form prescribed by the Court and stating precisely the court event(s) to which the limited appearance applies. An attorney may not enter a limited appearance solely for the purpose of making evidentiary objections, and an attorney and a litigant may not both argue the same legal issue during a limited appearance. When the limited representation is completed, the attorney must file a Notice of Withdrawal of Limited Appearance, using a form prescribed by the Court. There is no limit to the number of Limited Assistance Representation agreements into which an attorney and a client may enter, but they must always be with the agreement of the client and in writing, if required by Mass. R. Prof. C. 1.5(b). The attorney must file a Notice of Withdrawal for each new Notice of Limited Appearance.[3]

An attorney who has filed a Notice of Limited Representation does not need the court's permission to withdraw once the representation has been completed. However, if the lawyer fails to file a Notice of Withdrawal of Limited Representation, the lawyer will be deemed to have entered a general appearance and will then need the court's permission to withdraw. A lawyer filing a pleading, motion, or document outside the scope of the limited appearance shall also be deemed to have entered a general appearance. If a lawyer has agreed to handle all issues that arise in a matter on one day in court, the lawyer should file the Notice of Limited Representation on the way into court and file the Notice of Withdrawal of Limited Representation on the way out. Whenever service is required or permitted upon a party represented by an attorney making a limited appearance, such service shall be upon the attorney and the party for all matters within the limited appearance.

The ethical rules that apply to full representation apply to Limited Assistance Representation. Attorneys must be mindful that Limited Assistance Representation still involves the creation of an attorney-client relationship. An attorney must be vigilant about avoiding conflicts, representing the client diligently, and maintaining client confidences as in any representation. Any attorney filing a pleading, motion, or document under a Limited

[3] See Supreme Judicial Court's Order on Limited Assistance Representation, dated April 10, 2009, ¶ 2.

Assistance Representation agreement must comply with Massachusetts Rule of Civil Procedure 11(a) and must state in bold type on the signature page "Attorney of [party] for the limited purpose of [court event]."

As the number of *pro se* litigants remains significant or expands, it will be a challenge for the courts and members of the bar to determine how to effectively assist litigants to ensure access to justice without violating the legal and ethical rules and in a way that benefits litigants, courts, and lawyers.