

# BEST PRACTICES FOR PROVIDING LIMITED SCOPE REPRESENTATION

The following guidelines are designed to assist attorneys in developing best practices when offering limited scope representation. LSR does not differ substantially from the rest of your practice, and most of the suggestions which follow are equally applicable to full-scope service. However, there are some specialized issues which require consideration.

It is important to note that limiting the scope of your representation does not limit your ethical obligations to the client, including, but not limited to, the duty to maintain confidentiality, the duty to act competently, the duty not to communicate with another person known by you to be represented by legal counsel in the matter (absent permission from counsel to do so), and the duty to avoid conflicts of interest. It is also important to note that limiting the scope of your representation does not limit your exposure to liability for work you have agreed to perform, nor is such a limitation permissible. LSR does not mean lower-quality services or lower expectations from clients.

## *Deciding on whether to take the case*

- 1. Work within your expertise.** As with all legal representation, strongly consider rejecting a limited scope matter in areas of law in which you or your firm have little or no experience. Taking a case for the “learning experience” is unwise in limited representation, or any representation. For example, it takes significant expertise in family law to be able to anticipate what issues will arise in a matter, and it is necessary to give good counsel and avoid liability. Even where your representation is limited to a particular issue or matter, you may still owe a duty to alert the client to legal problems outside the scope of your representation that are reasonably apparent and that may require legal assistance. Therefore, you should inform the client not only of the limitation of your representation, but also the possible need for other counsel regarding issues you have not agreed to handle. Under limited scope representation, an attorney cannot provide inferior legal work due to incompetence or lack of skill, knowledge or diligence.
- 2. Don’t be pressured by emergencies.** Pay particular attention to prospective clients who have last-minute emergencies and seek limited scope representation. Limited scope representation does not mean that you do not have to provide competent representation. Being pressured to conduct a “quick document review” because of an upcoming deadline is much riskier if you will only be involved in that brief transaction. Consider advice on ways to move the deadline, if possible, to allow adequate time for review, preparation, and representation.

3. **Be wary of clients who take a “musical chairs” approach to finding legal help.** Carefully consider requests from prospective limited scope clients who have involved multiple attorneys in the same case. Bouncing around may be an indicator that the client is searching for the “right” answer after being given what the client believes are unsatisfactory responses to previous analyses of the client’s situation. You should avoid helping to facilitate situations in which a client may blame you for his/her discontent with the outcome. On the other hand, you may find that previous attorneys were uncomfortable with taking a “piece” of the case and that your prospective client simply had trouble finding an attorney like yourself who was willing to work effectively with them on a limited scope basis. The client may have been viewed as “difficult” because s/he was seeking more of a partnership relationship than what the traditional full-scope representation envisions.
4. **Be careful of clients who have unrealistic expectations.** A prospective client may be unrealistic about what s/he can achieve through limited scope representation. Part of your obligation in offering limited scope services is to advise the client about the legal system and the available remedies. Few non-attorneys will arrive on your doorstep with totally realistic expectations. Their beliefs are likely to have been shaped by what they have seen on TV, what they believe is fair, or what they have been told by neighbors or friends. You bring your knowledge and experience with the legal system to the relationship. If you believe that you will not be successful in managing a client’s expectations, you should decline the representation.
5. **Clients with limited capacity or language barriers may not be good candidates.** It is your responsibility to ensure that the client understands the limitations on scope. If the client lacks capacity to give informed consent or lacks the ability to assist in their own representation, then that person will not be an ideal candidate for limited scope representation. Special issues are presented for clients with limited English proficiency, and you should insist on a translator and/or interpreter.<sup>1</sup> The Louisiana Supreme Court’s Office of Language Access provides several resources on their [website](#) including a list of registered and certified court interpreters in Louisiana. Be creative in your fees or look for sources of *pro bono* or low-cost assistance in these cases when limited scope representation is not an option.
6. **Identify those with hidden motives.** Be wary if the prospective client has trouble focusing on the legal outcome even after you have carefully explained the possible remedies available to them. Emotional needs may be driving the request for assistance. While many cases involve an emotional component, litigants who seek revenge are likely to be unhappy with the limited results that the legal system provides and even unhappier with limited scope services.
7. **Make sure the limited scope of your services is reasonable.** Although you and your client have substantial latitude in limiting the scope of your representation, the limitation must be reasonable under the circumstances and the client must give you informed consent. If you conclude that a short-term limited representation would not be reasonable under the circumstances, you may offer advice to the client, but must also advise the client of the need for further assistance of legal counsel. Resist the urge to cooperate and continue forward with an unrealistic client, especially if the limited services sought will not realistically allow the client to continue onward alone.
8. **Special concerns will apply when the prospective client is a survivor of domestic violence.** If you have never worked with victims of domestic violence, it may be best to refer the client to an attorney with experience in this area until you receive training on how to handle domestic violence cases. Training and resources to help you effectively represent survivors of domestic violence are available from the Louisiana Coalition Against Domestic Violence.<sup>2</sup> If a client needs full representation, but cannot afford it, they can apply for free legal aid.<sup>3</sup>

9. **Clearly address the fee structure and its relation to services.** If during your initial interview you find that the prospective client is reluctant to discuss or agree on fees, be cautious. It is critical that the client understands that limited scope services not only limit your fees, but also limit the services that you will perform for them. If anything, your fee arrangement must be clearer in limited scope representation than in full service. You must ensure that there is no misunderstanding about what limited services you have agreed to perform. In limited scope representation, it is crucial to be on a “pay as you go” basis, as you may never see the client again. Do not allow a client to proceed with false optimism or expectations that you will still proceed without payment.
10. **A good diagnostic interview is critical.** It is critical to perform a good diagnostic interview to pick up all the critical issues in the case. Both experienced and inexperienced attorneys will find a checklist of issues in the relevant practice area to be extremely helpful in conducting a good diagnostic interview and in obtaining truly informed consent from a client regarding limited scope representation.
11. **Develop and use an intake form.** A good form should list the key issues and allow room to insert unusual ones. Give a completed copy to the client. It is a contemporaneous record which documents your file, reminds you to ask about related issues, memorializes the limitations on scope, and educates the client.
12. **Advise the client of the right/opportunity/importance to seek advice on issues outside the scope of the limited assignment.** It is probably a good idea to include in your intake sheet or handouts a statement that the client has been advised of the right as well as opportunity and importance to seek counsel on other remaining issues.

### *After you take the case*

13. **Use checklists.** This documents what the lawyer will do before the next meeting. Any checklist you use should be tailored to your specific practice. Fill the checklist out while the client is present and make sure that you both have a copy. It also helps to remind the client and reinforce/reiterate for the client those services that will and those services that will not be provided under LSR.
14. **Use a clear fee agreement detailing the scope of representation.** A good limited services fee agreement will spell out exactly what you are doing for the client, and even more importantly, what you are not doing, and will detail what responsibilities the client will assume. There should be no confusion about the scope of the representation. If the terms of the original fee agreement change, such as there is a *change in the scope of representation*, a new fee agreement should be entered into to avoid any confusion as it relates to the new scope of representation. A new agreement will help prevent misunderstandings as to the details and extent of the LSR.
15. **Create a support group of experienced colleagues.** Limited experience with handling limited scope representation poses special challenges for newer attorneys or those new to a particular practice area. An experienced practitioner can confirm your analysis, suggest additional issues to explore or divert you from a proposed course of action. You might want to locate colleagues who are experienced with offering limited scope representation, and consider creating a study group, referral sources, or general references for each other. Meet with them periodically to discuss common problems and solutions. Most of the issues which will come up in a limited scope practice are practical and procedural rather than ethical, and it can be immensely helpful to talk to other practitioners who have faced the issues and developed solutions.
16. **Practice defensively and document all decisions.** This is good advice in any type of legal work. Use a “Follow-Up Checklist” to document your file and educate the client easily and efficiently.

17. **Memorialize any changes in the scope of your limited representation as they occur.** Never do work outside the scope of the original agreement without a new agreement signed by the client. Doing so creates opportunities for a client to become confused as to the limited scope representation or even to claim and argue that you were not clear about limiting the scope of the representation. The checklists previously mentioned are a simple and reliable reference tool to avoid this. A confirming letter that the client does not sign will probably be insufficient to effectively document the new limit in scope. Be sure that you and the client both sign off on any changes in scope.
18. **Use prepared handouts.** Many of you will already have prepared handouts on common questions which arise in your practice. It is helpful to have one which describes limited scope representation and details the specific options available. Note on your intake sheet which handouts you gave to the client and on what date. You may even wish to consider having the client initial individual items on your checklist, signifying receipt of these handouts when provided.
19. **Explain “how” Limited scope representation benefits the client.** A client who understands the “big picture” and the tradeoffs will not only be more successful in making decisions regarding representation, but also less likely to blame you for unwanted or truly unexpected outcomes. -
20. **Do not encourage a client to act as a *pro se* litigant and handle a matter that is too technical or difficult.** A prime example of this problem is preparation of a QDRO. Part of your responsibility as an attorney is to counsel a person against handling such a matter *pro se* and to help them understand the cost/benefit analysis of using their litigation budget wisely to acquire the expert assistance in the areas where they most need it. This is an individualized assessment. You do the client no favors by enabling him or her to get into situations where s/he should not be without counsel.

## *Ending the relationship*

**Let the client know when your involvement has ended.** There should be no surprises either to you or the client about when your involvement in the matter has ended, and no unstated expectations of continued participation on your part. Send out a notice at the end of your involvement in a matter that involves a series of steps. Notify the client that you believe you have completed your part and advise him/her to get in touch with you immediately if s/he disagrees. Use good judgment. Many of these suggestions apply equally to full-service representation. Your limited scope clients are likely to be more satisfied than your full-service clients if you follow these simple practices, which do not take much effort and will document your file and educate your clients in ways which substantially increase the likelihood of a satisfactory relationship.

## FOOTNOTES

1. LA. STATE BAR ASS'N, USE OF COURT INTERPRETERS: AN ATTORNEY REFERENCE CARD, <http://files.lsba.org/documents/ATJ/attorneycard.pdf> (last visited May 21, 2021).
2. LOUISIANA COALITION AGAINST DOMESTIC VIOLENCE, <https://lcadv.org/> (last visited May 21, 2021).
3. *Find Legal Help*, LA. STATE BAR ASS'N., <https://www.lsba.org/public/findlegalhelp/> (last visited May 21, 2021).