

INTRODUCTION

In 2018, the Louisiana Access to Justice Commission launched the Modest Means Directory, an online listing of attorneys who offer affordable legal representation to low and moderate-income families in Louisiana. Typically, these are individuals who earn between 200 to 400% of the Federal Poverty Line (FPL). In Louisiana, more than 1.3 million people fall within this range of earned income. This has continued to increase in the wake of the pandemic.

To meet the growing demand for affordable legal services, attorneys are developing innovative methods to reduce the cost of legal services. For example, lawyers are leveraging legal technology, such as document automation and form generation software, to increase capacity and serve more clients. In addition, attorneys are offering “unbundled” services or representation that is limited in scope. By limiting the scope of the legal representation, the attorney is able to charge less than the lawyer would for full representation, and the client is able to obtain representation for a particular matter that he or she may not have been able to obtain otherwise.

Because traditional delivery models cannot serve the vast pools of potential clients falling between 200 to 400% FPL, limited scope representation has been the legal profession’s response to the consumer’s demand for legal services. People want legal services that they can afford. In certain matters, limited scope can make affordable legal representation possible.

The Louisiana Access to Justice Commission developed this toolkit as a guide for attorneys interested in offering limited scope representation or unbundled legal services to increase access to justice for modest means clients. The toolkit contains: an overview of the rules pertaining to limited scope representation, commonly asked questions, forms, and helpful resources. It is specifically geared to help attorneys offering limited scope representation through the Modest Means Directory available at www.lsba.org/ATJCommission/ModestMeans.aspx.

For more resources and information like this, join the Modest Means Directory. Attorneys who offer affordable legal services through the Directory have access to free CLEs, forms, and resource guides. Contact the Access to Justice Program at 504-561-1600 ext. 148 or amy.duncan@lsba.org with questions or comments about the Directory or resources available.

LIMITED SCOPE REPRESENTATION AND ACCESS TO JUSTICE

Louisiana is home to 4.65 million people, making it the 25th most populous state in the nation and the 10th most populous state in the South.¹ However, almost 20% of Louisianans fall below the poverty line, which in 2020 increased to \$26,200 for a family of four.² Median household income in Louisiana between 2014 and 2018 was \$47,7942,³ meaning half of the households in Louisiana made this amount or less. To qualify for free legal aid, a household of four must earn less than 125% of the federally recognized poverty level⁴ or \$32,750.⁵ A household of four that earns the median income in Louisiana falls above the guidelines for free legal aid and is, therefore, often not eligible to receive free legal aid. Historically, this is considered the *Justice Gap*, the difference between the civil legal needs of low-income persons and the resources available to meet those needs.

The most vulnerable populations tend to experience higher incidences of legal needs. In 2018, the Louisiana State Bar Association Access to Justice Commission published the Unmet Civil Legal Needs report (Unmet Needs), finding that 54% of survey participants, at or under 200% Federal Poverty Level (PFL), had experienced a legal issue at some point in their lives, with over half of those respondents identifying at least one civil legal issue within the last two years.⁶ On any given year, Louisiana's legal aid system faces the potential for almost half a million legal issues. The Unmet Needs study found that 44% of respondents had no idea how to receive help or help themselves. Those individuals were unfamiliar with legal aid, pro bono legal help, low-cost attorney directories, *pro se*, or online resources and managed their legal problems alone.

An article by the American Academy of Arts and Sciences on the Justice Gap report states that “[a]ccording to a recent report of the Legal Services Corporation, 71% of low-income households experienced at least one civil legal problem in the previous year, yet they received inadequate or no legal help in 86% of the problems they reported.” The report further indicates that “[t]he consequences were often devastating, since unrepresented litigants are at a distinct disadvantage in disputes over health care, housing conditions, veterans’ benefits, domestic violence and access for people with disabilities, among other problems.”⁷

The *Justice Gap* is nothing new. In recent years, however, it underscores the need to find new and sustainable solutions to addressing the unmet civil legal needs of households sometimes referred to as ALICE - Asset Limited, Income Constrained, Employed.⁸ ALICE households earn above the poverty level but below the Household Survival Budget. The Household Survival Budget identifies the minimum cost for each of the seven basic household items needed to live and work in today's economy: housing, child care, food, transportation, technology, taxes and health care.⁹ The cost of these expenses increased steadily in every parish in Louisiana since 2010. It goes without saying that if these households cannot afford basic living expenses, the cost of civil legal assistance is out of the question. Limited Scope Representation (LSR), however, presents a way for the legal community to help address the unmet civil legal needs of those Louisianans who find themselves in the *Justice Gap* and/or are ALICE households.

Under LSR, a lawyer provides only the specified, agreed-upon legal services to a client rather than handling all aspects of a client's case. This form of legal practice is also referred to as "unbundled legal services" or "unbundling." For example, in a divorce case, the client and the attorney might agree that the attorney will only draft certain documents or will only provide legal advice on how to handle the case, and that the client be responsible for all other aspects of the case. LSR is applied by attorneys across the country and used in a variety of practice areas. It serves as a potential solution to the growing number of people who cannot afford a lawyer and must represent themselves in court.

Albeit limited scope representation is a win-win for both the lawyer and the client. Limited scope representation: allows the client to pay for only the legal help s/he needs and may not have otherwise been able to afford; helps the client avoid high court costs associated with improper form filings; is beneficial for lawyers who can earn fees they may not have otherwise been able to receive; supports lawyers in building a client base from an untapped market; helps lawyers gain access to a larger pool of clients who can pay some fees but cannot afford full-service representation; allows lawyers to offer limited scope representation services for an upfront fee, which eliminates the risk of non-payment; often generates full representation once the legal matter is discussed with the lawyer; allows lawyers to fulfill their ethical and professional duties to provide access to justice; and increases transparency in pricing so the client knows what to expect and the limitation of the services provided.

Moreover, courts and the legal system as a whole benefit from attorneys who competently offer LSR to clients. A court hearing involving an order for child support payments often takes only a few minutes with a litigant represented by an attorney yet can consume extended court time when the litigant is not represented by or has not sought advice from counsel. This results in a waste of judicial resources and poor results for the *pro se* litigant. When transactional lawyers are not involved in a final review of documents, costly litigation can result. Unbundled legal services are based upon the premise that some form of competent legal representation is often better than no legal representation. LSR can safeguard the filing of intelligible pleadings and ensure procedural requirements are met.

Limited Scope Representation and COVID-19

In 2020, the world faced a global pandemic due to the spread of COVID-19. The virus had an impact on the physical health of people throughout the world. It also affected many other facets of life. Like nearly all other states, Louisiana was forced to shut down and support social distancing to prevent further spread of the virus. While these were critical lifesaving measures, it has also been a time of catastrophic rises in unemployment and increased economic hardships for many already struggling before the pandemic.

During this time, courts were forced to close. Due to the closures and social distancing measures, judges and lawyers explored ways to handle legal matters remotely. To allow some accessibility to the legal system, many courts turned to virtual conferencing programs to schedule and hold hearings for emergency matters. Lawyers held client consultations and document review online to meet the continued demand for legal help. Amongst the legal profession, technology was embraced to ensure a level of continuity in handling litigation and legal matters.

Eventually, Louisiana saw a decline in the spread of the virus and the state was able to reopen agencies, courts, businesses, and community organizations. However, the pandemic left a lasting effect on the legal industry and access to justice in two major ways. The first is the impact on legal needs and ability to pay. Due to court closures and less access to the legal system, an increase in unaddressed legal matters arising prior, during and after the pandemic associated with family, unemployment, and housing law occurred and continues to impact the justice system. Additionally, income levels have been affected due to business closures and a shrinking economy resulting from the pandemic. The second, but hopeful, result is the expanded use of technology by lawyers and judges, where applicable.

There have been several measures taken to address the disparities people experienced during the pandemic. While unbundling legal services alone does not present a solution to the many issues mentioned, it does, however, present one way to address the rise in unresolved legal matters, some of which occurring in light of the pandemic. First, LSR presents a model

to maximize capacity for law firms to address legal needs that may go unresolved previously. If an attorney provides services limited in scope, then these services can be offered on a larger scale when compared to full scope representation. In some cases, the increased need for legal services can be satisfied at a greater rate with limited representation offerings. Second, services that can be offered remotely, where both the attorney and client have access and capacity to use the necessary technology tools and platforms in accordance with the law, widen access capabilities to further the reach of services. While limited scope representation might not be able to solve all legal needs and issues arising out of the pandemic, it does play an important role in the public's access to the legal system and can simultaneously help attorneys grow their practices.

FOOTNOTES

1. U.S. CENSUS BUREAU, QuickFacts: La., <https://census.gov/quickfacts/LA> (last visited May 20, 2021) [hereinafter Quickfacts].
2. U.S. DEP'T OF HEALTH & HUM. SERVICES, HHS Poverty Guidelines, <https://aspe.hhs.gov/poverty-guidelines> (Jan. 15, 2021) [hereinafter Guidelines].
3. See Quickfacts, *supra* at n.1.
4. See 45 C.F.R. §1611.3 (2005) (explaining financial eligibility policies).
5. See Guidelines, *supra* at n.2.
6. LA. STATE BAR ASSOC.'S ACCESS TO JUSTICE GAP ASSESSMENT SUBCOMM., *Understanding the Unmet Legal Needs of Low-Income Individuals in Louisiana* (2018), <https://www.lsba.org/documents/ATJ/20182019LegalUnmetNeedsReport.pdf>.
7. Press Release, AMERICAN ACADEMY OF ARTS & SCIENCES, *New Issue of Daedalus Takes on the Justice Gap Facing Poor and Low-Income Americans* (Jan. 7, 2019), <https://www.amacad.org/news/new-issue-daedalus-takes-justice-gap-facing-poor-and-low-income-americans>.
8. LA. ASS'N. OF UNITED WAYS, *The Alice Reports for Louisiana* <https://www.launitedway.org/ALICE> (last visited May 20, 2021).
9. *Id.*