

Maybe We Should Take That Random Matter



Donald G. Rockwell

I don't know about you, but over the course of several years as a sole practitioner I received hundreds of random calls from individuals who would say something like, "I really can't afford an attorney, but can I come in and meet with you about a legal problem?"¹ My reaction was always to inquire about the nature of the problem in hopes of directing the caller to the best resource—frequently to our local attorney referral service.

After hanging up, I would often wonder whether I did the right thing. I would tell myself that I have a continuing duty (don't I?) to donate time or money or both (and I do donate) to help those who cannot afford an attorney. Even with the brief self-lecture, I knew that with the next random call, I would do the same thing—refer the caller elsewhere, in significant part because I didn't want to immerse myself in a matter that would take too much time and effort knowing that an attorney was required to *fully* appear and represent a client, even one of limited resources.

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Changes in our world of legal practice are developing as I write this. State Bar work groups are addressing these changes, one of which has already been approved by our Supreme Court. The focus of these changes is improving access to justice for those with limited resources. Access to justice is always a critical issue, and one at the forefront of the recommendations of the SBM 21st Century Practice Task Force.

The State Bar has appointed an Implementation & Innovation Steering Committee, chaired by Treasurer Dana Warnez, which works to accomplish the goals of our Strategic Plan by overseeing the changes in how we practice. This column addresses two of these changes.

The first change concerns the new limited scope representation rules, which became effective on January 1 of this year.² The Michigan Supreme Court modified Professional Rules of Conduct 1.0, 1.2, 4.2, and 4.3 and Court Rules 2.107, 2.117, and 6.001 to allow for unbundling of legal services, permitting attorneys to provide focused and discrete representation on a limited scope without the requirement of traditional full representation at every step of the legal

process.³ Some important points to consider are:

- Attorneys perform one or more discrete legal tasks such as preparing pleadings, conducting discovery, making a limited court appearance, or negotiating a possible settlement.
- Attorneys will assure that limited scope representation is reasonable under the circumstances and that clients give informed consent, preferably in writing.⁴
- Michigan rules exclusively address private civil matters rather than criminal matters. Many believe they will work best with landlord-tenant disputes, expungements, noncomplex consumer or tax matters, simple divorces, and other domestic and family law issues.
- Courts benefit from better-prepared pro se litigants and fewer delays. Clients benefit from attorney expertise and reduced legal fees.
- Attorneys gain access to an untapped market of otherwise self-represented litigants, increased revenues, and a growth in practice.

The heart of this change in the required scope of an attorney's representation gives rise to a second thought because we can now test the legal water with our toes, eliminating the need to jump in headfirst.

These developments are about serving the public in a way that complements our moral and ethical duties to provide legal services to those of limited resources.

The 30 states with established limited scope representation rules have demonstrated through experience its many positive benefits.⁵ Now that we have a major change in the required scope of an attorney's representation, perhaps each of us (me included) will now give a second thought to that random telephone call that begins with someone saying, "I can't afford a lawyer but can I..." The heart of this change gives rise to a second thought because we can now test the legal water with our toes, eliminating the need to jump in headfirst.

A second change that is developing with the efforts of another work group is the Modest Means pilot project where attorneys, in conjunction with the State Bar's Lawyer Referral Service, agree to represent eligible clients for a reduced or fixed fee. The typical fee in the pilot project is anticipated to be \$75 per hour with a maximum \$750 retainer fee. To be eligible for a Modest Means attorney referral, clients must fall at or below 200 percent of the federal poverty guidelines with liquid assets not exceeding \$5,000. The potential client may seek a preliminary 25-minute consultation with an attorney for an administrative cost of \$25. Initial matters covered in the pilot project are family law and Chapter 7 bankruptcy cases.⁶

As with limited scope representation, the Modest Means program focuses on providing legal service to individuals with limited financial means who otherwise would be without legal representation.

I mentioned in an earlier President's Page article that only 20 percent of the legal needs of individuals of limited income are being met.⁷ This depressing and alarming statistic must be addressed by the legal community. Moreover, the inefficiencies of pro se

litigants in our court system is just one part of the depressing statistics. Both of the changes mentioned here are, in my estimation, positive steps toward opening access to our justice system and provide a source of legal work, experience, and exposure for many of our members.

The bottom line, of course, is that these developments are not just about us, the members of the State Bar. Rather, they are about serving the public in a way that complements our moral and ethical duties to provide legal services to those of limited resources. ■

ENDNOTES

1. Understandably, I would seldom take random calls when I had a secretary to screen my calls; it was only when I was answering my own phone as a sole practitioner.
2. SBM Past President Lori Buiteweg initially wrote about this in greater detail; see Buiteweg, *Limited Scope Representation: A Possible Panacea for Reducing Pro Per Court Congestion, Attorney Underemployment, and a Frustrated Public*, 95 Mich B.J. 10 (August 2016) <<http://www.michbar.org/file/barjournal/article/documents/pdf4article2927.pdf>>. All websites cited in this article were accessed February 21, 2018.
3. Admin Order No 2016-41 (September 20, 2017) <http://courts.mi.gov/Courts/MichiganSupremeCourt/rules/court-rules-admin-matters/Administrative%20Orders/2016-41_2017-09-20_FormattedOrder_AmendtOfMRPC1.0-1.2-4.2-4.3-MCR2.1072.1176.001.pdf>.
4. Please see the related article on "informed consent" and "confirmed in writing" by John W. Allen in this month's *Bar Journal*.
5. For attorneys licensed to practice in Michigan, helpful resources are available at State Bar of Michigan, *Limited Scope Representation Rules Adopted by Michigan Supreme Court* <<https://www.michbar.org/News/NewsDetail/nid/5494>>.
6. State Bar of Michigan, *How the SBM Modest Means Program Works* <<http://lrs.michbar.org/LRS-Info/Modest-Means-Program#collapse2>>.
7. Rockwell, *Access to Fairness*, 96 Mich B.J. 14 (November, 2017) <<http://www.michbar.org/file/barjournal/article/documents/pdf4article3249.pdf>>.

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