



# PLI WEBINAR SUMMARY

## Limited Scope Representation: Ethical and Practical Considerations (2017)

### [Abstract](#)

#### Training Considerations for Michigan Attorneys Utilizing This Service

Background: This information comes from **Practising Law Institute's panel on Limited Scope Representation: Ethical and Practical Considerations (2017)**. The panel consisted of an ethics professor from Columbia Law and three attorneys who put on clinics for low-income clients in New York City and Chicago. The clinics utilize LSR so they can effectively serve a large number of people in a short window of time.

Focus: The information is synthesized from this panel as it would pertain to solo practitioners in the State of Michigan who wish to utilize Limited Scope Representation to expand their client base.

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# Segment One

## Professor Phil Genty—Columbia Law

### Legal Services are Provided in Three “Models”

1. Full service model—traditional, lawyer takes care of all the client’s legal needs.
2. “Noticed Representation”—there is a full attorney/client relationship however the attorney only represents the client in court in a limited scope.
3. “Undisclosed Representation”—two sub-models
  - a. Advice Only—the attorney does not necessarily WORK for the client
    - i. This could be preparing canned pamphlets for generalized advice, talking to a client in an informal setting (on the phone or online)
  - b. Ghostwriting
    - i. Working directly for the client, preparing the materials for the client’s specific case

Goal: there is an unmet need for legal services and these modern forms of representation make sure we are “stretching resources” to meet the needs.

### Ethical Issues (2)

#### 1. How to determine when an attorney/client relationship has been formed.

Full Service vs. LSR

- In a full service legal model, this is more obvious due to the more formal setting of the interactions
- LSR interactions may feel more informal but Professor Genty said to learn the line between **advice** and **information**
  - Information—generalized information about legal proceedings (i.e. in X scenario you utilize Y motion, etc.)
  - Advice—when you start applying legal analysis to the *specific case of a client*
    - At this point, you have probably crossed the line and you now have the duty or responsibility of an attorney/client relationship

Crossing the Line from Information to Advice

- Once you have crossed the line to advice but you only want to work in an LSR capacity it is important to immediately **LIMIT THE SCOPE**
  - Example: I will give you advice on this matter but I will not go to court for you
  - This is best done in writing in case it turns into a Notice of Limited Representation pursuant to rule **MCR 2.117(B)(2)(c)**
- There are two requirements for limited representation under the ABA 1.2(C)
  - The limitation must be reasonable
  - There must be informed consent

- The ABA does not provide a definition for reasonable but the notes outline that the lawyer must be competent and diligent and the client must be *better off with the representation*

## 2. How to determine conflict of interest in an LSR relationship.

A conflict of interest check is always performed for full scope representation

In the Model Rules—conflict of interest rules are relaxed for limited services where there is no expectation of continuing legal services. Conflict checks are only required unless the conflict is already known by the attorney, then they must act appropriately.

The two requirements for this relaxed conflict of interest checks are:

1. Short-term representation
2. “Anchored” by a sponsored legal service provider

Michigan Rules of Professional Conduct only instruct: *“The lawyer should adopt reasonable procedures, appropriate for the size and type of firm and practice, to determine in both litigation and nonlitigation matters the parties and issues involved and to determine whether there are actual or potential conflicts of interest.”* Section 1.7 Comment “Loyalty to a Client”

For purposes of a training it would be important to determine exactly what the attorney’s duty is for determining a conflict of interest in a limited representation sense.

## Practical Issues (2)

### 1. Lawyers working with non-lawyers in an LSR scenario. → THE NEW YORK BAR SPECIFICALLY ADDRESSED THIS SCENARIO

Hypothetical Situation: A social worker or someone who works with low-income populations calls the attorney to ask for legal advice on behalf of a client. The question is: is it ethical to respond?

- The attorney is technically working on behalf of the client if they cross the line from information to advice (see above)
- While the non-lawyer is describing the legal problem, the attorney could be forming a relationship with the client as the non-lawyer working as an *agent*.
  - It is important for the attorney to determine if the non-lawyer/agent is aware of what the client truly needs or wants.
  - It is important to CLARIFY roles and responsibilities in this situation and, more importantly, to define the scope of the representation

### 2. Being mindful of doing too little.

Confidence in Competence

- LSR attorneys oftentimes will have limited interactions with their clients
- Communicating with a middleman regarding a client’s specific legal issue goes into the bigger problem of assuring the necessary information is there to help the client
- Professor Genty—“LSR attorneys probably need to be MORE competent than a full-service attorney because they *may not have a second chance to get it right*”

- The attorney’s interaction with the client may only be once
  - On the phone, online, at a walk-in clinic
- There are many things to consider in a short time frame: conflict of interests, awareness of “benign issues” that can become larger problems in the future, hidden and unanticipated legal questions that clients may not be forthcoming about in a short interaction.
- The PLI solution: anchoring

#### Anchoring

- When private-practice attorneys work under a sponsored program, there is a wider safety net for catching mistakes and giving clients a way to re-contact if anything goes wrong
- This is especially important the representation is stemming from a singular interaction

#### Where Private Practitioners May Diverge from Non-Profit Legal Providers

- Solo practitioners probably will not run into as many conflict of interest problems
  - Large non-profit providers would have this problem more frequently
- If the attorney is communicating with a third party regarding a specific legal issue, there may not be as much confidence in the person and therefore a duty to ensure that the “agent” is truly representing the client’s interest.
  - A large sponsored program is more likely to work closer with social work programs or low-income outreach groups so there would be more of a relationship and therefore more confidence.

## Segment Two

# “Model Sponsored Programs” —Clinics in New York and Chicago Utilizing LSR

The second part of the program focused on how clinics utilize LSR. The overarching idea is that all attorneys who work in clinics work in a limited scope sense because the attorney/client relationship terminates when the client leaves the clinic.

Focus: Adapting the information regarding how clinics avoid potential LSR pitfalls to benefit solo practitioners.

**Potential Pitfall 1:** Does the client understand when the attorney/client relationship has ended?

→ Many clinics struggle with a client walking away from the interaction and saying “my attorney \_\_\_\_\_” because they do not fully understand that the attorney is not retained by them they just assisted with one legal issue.

- Ultimate solution: informed consent. Attorneys, in writing and orally, need to make sure a client understands *before representation* (to the extent that is possible) the scope of the attorney’s duties to the client.
  - Place based—the attorney limits to only the interaction in the office
  - Issue based—the attorney limits to the singular legal issue

- Population based—the attorney limits a particular service to one class of individuals (i.e. veterans or immigrants)
- An attorney SHOULD NOT refuse future contact to “limit” the scope. Possible solutions are ...
  - Give contact information with a disclaimer that the attorney is not retained by the client for the interim between legal issues
  - Partner with a legal service provider (Michigan Advocacy Program, A Lawyer Helps, Law School clinic, etc.) to handle follow up questions or just provide a general safety net for future problems.

**Potential Pitfall 2:** The “over-caring” lawyer who cannot limit to LSR.

→ Clinics saw issues with attorneys struggling to limit the representation because it is the nature of the profession to want to help with all problems. This was particularly prevalent in cases of immigration attorneys who wanted to help with crimes committed against immigrants but were limited to only to the deportation/overstay proceedings.

- IMPORTANT: LSR attorneys need to know how to say “I do not have an answer for you”/”this is outside the scope of what I am offering you.”
- Ultimate solution: lean on referral services
  - This is especially important if the attorney is not working pro-bono and is charging the client for his or her services.
  - The attorney has to establish a solid base of free/moderately priced services to which they can send clients and feel more at peace with limiting the representation

**Potential Pitfall 3:** Creating comprehensive tools/documents to make the LSR process easier.

→ An attorney who has only utilized full-service representation up to this point should consider drafting a new set of documents/resources for his or her clients. This could be an intake form.

- An assistant, intake worker, or the attorney should review this form with any potential LSR candidates (if they come in wanting LSR)
- If a client comes in and does not realize LSR is an option, an attorney can present the LSR form and explain to candidates he or she believes are applicable.
- *Useful tool:* pricing sheets that break down legal issues into “a la carte” options.
  - Ex. rather than presenting one, fixed price for a divorce proceeding have a form that breaks down the price into each specific issue so a client can visualize what they can or cannot afford.
  - This makes billing much simpler and makes the process more transparent.
- Other provisions to possibly include:
  - “my duties as your attorney will terminate when \_\_\_\_\_” (ex. you leave the office, the trial is over, etc.)
    - Set a clear time so a client understands the scope
  - A refusal to provide representation in an LSR capacity if the client does not consent to your terms
    - Turn the client away or insist on full-service representation
    - It is important that the attorney set the scope
  - “I will do my best to refer you if I come across an issue outside the scope of my representation”

- If the attorney is not going to trial ... make that extremely clear
- A waiver section that tracks the ethical rule which states that [if there is a relaxed conflict of interest duty] the attorney is not liable for conflicts of interest that may come up
- Is the attorney open to the idea of transitioning to full-service representation if it is an emergency/absolutely necessary
  - If no, this should also be included in the form

**Potential Pitfall 4:** Determining what falls “inside the scope” and setting boundaries.

→ Some legal issues are more conducive to LSR than others, so attorneys who chose to utilize LSR should be cognizant of which legal issues work well and which do not. It is important to be flexible to more complex issues and be open to referral or full-service representation, depending on budget.

- Be aware of issues that are ...
  - Time sensitive
  - Involve extremely vulnerable clientele
  - Outside of the scope of cases an attorney can take on an LSR basis (i.e. is it criminal or civil?)

**Potential Pitfall 5:** Making a client feel disserved by LSR/ignoring important issues on the basis of LSR.

→ It is important a client feels like his or her needs are met by LSR so he or she can feel safe utilizing it as an option in the future. As mentioned, an attorney using LSR may have less chances to “get it right” the first time so they need to be thoughtful and careful as to not waste the court’s time or the client’s.

- In an LSR interaction an attorney should make sure...
  - The client is being forthcoming about all things that could be pertinent to the case
  - Even though it is limited a client should not feel rushed
  - The space should be comfortable
  - The client should know the consequences of choosing LSR over FSR
  - They are open to hearing all information from the client so THE ATTORNEY makes the determination about what is inside the scope and what is not
    - Should not dismiss information too quickly for being “outside the scope”

### Conclusion

Limited scope representation is a great tool for helping low-income clients, expanding the client base of an attorney, and making legal services more approachable for many people. If it is done carefully and thoughtfully, it can be extremely useful. An attorney should be the one who sets the scope of his or her duties to the client and follow clearly explained guidelines if they wish to use this tool.