



PLI WEBINAR SUMMARY

Expanding Your Practice Using Limited Scope Representation

Abstract

This is summary of a Web Program hosted by the Practising Law Institute (PLI) featuring speaker M. Sue Talia published on February 1st, 2018. She covers the basics of Limited Scope Representation, explains how to create effective risk management materials, expands on national trends that make LSR prevalent now, and advises on how to market an LSR practice.

Summarized by: Lucy McManaman
Law Student Intern – ATJI State Bar of Michigan

Part 1 – What is Limited Scope Representation (LSR)?

a. What LSR is not

- It is not limited liability
 - Lawyers may not limit the standards of care just because the scope is limited
 - You owe your client the same standard of care as if you were performing that task in a full-service representation
 - Not a second-class practice
- It is not unethical
- It is not inherently dangerous if you are careful
- This is not just for “poor people”
 - Even people with middle class lives just cannot afford full representation
- It is not good for every case
 - Some cases are too complex to benefit from LSR.
 - Be conscious of which issues work and which don’t
- It is not good for every client.
- **What LSR is** – it is quality practice of law
 - There is an attorney/client relationship
 - The same rules apply
 - The limitation here is only in scope
 - It is a profit center if done correctly

b. Why is LSR prevalent now?

- Consumer demand from a changing demographic
- Traditional models of law cannot effectively serve all legal needs
 - This is a response to the bar’s demands
- Courts are overwhelmed
 - Courts benefit from having well-coached litigants and well-drafted pleadings
- Most of the issues in LSR are practical, not ethical

c. Defining Limited Scope Representation

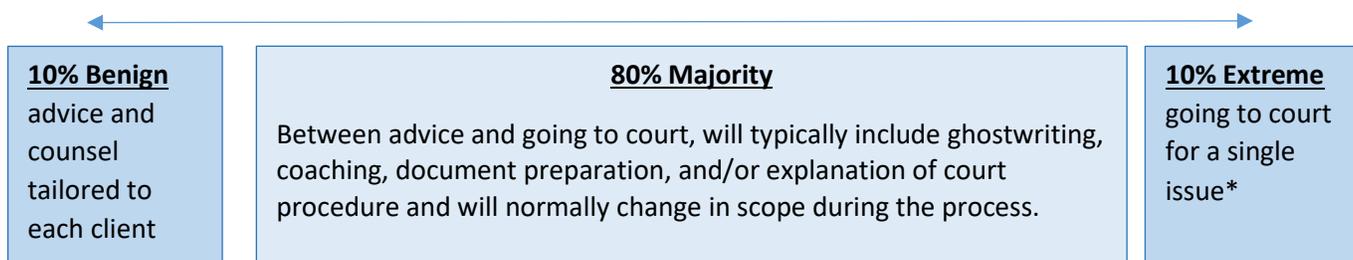
- Other names: unbundling, discrete task representation, coaching
- LSR is addressed for the first time by ABA Model Rule 1.2
- For non-profit and court annexed ABA Model Rule 6.5
 - **Sue says:** the ABA rules should include a requirement that LSR arrangements be in writing however this instruction *does not exist in the rules*
 - ABA Rule 1.2 (c) - A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

Michigan Rules

- MRPC 1.2 (b) - A lawyer licensed to practice in the State of Michigan may limit the scope of a representation, file a limited appearance in a civil action, and act as counsel of record for the

limited purpose identified in that appearance, if the limitation is reasonable under the circumstances and the client gives informed consent, **preferably confirmed in writing**

- This is where most of the practical issues come into play
- Areas of practice conducive to LSR:
 - Family Law
 - Consumer Law
 - Landlord/Tenant Law
 - Homeowner Association Law
 - Special Needs Advocacy
 - Takeaway: any situation where a civil litigant is interacting with a regulatory agency
- Think of LSR like a sliding scale:



*most prevalent in non-profit/court-based programs

- The middle ground must be tailored to each individual case
- The most important thing to keep in mind is: the scope of representation changes
 - More often than not, they will try a legal task themselves and fail and have a greater appreciation for what you do and then expand the scope

d. Four basic ethics rules you need to know for LSR

1. **All limits should be informed and in writing.** (**MRPC 1.2(b)** says *preferably in writing*)
 - a. Client must understand the difference between full representation and limited representation and that is the attorney's job to help them understand
 - b. Sue's Rule: must be in writing, because if there is any miscommunication or misunderstanding as to the scope, the deference is to the clients
 - i. This is a safety measure for the attorney
 - c. It is important to have a bright-line rule
 - d. Most disputes will be resolved in favor of clients
 - e. **Key tool: *checklist***
2. The arrangement must be reasonable under the circumstances.
 - a. Take into consideration: complexity of the case, language barriers, whether or not the task is something you can coach them to do (use common-sense)
 - b. Split off a very technical issue and give them the more general issue
3. Changes in scope must always be documented
 - a. the scope almost always increases

- b. **Sue says:** if you are not disciplined enough to document all changes in scope you will not have success with LSR.
- 4. Clients must be advised on related issues even if they do not ask
 - a. **Example:** Nichols v. Keller, 15 Cal. App. 4th 1677 (1993).
 - i. Parties – Keller (attorney) & Nichols (plaintiff in a workman’s comp case)
 - ii. Facts – Nichols was injured during the scope of his employment. Keller only did workmen’s compensation cases, he had a sign on his door making that very clear. Keller did not tell Nichols that he had a personal injury claim against the driver of the other car. Nichols had a personal injury claim against his employer but was unaware of it and the state of limitations ran.
 - Keller’s defense – I’m not qualified to do personal injury, only workman’s compensation
 - iii. Procedural Posture – Nichols sued Keller for ineffective counsel because Keller did not inform him about his Personal Injury claim even though he did not do PI Law.
 - iv. Held – The Court of Appeals found in favor of Nichols because it found that Keller had a duty to at least tell him about the claim.
 - Not making him represent him
 - v. Reasoning - the attorney is much better suited to knowing about the other claim than the client, so he or she has a duty to at least inform
 - b. Takeaway: do a thorough intake and use common sense.
 - i. Intake is a non-delegable task, do not give the job to a paralegal
 - ii. Attorney/client questions to determine ALL possible legal issues
 - iii. Attorney must make sure he or she has met all the standards

e. Client selection

- Most common tasks done by an LSR attorney: document assistance, procedural advice, strategizing, attending the occasional hearing
 - Service of process is what **Sue found** confused people the most and it ties up the court’s calendar, so it is a very common and effective use of LSR
- The “poster child” of LSR
 - Used to gathering information, making informed choices based on that information, and will take responsibility for their actions, want help navigating to a reasonable, practical solution
 - A client who can do his or her own research
 - Takes responsibility for tasks
 - Practical and organized
 - Recognizes what his or her legal problem actually is
- The “client from hell”
 - A client who has gone to too many attorneys, doesn’t like any of them
 - Pitches “will you be my coach I should have represented myself a long time ago”
 - Argues with you about the direction of his or her case
 - Has unrealistic expectations
- **Sue says:** when in doubt just say no to the client

- Most people will be somewhere in between a poster child and a hell client
 - However, consistently LSR clients will be inherently distrustful of attorneys
- Best tool: speak to them using “consumer terms”
 - Say “this is how we can use your litigation budget most effectively”
 - Explain the law in a commodified way “this part of your case vs. this one”
 - Tell them candidly if you are uncomfortable about something
 - Explain the limits of your abilities, you are making a consumer decision by doing this part pro se and prepare them that there might be unexpected things in trying to do it themselves
 - Help them understand exactly what they are getting
- The misconception:
 - Attorneys think they are selling hours
 - Clients think they are buying results
 - Clients are very skeptical of billable hours
 - But after they try it themselves and realize how difficult it is they are more trusting
- LSR clients are wary of attorneys
- They think attorneys are trying to pad their hours
- You must speak to them in consumer terms
- They typically end up being your happiest clients
- Insurers say that clients are **much less likely** to sue an LSR attorney
 - There is no proof of increased claims
 - Conclusion: it is not inherently dangerous to practice LSR

f. Judges and LSR

- Attorneys fear that judges will make them stay on to represent a client because they are sick of pro se litigants
- Specifically to ATJI – it is important to educate judges
 - Lawyers will not take the chance of going to a court with Pro Se litigant if they think the judge won’t let them out
 - There should be a form submitted to the court explaining the scope exactly so a judge does not try to make an attorney overstay
- For attorneys it is important to document that you are an LSR attorney before going to court
- Getting out is a practical issue for lawyers
 - Always send a closing letter
 - Checklists are your best friend

Michigan Rules

- See MCR 2.117(C)(3) - The attorney can get out of his or limited scope representation by properly filing and serving a notice of withdrawal. The barrier to “getting out” of the relationship is the client, who may file and serve an objection to the withdrawal. No mention in the rules about a judge barring exit.

g. Redefining the scope

- Requires the most discipline
- Will usually be expanding the scope as opposed to reducing the scope
- Always done in writing
- Will usually be a product of new issues arising
 - Make sure to anticipate expected problems by doing a thorough intake
- Other times will be the client being incapable of completing his or her assigned tasks
- Beware of emergencies
 - Do not get into a situation where you are giving full service representation without compensation
 - Be aware of areas of law more prone to emergencies
 - Do not forget fee agreements
- If your name is on it, be responsible for it
 - Do not let the client file anything with the court that your name is on in case they file it incorrectly

h. Getting out of LSR

- This is the trickiest part
- Many clients fear they are being “abandoned” by the attorney
- Important to always send a closing letter
- To avoid malpractice issues:
 - Follow the [Four Ethics Rules](#)
 - Document every step of the process
 - Utilize checklists
 - Use good judgement in defining the scope of your representation
 - NEVER step outside the “bright-line box” (the agreed upon scope of representation between you and your client) without drawing a new one

Michigan Rules

- MCR 2.117(C)(3) - An attorney who has filed a notice of limited appearance pursuant to MCR 2.117(B)(2)(c) and MRPC 1.2(b) may withdraw by filing a notice of withdrawal from limited appearance with the court, served on all parties of record, stating that the attorney’s limited representation has concluded and the attorney has taken all actions necessitated by the limited representation, and providing to the court a current service address and telephone number for the self-represented litigant. If the notice of withdrawal from limited appearance is signed by the client, it shall be effective immediately upon filing and service. If it is not signed by the client, it shall become effective 14 days after filing and service, unless the self-represented client files and serves a written objection to the withdrawal on the grounds that the attorney did not complete the agreed upon services.
- ***Ghostwriting** MCR 2.117(D) - Nonappearance of Attorney Assisting in Document Preparation. An attorney who assists in the preparation of pleadings or other papers without signing them, as authorized in MRPC 1.2(b), has not filed an appearance and shall not be deemed to have done so. This provision shall not be construed to prevent the court from investigating issues concerning the preparation of such a paper.

i. Common practical issues with LSR

- Dealing with opposing counsel*
 - If they are using your LSR relationship tactically, make sure you look into your remedies
 - Be sure to coach clients on when they can/cannot speak
 - Do not let them abuse your limited representation to their benefit
- Dealing with the courts
- Getting papers filed
 - Do not let a client file anything with your name on it
- Resisting changes in the scope
 - New issues pop up all the time and you have to be disciplined regarding which ones you will allow to expand the scope of your representation
- Service of process when you are going against LSR counsel
 - How to know who to serve
 - **Sue says:** just serve both, fee agreements are confidential

*Michigan Rules – Service of Process

- MCR 2.107(B)(1)(e) - If an attorney files a notice of limited appearance under MCR 2.117 on behalf of a self-represented party, service of every paper later filed in the action must continue to be made on the party, and must also be made on the limited scope attorney for the duration of the limited appearance. At the request of the limited scope attorney, and if circumstances warrant, the court may order service to be made only on the party.

j. Avoiding practical issues

- Greatest tool: client handouts
- Make a brochure and put it in your waiting room
 - Make a brochure for everything
- This can be a form of “informed consent”
- Makes clients more educated
- Be sure to document that you gave them this brochure
- Issue: LSR Clients utilize the internet more than normal clients
 - Solution: be prepped with common-sense websites to counter bad internet information
- **Be prepared to not take a client if you believe they are going to be too problematic**
- Utilize other LSR attorneys to determine and avoid issues encountered in practice
 - Emails, listservs, brown bags, etc.

Part 2 – Risk Management

Case where malpractice insurance was actually needed:

- Bankruptcy case
- Creditor consulted with an attorney about her claim
 - After the consultation, the creditor did not attend the first meeting of creditors
 - Her claim was subsequently waived
- Creditor sued the lawyer – claiming the attorney should have told her “if you didn’t attend the first meeting then your claim would be waived”
 - Attorney told the client – it is inconceivable that he would not have said it

- Problem: he had nothing in his file proving he told her
- What would have saved the attorney – contemporaneous notes from the intake
- Sue came up with the idea of using a checklist from this story

a. Best practices to prevent practical issues

- Work within your expertise
 - If you don't know the field of law it is dangerous to know which issues are susceptible to coaching and which are not
- NEW LSR attorneys should stay away from **issue-based** LSR and keep with **task-based**
 - There are more pitfalls with issue-based
 - **Attorney-client relationship still owe a duty to inform on related issues**
 - Be able to spot issues
 - Best areas to start in:
 - Where you want to practice law?
 - Any area where consumer law exists and you can take the time to educate yourself
- Don't be influenced by emergencies
- Clients who have “shopped around” raise a red flag
 - Avoid the client who is just trying to find the attorney who tells them what they want to hear
- Unrealistic expectation – the issue is not do they have them (they do) it's just can they be coached?
- Language-barriers are bad options
 - Be wary of translators with hidden agendas
- Hidden motives – be on the alert
 - Ask them why they want to do limited scope
 - If they want to manipulate the process – just say no
- Domestic violence
 - **Sue** went to a conference and said DV is a bad area for LSR
 - She was vigorously corrected by a number of Family Law attorneys in the audience
 - They explained to her that self-representation and coaching a victim to stand up to his or her batterer in the safe environment of a court room can have tremendous healing potential
 - It is not a deal breaker but you have to determine your client's comfort level
- Always address fee structures
 - **Sue** prefers hourly over a flat fee
 - Thinks it makes more sense unless you have a very high-volume practice and know exactly how long each task takes
 - If you're going to set a flat fee just be sure you are comfortable with it
 - You can't change it without causing problems with your clients
 - “But my friend paid this”
- Always utilize a good diagnostic
 - Even if you know your intake inside and out, put it on a piece of paper
 - Checklist/fee agreement

- Use a fee agreement SPECIFIC TO LIMITED SCOPE
- Always explain the WHY of legal procedures, it makes clients more likely to follow them
- Do not make laypeople part of your litigation team
 - Ex: my Aunt Mary is an English teacher and she is going to draft this pleading for me then you can look it over.
 - Aunt Mary can be deposed because there is no privilege
 - No, the arrangement is only between you and the client
 - **Sue** cautions against using paralegals as well
- Do not let a person handle something that is too technical
- Don't expose a client

b. Federal Rule 11

- Many attorneys worry about being deceived by clients
- The rule only requires that the attorney have a *reasonable belief* in the truthfulness of the representations which constitute the information found in forms filed
 - You are not culpable as long as you are not on notice that the client could be lying
- Montana concluded this was fine:
- If a client comes to you and says I'll tell you the facts and I want you to draft the affidavit
 - You are not running afoul Rule 11 if you have no reason to think they are lying to you

Michigan Rule – “reasonably diligent”

- MRPC - Rule 1.2 Comment - **Reasonable under the Circumstances**. Factors to weigh in deciding whether the limitation is reasonable under the circumstances according to the facts communicated to the attorney include the apparent capacity of the person to proceed effectively with the limited scope assistance given the complexity and type of matter and other self-help resources available. For example, some self-represented persons may seek objectives that are inconsistent with an attorney's obligation under the Rules of Professional Conduct, or assert claims or defenses pursuant to pleadings or motions that would, if signed by an attorney, violate MCR 2.114 [Signatures of Attorneys and Parties; Verification; Effect: Sanctions]. Attorneys must be reasonably diligent to ensure a limited scope representation does not advance improper objectives, and the commentary should help inform lawyers of these considerations.

c. Risk management materials and leaving LSR

- **Sue:** you must ALWAYS send a closing letter
- When you have a court appearance – you must tell the court you are done
- The safest method: get a substitution of attorney
- Ex: client hires you to go to a hearing, you go then you have to write the order after hearing
 - Then you want out
 - You send a substitution of attorney and they ignore you
 - Clients tend to not sign the closing
- You need to explain the situation to a client and **condition your appearance** on them signing the substitution of attorney form
- Cannot have a client sign a blank substitution of attorney to be filed at that attorney's discretion

- Can't sign one in advance
- Will help you with insurers as well
- THE TERMINATION FORM
 - The client must sign this *at the end of the representation*
 - They cannot pre-sign this
 - The written record must show they consented to the termination
 - Most forms will be task-related
 - Attach an LSR brochure to the form
- **Sue** does not recommend contingency fees with LSR
- In California judges know they have to let you out

Michigan Rules – Leaving LSR

- MCR - Rule 2.117(C)(2) - Unless otherwise stated in this rule, an attorney who has entered an appearance may withdraw from the action or be substituted for only on order of the court.
- *See also* MCR Rule 2.117(C)(3) – notice of withdrawal needs to be signed by the client to be effective *immediately*, otherwise will be effective 14 days after filing, assuming the client does not file and serve a written objection to the withdrawal on the grounds that the attorney did not complete the services that were agreed upon.
- *See also* MCR Rule 2.117(D) – a ghostwriting attorney did not appear and does not need to submit a withdrawal, however the court may still investigate any issues concerning the preparation of the paper

d. Fee Agreements

- Do not use any full-service representation forms
- Does not recommend contingency fee structures
 - An exception *may be* collecting arrears in child support (liquidated form of recovery)
- Sue outlines four possible fee arrangements and emphasizes that all of them should have their own set of documents
- Option 1: One-time meeting and consult
 - Eliminates expectation of future services
 - Best practice: consumer legal services in certain areas where you are willing to learn practices
- Option 2: Consulting
 - Have an LSR-designated document that makes it clear that the client “will maintain control of their case”
 - Fill in the nature of the case
 - Tailor to your practice
 - Teach clients
 - how to organize documents
 - how to keep the attorney notified
 - Utilize a checklist in which the client can request services (yes/no checklist)
 - Once you review it, outline exactly what you will NOT do
 - Decide on a fee and make it clear
- Option 3: Coaching
 - This is the most common

- Forms must emphasize that the attorney does not represent the client nor speak for them
 - Make it clear there will be no court appearances
- Try to utilize flat fees whenever possible, although it is not always practicable
 - Ex. I will draft for one hearing or one motion
- Include a section about dispute resolution
 - Ex. if you are unhappy with the fees you must talk to the attorney first
- Make sure there is a statement of client understanding
- Set ground rules for more active cases
- MOST important – the checklist
- Ongoing consulting is very prone to change
- Option 4: Court appearance
 - Only for court appearance
 - Again, use a checklist – it is not worth anything without the checklist
 - Say you will only do the requested services
 - Include an anti-expansion protection which says the attorney can choose whether or not to expand the scope

e. Documenting changes in scope

- Always use a letter
 - Outline what you initially agreed to do
 - Outline new tasks
 - Say you will not continue without signature
- Model form:

Consulted on: _____ [date] _____ and will do _____ [tasks] _____ or provide
_____ [information] _____ by the date specified.
- Practice Tip: make a copy for both parties at the end of the consultation

Michigan Rules

- MCR Rule 2.117(B)(2)(d) - An attorney who has filed a notice of limited appearance must restrict activities in accordance with the notice or any amended limited appearance. Should an attorney's representation exceed the scope of the limited appearance, opposing counsel (by motion), or the court (by order to show cause), may set a hearing to establish the actual scope of the representation.

f. Checklist for overview of relationship

- Make a list of all the materials given to the client
- Note that you completed the checklist
- Document if/that you changed scope
 - Date of initial agreement
 - Date of new agreement
- Date of conclusion
 - Withdraw immediately
 - Insurers say this is where many attorneys run into problems

- Date of actually closing the case

g. Client relations

- LSR clients will talk to each other
- You will find yourself getting along between with some types/professions of clients
- LSR is a team service and communication is very important
- Effective communication makes it very easy to end the relationship painlessly
- LSR consultations should be done in person not over telecommunication
- Make sure you have upfront commitment to your terms or
 - Withdraw
 - Give them a chance to withdraw
 - DO NOT partially withdraw, this is mismanagement
- But you should explain why the what they think they want could hurt them

Part 3 – National Trends and Marketing Your Practice

a. National trends

- High consumer demand for legal services
- Court pressures (funding, staffing, administration)
- ATJ commissions
 - Effective in pushing the cause for increased access
- Internet resources
- Unauthorized practice of law
 - Mostly on the web
- Changing nature of the practice of law
- Impact of technology
 - Attorneys are slower to adapt to technology
- Changing client expectations
 - Faster responses due to more advanced technology
- Attorney expectations for their careers/life choices
 - Used to be: stable but demanding work
 - Now: attorneys have kids, expect free time, there are more immigrant attorneys that bring a different culture to the profession, alternative billing and virtual offices demand new discipline
- Demographic changes
- New delivery methods

b. Law practice economics

- The traditional “Associate” pathway is closing
- Rise of contract attorneys
- Law school loans having a huge impact on the practice
 - Law students are spending more and gaining fewer practical skills
- There is **less mentoring than necessary in the profession**
- Impact of recession

- LSR can help keep doors open
- New ways of marketing increases competition for “good clients”
- Commoditization of legal services
 - Think of it as more “piece meal” law rather than a culture or art form
 - Law firms now have professional managers

c. New ABA rules

- New ABA Rule 1.2(c) is very basic
 - **No writing requirement** and very little guidance
- Debate: how to use the rules for LSR
 - How do we encourage more people to do this?
 - **Sue says:** make it easier to get out of the relationship
- It is important to train attorneys how to do this right so it is easy
- Sue’s Advice:
 - Informed consent should ALWAYS be in writing
 - There is a presumption in the rules that there is no responsibility for anything outside the scope
 - Sue believes attorneys should not be held at fault for wrong information in documents because they are only required to determine if the representations are reasonable
 - “the rules are drafted too restrictively for the 5% of attorneys who are predators and hurts the 95% of good lawyers who are trying to do an ethical job and get paid for it”

d. Ghostwriting

- Debate: attorney drafts documents but does not represent client, do they have to identify themselves?
 - Three positions: yes, no, yes but no contact information
- In California, it is covered by privilege and they do not have to identify themselves
- In states that require identification it has a chilling effect on the practice
 - Attorneys are afraid of judges roping them in
 - “we want to encourage participation”
- Solution: say it is written by an attorney but do not include a name
- Bar Association LSR Lawyer Referral Panels
 - Help meet increased demand
 - Struggling lawyers can find a new pool of clients
 - Increasing competition for “good” clients
 - Also redefining what a “good” client is
 - Expanding referral services

Michigan Rules – Permitting Ghostwriting

- Rule 1.2 Scope of Representation
- (b) A lawyer licensed to practice in the State of Michigan may limit the objectives scope of the a representation . . . if the client consents after consultation limitation is reasonable under the circumstances and the client gives informed consent, preferably confirmed in writing.

- (1) A lawyer licensed to practice in the State of Michigan may draft or partially draft pleadings, briefs, and other papers to be filed with the court. Such assistance does not require the signature or identification of the lawyer, but does require the following statement on the document: “This document was drafted or partially drafted with the assistance of a lawyer licensed to practice in the State of Michigan, pursuant to Michigan Rule of Professional Conduct 1.2(b).”
- (2) The filing of such documents is not and shall not be deemed an appearance by the lawyer in the case. Any filing prepared pursuant to this rule shall be signed by the party designated as “self-represented” and shall not be signed by the lawyer who provided drafting preparation assistance. Further, the lawyer providing document preparation assistance without entering a general appearance may rely on the client’s representation of the facts, unless the lawyer has reason to believe that such representation is false, seeks objectives that are inconsistent with the lawyer’s obligation under the Rules of Professional Conduct, or asserts claims or defenses pursuant to pleadings or papers that would, if signed by the lawyer, violate MCR 2.114, or which are materially insufficient.

e. Montana Rules – more forward thinking

- Requirement for “in writing”
- Presumption that services are limited to those in writing
- Presumption of non-representation unless notified in writing
 - Permission to deal directly with coached pro se opponent
- Makes attorneys more comfortable with LSR because courts recognized the need for this service
- Lawyer competence includes LSR attorneys
- Addressed [Rule 11](#) concerns

f. ABA Unbundling Resource Center

- Includes links to rules of professional conduct
 - Be aware some LSR rules come from other sources in certain states
- Includes ethics opinions about LSR
- Ethics committees
 - Live to find ethics violations
 - CA ethics committee went through LSR
 - Published an ethics primer
 - Found NOTHING wrong with it
- Referral: Susan Kim – Stanford Law Lecture

g. Sue’s final notes

- If you quote a fee to do a service you must abide by this fee otherwise you kill the faith
- LSR is supposed to be low-cost that is why people do it
- Do not put your work product on hold
- Attorneys need to take credit cards
- Do not draft documents for a court where you are not admitted to practice law
- Criminal Law
 - Some states have very limited LSR options for criminal law

- There is WAY more that can go wrong

h. Marketing your LSR practice

- Website – you must have one for private practice
- Brochure
- Social media/blogs
 - Be careful and check your Rules of Professional Conduct
- Community cable TV and radio
 - Many have to do pro bono work and allow a certain number of hours of free air time and this is good to capitalize on
- Yellow pages online
- Referrals from past clients
- Workshops
- Business cards
- Offer to give programs about LSR, can help build a professional client pool
 - Groups always need speakers
- Be sure to never give advice on social media/no specific client information
- **Be respectful and reasonable**