

# A CHANGING PRACTICE: LIMITED SCOPE REPRESENTATION

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# Limited Scope Representation

## What it Isn't

Limited liability

Second class practice

Unethical

Inherently dangerous

Good for every case

Good for every issue

Good for every client

# Limited Scope Representation

## What it is

- Increases **access** to **needed legal services** with an affordable fee-for-service payment structure
- “Unbundling” or “Unbundled Legal Services”
- Attorney limits representation to agreed upon tasks

# Limited Scope Representation

## What it is

- Quality practice of law
- An attorney-client relationship
- Ethical
- Safe when done correctly
- A profit center

# Win-Win-Win

## To Lawyers—

- New market of litigants
- Focus practice

## To Clients—

- Reduces costs of legal services
- Increases access to legal services

# Ethical Considerations



# Ethical Considerations

## TDCRP

### Texas Disciplinary Rules of Professional Conduct 1.2(b)

*A lawyer may limit the scope, objectives, and general methods of representation **if the client consents after consultation.***

# Ethical Considerations: TDCRP

## “Consultation”

communication of information and advice **reasonably sufficient** to permit the client to **appreciate the significance** of the matter in question



# Ethical Duties

- Still must provide competent and diligent representation.
- Still must maintain duty of confidentiality.
- General duty not to communicate with another person known to be represented by counsel
- Avoid conflicts of interest and run conflicts check.

# The Four Basic Ethical Safeguards (aka No-Brainers)

- 1) Limitations must be informed (better to get it in writing)
- 2) Limitations must be reasonable under the circumstances (ABA model rules)
- 3) Changes in scope should be documented (CYA)
- 4) Clients should be advised on related issues **EVEN IF THEY DON'T ASK**

**Duties are NON-DELEGABLE**

# A Limited Scope Practice



# Do how do I do it?

## *Best Practices*

The work between lawyer and client is split in one of two ways:

1. Tasks

OR

2. Issues

# Best Practice Tips: Limiting the work

## **Split by tasks**

Client instructs attorney not to do discovery, and undertakes the information gathering role;

Client asks attorney to draft moving or responsive pleadings for a hearing the client attends in *pro se*;

Client consults with attorney on strategy and tactics;

Client appears at the hearing and asks the attorney to draft the order;

Client asks attorney to review correspondence or pleadings which the client has drafted;

Client asks attorney to prepare subpoenas;

Client asks attorney to write a brief to be filed in *pro se*;

Client asks attorney to run computer support programs on her, or review and analyze computer support calculations proposed by the opposing party.

# Best Practice Tips: Limiting the work

## **Split by issues**

Attorney represents client in connection with custody, support and visitation issues and client is *pro se* on *property issues*;

-or-

Attorney prepares QDRO dividing pension or order apportioning stock options, while client self-represents on other issues.

# Best Practice Tips: Selecting the client

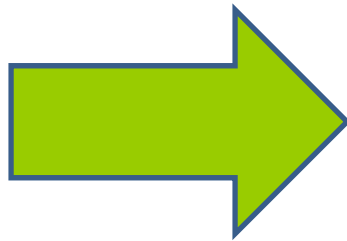
- The Poster Child
  - Reasonable
  - Businesslike
  - Responsible
  - Common Sense
  - Self-help oriented
- The Unbundled Client from Hell
- Everyone in between

# Best Practice Tips: Dealing with clients

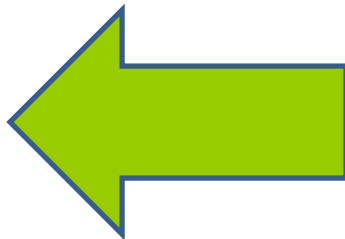
- Client-Attorney Miscommunication
  - ✓ Written Service Agreement
- Unrealistic Client Expectations
  - ✓ Discuss all aspects of the case
  - ✓ Written Service Agreement
  - ✓ Document changes in scope



# Best Practice Tips: Going to court



Getting In



Getting Out

# The Risk Management Materials

Your Ticket to a Good Night's Sleep  
(Courtesy of the California  
Commission on Access to Justice)

<b>Initial Interview Checklist - General Civil</b>		
I met with _____ on _____, 20____		
regarding _____		
I performed a conflicts check on: _____		
<b>We discussed the following issues:</b>		
Date of Incident/Occurrence		State of Limitations
Legal Theories/Causes of Action/Elements of Claim or Defense	Burdens of Proof	Costs of Litigation
Evidence	Motions Attacking the Pleadings	
Defenses	Possible Settlement	Duration of Case
Ability to Collect Judgment		
Witnesses	Alternatives to Litigation	
Other related matters (i.e. relationship of parties)		
Underlying Goals	Challenges of Case	Likely Response from the Other Side
Ability to Self-Represent	Possible Insurance Coverage	
Possible Bankruptcy (either debtor or creditor)	Possible Service of Process Challenges	
Discovery	Possible Demand for Bill of Particulars	
Jurisdictional options	Proper notice given to tenant	
Rent control issues	Lease terms	
Habitability defenses	Other tenant defenses	
Advised of right to seek counsel on issues outside of the scope		
Other:		
<b>We discussed the following coaching options:</b>		
<b>I gave the client the following materials:</b>		
Issues checklist	Tasks checklist	Fee agreement #
Client's guide to Limited Legal Services handout		
Handout re preparing evidence	Handout re eviction cases	
Blank court form:		
Other:		
Attorney initials:	Client initials:	

*Excerpted from the Risk Management Materials developed by M. Sue Talia and the California Commission on Access to Justice.*



Initial Interview Checklist

TASK	ATTORNEY TO DO:	DATE COMPLETED	CLIENT To Do:
DRAFT INITIAL DEMAND PRIOR TO FILING SUIT			
DRAFT PAPERS TO START/RESPOND TO SUIT			
FILE AND SERVE PAPERS			
DRAFT MOTIONS/RESPOND TO MOTIONS			
ANALYZE CASE AND ADVISE OF LEGAL RIGHTS			
PROCEDURAL ADVICE			
FORMULATING STRATEGY AND TACTICS			
INVESTIGATE FACTS; WHICH ISSUES?			
OBTAIN DOCUMENTS; WHICH ONES?			
DRAFT CORRESPONDENCE			
REVIEW CORRESPONDENCE AND PLEADINGS			
APPEAR IN COURT			
PREPARE CASE MANAGEMENT STATEMENT			
PREPARE SUBPOENAS FOR DOCUMENTS			
TAKE DEPOSITIONS			
REVIEW DEPOSITIONS AND DOCUMENTS OBTAINED FROM OTHERS			



Attachment to Service Agreement:  
Tasks to be apportioned

*Excerpted from the Risk Management Materials developed by M. Sue Talia and the California Commission on Access to Justice*

# Other Sample Documents

- Service agreements
  - Four different agreements from California
  - One agreement from Travis County
- Change in scope letter
- Follow-up checklist
- Tickler checklist
- Suggested client handouts
- Closing document
- Pleadings
  - Notice of limited appearance
  - Motion to withdrawal from limited appearance
- Client pamphlet

# Summary of Best Practice Issues

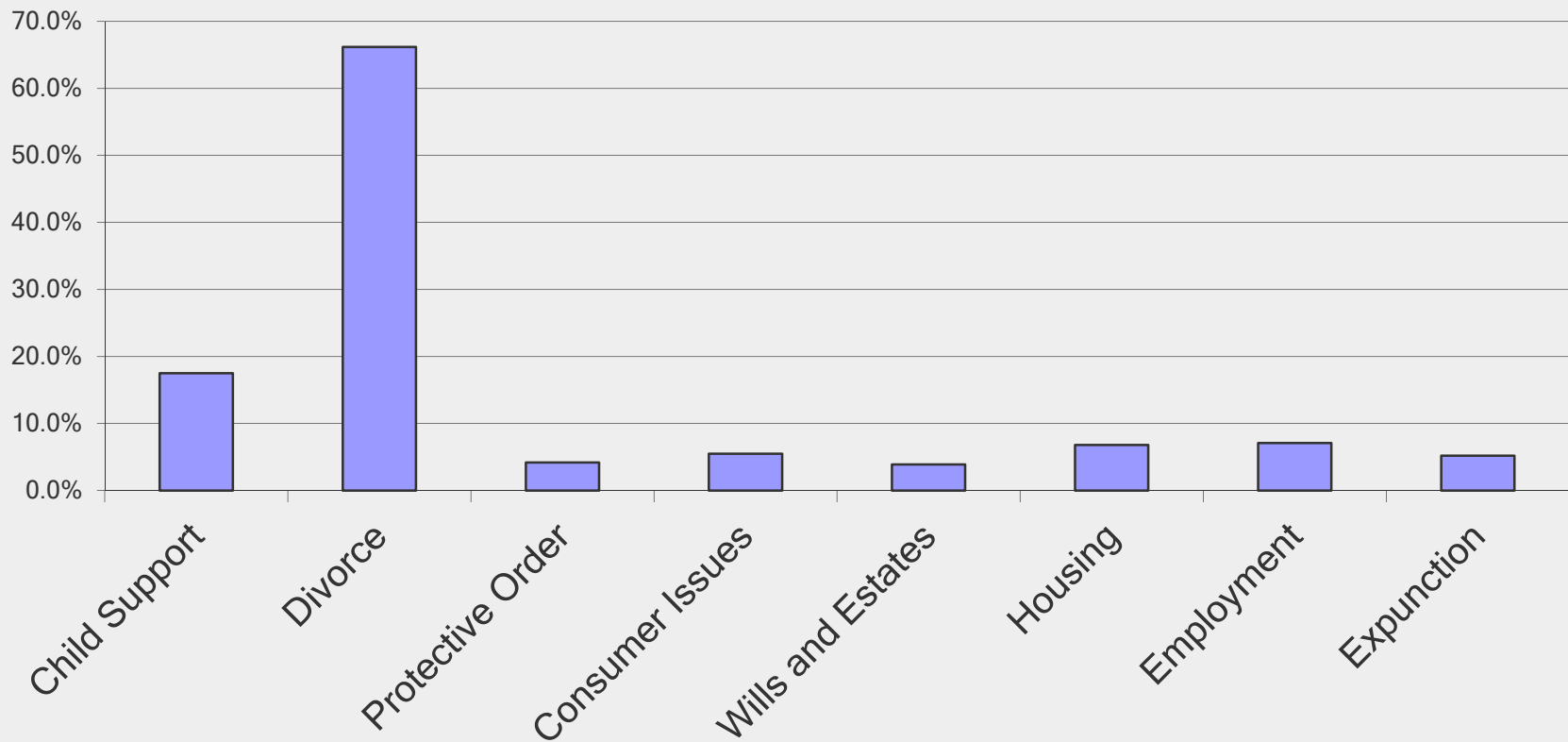
- Remember the four No-Brainers
- Document your file
- Checklists are your best friends
- Use good judgment in defining the scope, keeping the particular client and particular judge in mind
- NEVER step outside the bright line box without drawing a new bright line box
- Tailor and use the sample documents

# Summary of Best Practice Issues

- Most issues practical rather than ethical
- When in doubt, don't do it
  - Remember, it's not for everyone, but great for many

# TexasLawHelp.org Stats

What type of legal information were you looking for?





# Collaborative Law Applications

- Limiting the Client.
- Narrowing the project definition.
- Narrowing tasks (legal research, etc.).
- Watching what is necessary to the project.
- Limiting expenses (experts, demonstratives).
- Narrowing third party dealings (CPS, psych)
- Recognizing additional/ revised engagements.

# Marketing your Practi\$e

- Brochures
- Websites
- Public Speaking
- Community cable TV and radio
- Online yellow pages
- Your eternally grateful unbundled clients

# Tools that make LSR work

- Judicial Commitment
- Strong Bar Association Support
- Attorney Training
- Referral Conduit
- Templates