

# Practicing Limited Scope Services (aka Unbundled Services) Safely and Effectively

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Disclaimer: This is a continuing legal education paper and presentation. It should not be considered as stating any official policy of the Oklahoma Bar Association. The OBA Management Assistance Program has been serving Oklahoma Bar Association members for over twenty years. If we were going to set up a limited scope delivery process ourselves, in light of recently enacted [District Court Rule 33](#), this is the outline of the steps and procedures that we would consider to make this a positive experience for clients and as risk-free as possible for the participating attorney.

## What Are Limited Scope Legal Services?

Several years ago the commonly used term for limited scope legal services was “unbundled services.” Those who spent time studying these types of services believe that the term “limited scope” better informs the public and so they have encouraged the use of that term. This has evolved into the term Legal Scope Representation (“LSR”). According to the [American Bar Association](#) the definition of limited scope representation is:

“Unbundling, or limited scope representation, is an alternative to traditional, full-service representation. Instead of handling every task in a matter from start to finish, the lawyer handles only certain parts and the client remains responsible for the others. It is like an à la carte menu for legal services, where: (1) clients get just the advice and services they need and therefore pay a more affordable overall fee; (2) lawyers expand their client base by reaching those who cannot afford full-service representation but have the means for some services; and (3) courts benefit from greater efficiency when otherwise self-represented litigants receive some counsel.”

Legal authority for the concept of limited scope or unbundled representation is found in [Rule 1.2 of the Oklahoma Rules of Professional Conduct](#), Scope of Representation and Allocation of Authority Between Client and Lawyer, adopted in 2008, which states in subparagraph (c)

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

There are likely few who would dispute that a lawyer could provide some unbundled services in regard to litigation, such as explaining how a particular court proceeding would work or advising that individual who had been served with process of his or her answer date and the necessity of filing an answer on a timely basis. Those actions would be considered a traditional method of dispensing legal advice. Such advice has often been provided as a courtesy to members of the public. But some cautious lawyers would decline to give even limited advice without a formal engagement because of concerns about professional liability.

Prior to the adoption of District Court Rule 33, the challenge occurred where a lawyer wanted to assist an individual with preparing documents that will be filed with the court as a *pro se* litigant.

## **Why Was There a Need for District Court Rule 33?**

Self-represented individuals appearing in court with documents drafted using online services or paraprofessionals (both legally authorized and unauthorized) has been an area of growth over the last several years. Many Oklahoma lawyers have been hesitant to consider providing limited scope document preparation services because even though they were authorized since the 2008 adoption of ORPC 1.2(c).

But there still had been an antipathy in many courthouses over whether a lawyer preparing these “ghostwritten” pleadings or other court filings was appropriate or even ethical. In fact one Tenth Circuit Court of Appeals opinion held ghost writing to be a violation of legal ethics.

The new District Court rule provides a consistent procedure throughout all counties.

### **Rule 33. Limited Scope Representation**

A lawyer providing limited scope representation under Rule 1.2 (c) of the Oklahoma Rules of Professional Conduct may draft pleadings or other documents for a pro se litigant to file with or present to a district court without the lawyer entering an appearance in the matter. A lawyer shall disclose such assistance by indicating their name, address, bar number, telephone number, other contact information and, optionally, a signature on said pleading or other document with the phrase "No appearance is entered as counsel of record."

## **General Principles of Safely Delivering Limited Scope Legal Services**

1. The individual you meet with who pays for your attorney’s fees is your client. You cannot represent opposing interests in a family law case or any other matter. With the client’s informed consent, you may meet with both the client and an unrepresented party to discuss the documents being created. However, this should not be done unless the opposing party is willing to execute a Disclosure of Nonrepresentation.
2. Limited scope services are based on the concepts of informed consent to receiving less than full.

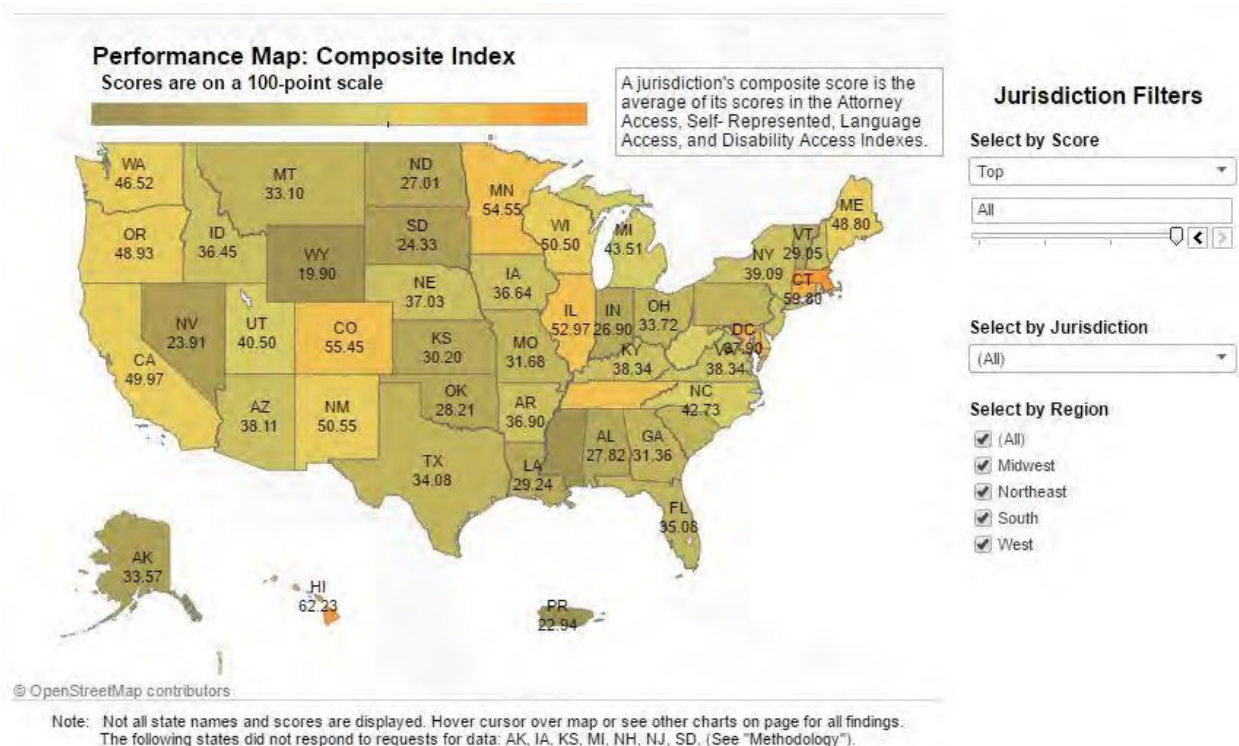
## **The Need for Limited Scope Legal Representation in Oklahoma**

The legal profession has a tradition of focusing on precedent to determine how the law will be applied prospectively. In today's world, with many changes fueled by technology advances, precedent is often not the surest guide. The current business development model is based on the principle of rapid change through experimentation.

Access to justice issues are also critically important for society and for the future of the legal profession.

While there might be disagreement on the exact statistics concerning the situation, no one really disputes that the lack of access to civil justice for lower income individuals is a problem. The National Center for Access to Justice at Cardozo Law School has compiled the Justice Index 2016. Oklahoma was among the states with the lowest ranking.

## Access to Justice Issues in Oklahoma



According to the LawSites Blog:

States are scored across five indexes: number of attorneys for people in poverty, support for self-represented litigants, support for people with limited English proficiency, support for people with disabilities, and a composite of the other four.

The top-ranked state across all indexes is Massachusetts, followed by Hawaii, Maryland,

Connecticut, Colorado, Minnesota, Tennessee, New Mexico and Wisconsin. The top ranking overall goes to the District of Columbia.

The lowest-ranked states, from the bottom up, are Mississippi, Wyoming, Puerto Rico, Nevada, South Dakota, Indiana, North Dakota, **Oklahoma** and Vermont.

<http://www.lawsitesblog.com/2016/05/new-data-companion-website-score-states-on-access-to-justice.html>

The report is [here](#) and a companion website uses data analytics and data visualization tools to present this data in several maps and graphs.

The current imbalance of supply, demand and affordability of legal services for individuals presents a unique opportunity for a law practice to expand into serving the underserved, especially since many of them can pay some fees for the legal services they need.

For those lawyers who currently have very busy “full service” practices with new client matters developing frequently, there is perhaps no case to be made for considering adding limited scope services to the workload.

But there are many others, such as the new lawyer in a small town wanting to build their practice, a lawyer who has recently lost a large client or seen a practice area begin to wither away or a lawyer of a certain age who wants to slow down a little bit and focus on the less stressful matters.

For these lawyers, developing the office elements of “low bono” work may provide an opportunity to help clients who were previously underserved while generating a positive revenue stream and providing a great service to these individuals. It is also true that a lawyer who provides these services in a professional and efficient manner may find these former clients coming back to their law office for additional legal work, perhaps at this stage in their life where they can afford full scope representation and the resultant larger attorney fee.

## **Some General Principles of Delivering Limited Scope Services**

For the purposes of today’s presentation, we will focus on an in-person meeting with a client where documents can be executed and notarized in a traditional sense. This is not to say that limited scope services cannot be delivered in other ways such as video conference.

A lawyer will want to provide good client service with clear explanations for the client who wishes to receive limited scope services. But with limited scope services documentation is the key.

Documentation is a key in maintaining any client file, but it is particularly important in the case of limited scope services where the relatively brief interaction with the client may be difficult to recall after time and the lawyer must rely heavily on the notes and other documents contained within the client file in the event there are any questions.

The challenge will be in quickly preparing accurate documents in a short amount of time. Ultimately, automated document assembly processes will be used by lawyers who regularly deliver these types of services.

## **The Basics**

In a nutshell, the objectives of limited scope services (using the example of the in-office consultation model) are:

1. Delivering a brief but pleasant client experience in person.
  - a. It is an important goal to connect with the individual in a way that assists the client in being confidently able to execute the steps they are handling.
  - b. Obviously, it is in the lawyer's best interests to leave a positive impression that might cause the client to return for additional services in the future.
  - c. Set expectations quickly "We have about 30 minutes to talk here. What questions do you have?"
  - d. Short videos featuring the lawyer might be viewed in advance at the office or after the meeting, either in the office or online behind a password-protected site. (This is a part of the client experience and should not be located on a public site, although certainly introductory videos to market the practice and the concept could be placed on YouTube.)
2. Documenting everything in a very efficient way in case there are concerns later.
  - a. Whether on a digital screen or on paper, the lawyer should use a checklist style system where the various steps are checked off or initialed by the lawyer as they are done, both to ensure that they are done and to generate a written record.
  - b. If the client or opposing party is conferencing in through Skype or Facetime, preserving a video recording of the entire conversation is an almost perfect method of documentation.
  - c. If the lawyer's staff is interacting with clients beyond welcoming and scheduling, they should be provided "scripts," checklists and bullet point lists to assist them with documentation.

- d. Identity verification may be warranted.
3. Providing valuable assistance to the client.
  - a. Quality legal advice and/or documents.
  - b. Explaining the process and answering questions.
  - c. Providing clear instructions and scripts for clients will be handling on their own.
4. Assisting the administration of justice by enabling those who self-represent, whether through choice or necessity, to interact appropriately with and obtain results from Oklahoma courts.
5. Embracing technology tools and reflective analysis to continually upgrade and improve the process so that better client services and document production do not require attorney time per individual matter.

## **Using Tools to Deliver Limited Scope Representation More Efficiently**

Delivering quality legal services while reducing costs is especially important in limited scope representation. Certain technology tools can help with this endeavor. These tools can provide automated document assembly, conflict checking and other services that can reduce the time a lawyer spends with administrative functions.

Automated document assembly allows attorneys to minimize data entry, reduce the time spent proof-reading, and reduce the risks associated with human error. Although there is an initial investment in learning how document assembly works and either automating one's own documents or hiring someone to assist with that, the use of robust automated document assembly means that documents that used to take hours to draft (and then carefully and repeatedly proofread) can now be done in minutes. Online legal service providers use document assembly and lawyers who wish to compete in that marketplace must utilize this technology as well Here is a sample of some of the available options:

1. OBA Intellidrafts <https://oba.intellidrafts.com/> is an automated document assembly tool for Oklahoma lawyers and is the replacement for the OBA's form book.
2. Microsoft Word allows attorneys to create templates and fillable forms.
3. The Form Tool [www.theformtool.com](http://www.theformtool.com) is a Microsoft Word add-on that creates document templates.
4. HotDocs is probably the industry leader but due to the cost, licensing and training, HotDocs may not be the best option for solo or small firm attorneys.
5. Pathagoras [www.pathagoras.com](http://www.pathagoras.com) is a Microsoft Word plug in that uses plain text and the bracket keys to build templates.
6. Various practice management software platforms offer automated document assembly.

When providing LSR, an attorney's ethical responsibilities, with limited exception, are the same as if he/she were providing full scope representation. Because of the limited contact an attorney will likely have with many clients selecting LSR, maintaining accurate records is essential for doing a conflict check.

Conflict checking functions are common features of technology tools such as web-based practice management solutions. Clio, CosmoLex, MyCase, PracticePanther, Rocket Matter and Zola Suite are all cloud-based practice management solutions for law firms that offer various discounts to OBA members. All of these platforms contain conflict checking features. There are also standalone automated conflict checking programs such as Client Conflict Check <http://www.clientconflictcheck.com/> and RTG Conflicts <https://www.rtgsoftware.com/online/cindex.htm>. However, the disadvantage of the standalone systems is the manual input of information required.

## **Marketing Limited Scope Representation**

Internet-based advertising with a social media component will likely be required for those attempting to make this type of service delivery a substantial part of the practice. Social media promotion cannot be ignored. An effective website should be client focused with a clearly displayed phone number and email newsletter signup or contact form. Visitors to the site, at a minimum, should be able to understand what limited scope representation is.

Even though lawyers have not traditionally done this, when goods or services are sold via the Internet, consumers expect to see pricing information. Most LSR representation will be done on a flat fee basis so many lawyers will conclude it is important to post pricing information online, with clear caveats about what is not included in that price, such as court costs.

## **Conclusion**

Lawyers offering limited scope services must find ways to function more efficiently. Using today's technology tools to market and deliver limited scope representation is the primary means of increasing efficiency and allowing lawyers to provide lower cost legal services tailored to client needs. LSR services are likely here to stay. These services provide an opportunity to provide low-cost legal services that assist people who can pay some fee while also providing revenue to the law firm.



# Suggested Guidelines for Lawyers Doing Limited Scope Agreed Family Dissolution

**(From the Oklahoma Bar Association Management Assistance Program. These guidelines are to assist lawyers in developing their own limited scope practice procedures, but have not been officially “adopted” by the OBA.)**

*The purpose of this outline is twofold.*

*First, to assist the lawyer complying with Oklahoma Rules of Professional Conduct, in particular Rule 1.2(c), which states:*

*(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.*

*Second, to outline a business process for these services that serves and protects the public and protects the lawyer from untrue or unfair claims about the lawyer’s conduct while simplifying and standardizing the lawyer’s work process with the ultimate goal of reducing the cost to the public for the service.*

## **Guidelines**

- 1) Limited scope services will typically be delivered on a flat fee basis. A lawyer wishing to deliver such services in a family law dissolution context should provide a clear schedule of various services and the various fees. This can be done on the lawyer’s website as well as by a handout with the fee schedule to those who visit the lawyer’s office seeking information. There should be no disputes about the fees and these fees will likely vary depending on provisions such as child support guidelines computation, joint custody plans and qualified domestic relations orders as needed. Clarity and simplicity are key considerations.
- 2) Prior to tendering payment and the commencement of legal services, the client/consumer should acknowledge the fee in writing, typically by signing an attorney-client fee agreement, which may or may not be combined with other disclosures to the client and agreements.
- 3) Unless the individuals are well-known to the lawyer prior to the representation, identity verification of the individuals should be done at that time and the lawyer should retain these records so that there can be no dispute as to who met with the lawyer. Typically this would be done by making a photocopy of an Oklahoma driver’s license or passport and retaining it in the permanent records of the transaction. Even though it may not be a traditional lawyer’s first inclination, photographs taken with a cell phone or video recordings may also be used as documentation.

- 4) To obtain the needed facts for the document preparation and to be able to later verify what factual representations were made, a factual representation sheet should be prepared by both parties including a list of all assets and liabilities, both fixed and contingent. The best practice is for these separate documents to be signed and notarized by both the client and the unrepresented party. The factual representation sheet should contain a statement to the effect that the representations are true, and that in the event there is any false statement or material omission in these documents, this affidavit may be used to attempt to vacate any court order based on fraud in obtaining an order or judgment. (12 Okla. Stat. 1031).
- 5) The lawyer should verbally inquire about the factual representation sheet and the parties' agreed settlement proposal to determine that the parties competently understand and appreciate the significance of their actions.
- 6) Because some parties may need some time to complete their factual representation sheet, this process may involve two steps. It is appropriate to charge separate fees for additional meetings as long as these charges are made absolutely clear to the individuals in advance.
- 7) The lawyer should execute an affidavit of his or her findings and compliance with Oklahoma Rules of Professional Conduct Rule 1.2(c). Note that the rule contains a two-tier test.
- 8) While the lawyer may manually prepare the Petition for Dissolution of Marriage, Waiver, Decree and other pleadings, the use of some automated document assembly process is strongly recommended to assure a more error-free work product can be created utilizing much less of the lawyer's or staff's individual time.
- 9) The extra value that a lawyer can bring to this process is to provide very clear and simple instructions that a person unfamiliar with the process can use to be more comfortable. For example, don't just give them the address of the courthouse, but include a document with a map and photographs. And make suggestions for parking. Don't just tell them the courtroom number but give them a photograph of the courtroom door. You might even make a video of how the process in the court works and let them watch it in your office. Make certain they understand if there is a metal detector they have to go through and to allow time to do that. This is where you can provide greater value than a national document assembly service and can leave a favorable impression with these individuals in case they need additional legal services in the future.
- 10) A lawyer cannot give advice to both parties and one person must be designated as the client. This should be clearly disclosed in writing and signed by the client. If the other party is participating with the lawyer in any way beyond showing up at the lawyer's office later to sign documents, that individual should also sign a document indicating that they are aware the lawyer does not represent them and they are proceeding without the advice of counsel.
- 11) Permanently store all of the information (including any videos that were made) in at least two secure locations and retain it for at least five years.

# Resources

American Bar Association Unbundling Resource Center Association  
[https://www.americanbar.org/groups/delivery\\_legal\\_services/resources/](https://www.americanbar.org/groups/delivery_legal_services/resources/).

Nebraska Limited Scope Representation Toolkit  
[https://supremecourt.nebraska.gov/sites/default/files/Self-Help/LSR\\_ToolKit\\_Final\\_for\\_web\\_6.5.19\\_1.pdf](https://supremecourt.nebraska.gov/sites/default/files/Self-Help/LSR_ToolKit_Final_for_web_6.5.19_1.pdf)

Trial Court of Massachusetts Limited Assistance Representation Training Manual  
<http://www.mass.gov/courts/docs/lar-training-manual.pdf> **(This 121 page resource is an excellent first read with forms and scripts of hypothetical discussions with clients.)**

California Judicial Branch page on Limited-Scope Representation <http://www.courts.ca.gov/1085.htm>

Unbundling Legal Services: A Guide for Lawyers, Institute for the Advancement of the American Legal System (2015), <http://iaals.du.edu/honoring-families/publications/unbundling-legal-services-guide-lawyers>

Illinois Supreme Court Access to Justice homepage.  
<http://www.illinoiscourts.gov/civiljustice/accesstojustice.asp>

Timothy J. Pierce, Limited Scope Representation: Some Considerations (Rev. November 2010),  
[http://inns.innsofcourt.org/media/69501/30172\\_november\\_2012\\_limitedscoperepresentationsomeconsiderations.pdf](http://inns.innsofcourt.org/media/69501/30172_november_2012_limitedscoperepresentationsomeconsiderations.pdf)

Colorado Bar Assn. Ethics Comm., Formal Op. 101 Unbundling/Limited Scope Representation, (2016),  
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