

LIMITED SCOPE REPRESENTATION

Best Practices

i. Stay within your scope and area of expertise

Strongly consider rejecting a limited scope matter in areas of law in which you have little or no experience. It is not a good idea to take a case for “learning experience”; it takes significant expertise in particular areas of law to be able to anticipate what issues will arise in a matter and what liabilities to avoid.

ii. Practice defensively and document everything!

After you take the case develop materials that will help you with administering the case efficiently.

- ✓ Checklists help in documenting who is going to do what and when. Be sure to give a copy of this to your client. Fill it out while client is present, and make sure you both have initialed each copy.
- ✓ Use a clear retainer letter that sets out in detail the scope of your representation. Set out specifically what you will be doing and what you will not be doing. Write out what the client will be doing.
- ✓ Document all decisions! It is essential to write everything down and properly memo your activities on the file. It is especially important in instances where you offer advice to your client on a particular path to take. If you are changing the scope of your limited representation be sure to document it for your file and write a confirming letter, then have your client sign a new retainer letter.
- ✓ Write a closing letter to your client that concludes your involvement with them and summarizes the work you have done on the file.

iii. Don't be pressured by clients, judges or opposing counsel

Sometimes other parties may want you to deal with matters outside what is set out on your limited scope certificate. You must stay within the certificate. Do not let clients' emergencies become yours. If the scope of your certificate changes, you must confirm with Legal Aid, and then draft an amended Limited Scope Agreement with your client. If you need more time your client, then you must go back to Legal Aid and request another certificate – do not send your client!

iv. Control your client

A prospective client may be unrealistic about what s/he can achieve alone or about the nature of the limited scope representation. Part of your obligation in offering limited scope services is to teach or coach your client about the legal expectations. You must be able to control a client with unrealistic expectations. If that is not possible, then you should advise the client that limited scope representation may not be suitable for the client and refer them back to Legal Aid Alberta to discuss whether other coverage is an option.

v. Use your discretion

- ✓ Work within your area of expertise. Even where you are representing someone in a limited fashion you still owe the same duty of care, therefore you should only take certificates for matters in areas of law which you have expertise.
- ✓ Do not take files where a client has last minute deadlines to meet. Suggest to the client ways to move the deadline to allow for more time to provide adequate review or representation.
- ✓ Do not encourage clients to handle highly technical and complicated matters in a limited scope retainer.

vi. Have a good diagnostic interview

Every time you get a new client, it is very important to have a thorough initial interview so you can accurately determine what the legal matters are. Once that is determined, you will be able to direct the matter in the most effective way possible. Make use of the client information sheets provided by Legal Aid in the precedent package you received.

vii. Pay attention to surrounding/corollary issues

Even where your representation is limited to particular tasks, be sure to document information provided on other issues. You may still owe a duty to alert the client to legal problems outside the scope of your representation that are reasonably apparent and that may require legal assistance. Therefore, you should inform the client not only of the limitation of your representation, but of the possible need for other counsel regarding issues you have not agreed to handle.

viii. Exclude third parties

On occasion, a third party, or a person who is not directly involved in your client's legal matter, may try to get involved. It is up to your client whether or not they want that person involved, but if they interfere in your ability to represent your client, you must exclude them from the process.

ix. Avoid matters that are too technical/difficult

Not all cases are amenable to limited scope representation. Part of your responsibility as a lawyer is to counsel a person against handling a matter that is too difficult or technical. If it is your opinion that the matter is not suitable for limited scope representation, then discuss the matter with Legal Aid Alberta

x. Establish good communication with client

Have clear and open communication with your client about what will be covered under the limited scope certificate. Document decisions and provide your client with copy. Provide client with handouts and direct them to resources that will help them accomplish the tasks assigned to him/her. It is important to manage your client's expectations about your services and his/her legal matter.

A key element in communicating with you client is using language and descriptors he/she can understand. Wherever possible communicate with your client in plain language both verbally and in writing.

xi. Follow applicable law society rules

As a lawyer you must follow the law society rules at all times. You are responsible for knowing the rules as they apply to you. For example, you must be aware of the rules about conflict of interest.

xii. Take time to educate your clients

Limited scope matters are pursued in partnership with the client. A client who understands the "bigger picture" and the tradeoffs will not only be more successful in self-representation but also less likely to blame you for unwanted outcomes.

xiii. Establish links to good resources, and take advantage of mentoring

Consulting with experienced lawyers can help answer questions in areas of law you may need some direction in. They can help confirm your understanding of the legal problem and suggest additional issues you may have missed and they can help with developing an effective plan of action. Potential sources of mentors could be in study groups, list serves and referral sources.

xiv. Plan strategy for getting on and off record if you're making appearances in court

This can be facilitated by drafting and using a notice of withdrawal form that can be filed with the clerk of the Court. Legal Aid Alberta is in the process of seeking the court's approval for the use of such forms.