

# Trial Court of Massachusetts

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## Limited Assistance Representation Training Manual

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# Contents



## **Trial Court of Massachusetts**

## **Limited Assistance Representation Training Manual**

Introduction	1
I. LAR Overview	2
II. Guidelines	5
III. Nuts and Bolts of LAR	6
Module A - Probate & Family Court	17
Module B - Housing Court	34
Module C - Boston Municipal Court & District Court	50
Module D - Land Court	68
Appendices: Unbundling Materials	85
For Attorneys	87
1. Best Practices for LAR	87
2. Links to Forms	92
3. Supreme Judicial Court Order – <i>In Re: Limited Assistance Representation</i>	94
For Clients	96
4. Client Handout	96
5. LAR Flow Charts for Attorneys and Clients	98
6. Suggested Client Handouts	100
For The File	101
7. Sample Intake Sheet	101
8. Sample Fee Agreement	102
Fee Agreement #1-Single Consultation Agreement	102
Fee Agreement #2-Consulting Services Agreement	103
Fee Agreement #3-Ongoing Consulting Agreement	107
Fee Agreement #4-LAR Agreement including Court Appearance	112
9. Sample Tasks/Issues to be Apportioned Attachment to Limited Assistance Fee Agreement - Tasks to be Apportioned	119
10. Sample Change in Scope Letter	120
11. Sample Revised Tasks/Issues Checklist	121
12. Sample Closing Letter	122
13. Sample Tickler Checklist	123

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# Introduction

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**Limited Assistance Representation** (sometimes called unbundling) refers to matters in which a client hires an attorney to assist with specific elements of a matter, such as legal advice, document preparation or document review, and/or limited appearances in court. The client and the attorney agree on the specific discrete tasks to be performed by each. Depending on the nature of the attorney's involvement, the attorney may or may not enter an appearance with the court. The client represents him/herself in all other aspects of the case.

## **Preamble**

This manual includes suggested forms, guidelines, and handouts that have been developed to use in limited assistance representation pursuant to the Supreme Judicial Court's Order *In re* Limited Assistance Representation, effective May 1, 2009 (see Appendix 3), as implemented by LAR orders promulgated by the individual Trial Court departments.

These materials are not official court forms; they offer a variety of suggestions that you may tailor to your particular practice as appropriate.

Each case, each client, and each opportunity for LAR presents its own unique professional and ethical issues, and nothing in these materials is intended to be a substitute for your own professional judgment and opinion.

These materials describe how you can explain limited assistance representation to clients, establish and memorialize the scope of an individual case, address requests to modify the scope, and avoid common pitfalls.

## **Manual Instructions**

This manual is divided into three parts:

1. General training for all attorneys to complete (Parts I and II)
2. Specific training by Module (Part III) (choose one of the Modules to review—select the one that most closely relates to your practice)
3. Appendices (containing helpful sample forms and handouts)

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# I. LAR Overview

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## **What is Limited Assistance Representation (LAR)?**

Limited assistance representation permits attorneys to assist a client on a limited basis rather than having to fully represent the client in all aspects of the litigation. There are three basic types of LAR described below.

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## **Three Basic Types of LAR**

1. Document Preparation: An attorney may provide LAR in the form of preparing documents, including pleadings and motions, a practice commonly referred to as “ghostwriting.” The SJC Order does not require the attorney to sign the document, but it does require the attorney to note on the document “prepared with assistance of counsel.” See Appendix 3.
  2. Representation in Court: An attorney may provide limited assistance in the form of one or more court appearances. For this type of limited representation, the SJC Order requires the filing and service of a Notice of Limited Appearance. There are also special instructions for documents filed by attorneys making a limited appearance. See Appendices 2 and 3.
  3. Advice and Counsel: An attorney may provide limited assistance in the form of advice and counsel, a practice that is unchanged by the SJC Order.
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## **History**

Lawyers have been offering limited assistance representation for years, in the form of classic advice and counsel. However, the needs of our population are changing, the demand has increased exponentially, and limited assistance has been formally recognized by many courts throughout the country, giving it a much higher profile.

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**Needs of the  
Litigant**

After the Boston Bar Association Task Force on Self-Represented Litigants conducted a survey in 1998, which found that one or both litigants were self-represented in over two-thirds of cases, the SJC Steering Committee on Self-Represented Litigants (“Steering Committee”) recognized the need of these litigants for competent legal assistance. The Steering Committee began working with an advisory committee, representing many sectors of the bar, to actively seek ways to encourage attorneys to assist litigants representing themselves.

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**Pilot Program**

For the pilot program, the Steering Committee developed, and the Supreme Judicial Court promulgated, court forms to provide notice to the court and opposing parties of the parameters of the limited assistance arrangement, as well as a simplified procedure to withdraw at the completion of the limited assistance duties.

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**Educating  
Court Staff  
About LAR**

Moreover, the Steering Committee encouraged judges to facilitate limited assistance representation to increase access of litigants to much needed legal services by providing education for judges and clerks about limited assistance representation and its value to the courts.

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**Why Provide LAR?**

Self-represented litigants comprise an increasing number of participants in the Trial Court. While there are many reasons that people of all income levels choose to represent themselves, the reality is that most self-represented litigants have low to moderate incomes and either:

- Do not qualify for legal aid;
  - Live in areas where the legal aid resources are insufficient to meet their needs;
  - Worry that, once they engage an attorney, counsel fees for full representation will become prohibitive;
  - Desire to retain more control over their cases; or
  - Turn to attorneys only to coach them or assist with their paperwork.
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## II. Guidelines

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**Limited Assistance  
Representation  
Helps Self-  
Represented  
Litigants:**

- Prepare their documents legibly, completely, and accurately;
- Prepare their cases with a better understanding of the law and court procedures;
- Obtain representation for portions of their cases, such as court hearings, even if they cannot afford full representation; and
- Obtain assistance in preparing, understanding, and enforcing court orders.

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**Court-Promulgated  
Rules and Forms  
Allow Attorneys to:**

- Help litigants prepare pleadings without appearing or disclosing the attorney's name;
  - Clarify the scope of representation when the attorney and client have contracted for limited legal assistance;
  - Clarify communication and notice requirements;
  - Provide for a limited court appearance(s); and
  - Provide a simplified notice for withdrawal from cases when an attorney is providing limited legal assistance.
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## III. Nuts and Bolts of LAR

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### **Attorney Duties and Liability in General**

LAR does not mean limited liability. The attorney remains responsible for the conduct of all the tasks which he or she undertakes, whether in the context of full service or limited scope. This means that, within the confines of the limitation on scope, the attorney still owes the client full duties of loyalty, confidentiality, and competence. For that reason, attorneys must still keep careful conflict records. Confidentiality applies, even as to those matters which are outside the scope of the limited representation. And, of course, there is never a waiver of the duty of competence. Once you and the client have agreed on which portions you will undertake, your duty of care for that limited portion is the same as it would be for those same professional activities in the context of full service representation.

An important difference from full service representation is the requirement that you advise the client of various limitations of limited legal assistance. This is not difficult to do, but cannot be omitted. One good way is to provide to the client a written description of limited assistance. There are examples of how to do this in Appendix 4 (Client Handout).

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**Specialized Attorney  
Duties for LAR**

While most of the rules which apply to full service representation are equally applicable to limited assistance, there are a few specialized rules which you must keep in mind. They are:

1. Limitations in scope require the client's informed consent.
2. Limitations in scope must be reasonable.
3. An attorney has a duty to advise clients fully about the issues, even if not asked.
4. Any change in scope must be documented.

These duties are non-delegable and must be governed by the professional judgment of the attorney.

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**Scope of  
Representation and  
Informed Consent**

There are many ways in which an attorney and client can limit the services to be performed by the attorney, either by assigning specific tasks to the attorney and others to the client or by agreeing that the attorney will handle certain issues, while the client will be responsible for others. For example, the attorney and client may agree that the attorney will handle the entire issue of custody, or the attorney may apportion the various tasks between them. See Appendix 9 for apportionment checklists.

As an attorney, it is your responsibility to ensure that the client understands the consequences and trade-offs inherent in limited assistance representation. Your responsibility includes advising the client about the options available for limited assistance and ascertaining not only that the limitation is reasonable under the circumstances but also that the client has given informed consent to the limitation. For example, it would generally not be reasonable to assign a particularly technical or complex issue to a self-represented litigant.

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**Scope of  
Representation  
Continued**

Another essential part of your analysis is to advise the client of the risks inherent in limited assistance representation. Some risks that are important to point out include:

- It is impossible to predict every evidentiary objection which might be made in court;
- The litigant may be confronted with issues and objections which were not anticipated; and
- Of course, an otherwise reasonable limitation on scope which the client is unable to understand, for one reason or another, may not be effective.

However, these trade-offs are part of the litigant's consumer decision to limit the services that the attorney will be providing to him or her and the resulting costs of those services.

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*Once the case analysis has been completed and the attorney and client have agreed on a limitation on scope, that limitation, as well as any later changes in scope, must be in writing in order to avoid misunderstandings and confusion which might impair the client's rights.*

*A standard "boilerplate" full service fee agreement will not suffice for a limited assistance arrangement. See Appendix 8 for sample agreements. These four fee agreements are designed for four different kinds of limited assistance representation.*

**Fee  
Agreement  
#1**

A simple single page document which is not properly a fee agreement so much as a non-retention agreement. It memorializes the fact that the client consulted you for a single service which has now been completed and no further services are contemplated. This form would be most likely used when your assignment is to draft a single document, such as an order after hearing, or to appear at a single hearing, such as a motion matter.

**Fee  
Agreement  
#2**

Contemplates that you will be coaching the client, perhaps advising on law and procedures, but the client will only be consulting with you. You will not be drafting documents, filing pleadings with the court, or making a court appearance.

**Fee  
Agreement  
#3**

Designed for a situation where you would be more involved with the legal matter, perhaps drafting pleadings, negotiating, reviewing discovery, assisting with exhibit preparation, or some other ongoing service. This is the vast majority of limited assistance arrangements, and this agreement is designed to be tailored to the specific needs of your client and issue. Note that each of these agreements provides for the apportionment of tasks and/or issues right in the body of the agreement. Another way to do this is to memorialize the apportionment of tasks and responsibilities in an attachment to the agreement. This would probably be the most practical format if you suspect that the scope may change because of new issues arising.

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**Fee Agreement #4**

Designed for the circumstances where your assignment would require you to appear of record, either to represent the client on a limited basis at court or to file documents on the client's behalf.

Please review the fee agreements carefully and tailor them to your use, taking the parts of each which best suit the limited assistance arrangement with each client. The important thing to note is that your standard full-service fee agreement will not work with limited assistance representation.

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*The easiest way to document the limitation on scope is through the use of checklists. There are several included in your materials in Appendices 9, 11 and, 13.*

**First Type of Checklist**

Designed to apportion tasks between you and the client. It is a contemporaneous record of your discussion with your client memorializing the fact that you discussed the various tasks which might be required in the matter. It is also a reminder to you to see that all likely tasks are assigned to either you or the client and nothing is left out. And finally, it is a tool for educating your client on the scope of your involvement and the client's own responsibilities. Of course, it is your responsibility to ascertain that the apportionment is reasonable under the circumstances.

**Second Type of Checklist**

Designed to identify issues which you will address and those for which the client will retain responsibility. This form assumes that certain issues will be handled by the attorney, while other, simpler aspects of the matter will be the responsibility of the client.

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### Advising Your Client on Issues Related to LAR

It is incumbent on you, as the attorney, to advise the client on related issues, even if not asked. Laypersons frequently have a simplistic view of what the law “ought” to be and make assumptions which are incorrect. It is your responsibility as the attorney to ensure that you have done a thorough intake interview before agreeing to a limitation on scope. See Appendix 7 for a Sample Intake Sheet.

The client should be carefully advised on all aspects of the legal problem presented, because only then can an informed decision be made on what constitutes a reasonable limitation on scope.

The attorney has a duty to advise the client of legal issues which are “reasonably apparent.” You do not have to represent the client on the related issues outside the scope of your representation, but you must advise the client of their existence, so that the client’s agreement to leave them outside the scope is an informed one. A simple checklist containing an entry demonstrating that the related claim was discussed and the client declined assistance is recommended in this circumstance.

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### Changing the Scope of Representation

Limitations on the scope of representation, if **reasonable, informed, and properly documented**, are permissible. However, it is a very common occurrence in litigation for new issues to arise after the proceeding is underway. That is just the nature of litigation. If a new issue arises in the context of an existing limited assistance representation, it should be treated as a related issue. It should be discussed with the client using the same analysis which you would use at the initial intake. In addition, the following questions should be considered:

- Is it something that would be reasonable to exclude from the scope?
- Does the client agree that it is to be excluded?
- Is that agreement memorialized?

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**New Agreement  
Needed After a  
Change in the Scope  
of LAR Occurs**

If the new issue is to be included in the scope of representation, that is, if you and the client agree that you will assist with this new issue, the new and expanded limitation on scope must similarly be reasonable and memorialized in a written fee agreement signed by the client before you undertake work outside the original scope. See Appendix 9 for sample forms to assist you in memorializing changed scope. Note, here, that a confirming letter is not going to be sufficient to fulfill this duty absent some demonstration of agreement by the client. If you just send a confirming letter to the client, without any other action on the client's part, you run the risk of misunderstandings and insufficient documentation of the changed scope. We have provided a sample letter regarding changes in scope in your materials in Appendix 10.

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**Further Scope  
Considerations**

Scope can change in another important way. Laypersons frequently have unrealistic and idealized expectations of what happens in court. That may cause them to re-think the limitation on scope. If, after attempting to self-represent, the client decides that he or she wants full service representation after all, it is essential to get a new full service fee agreement to replace the limited assistance agreement. This is a situation which occurs frequently, as litigants often learn their ideas of what happens in court from Judge Judy and other entertainment outlets. Stated differently, after seeing what really goes on in court, they may well have a greater appreciation of the fact that there really is something in what you learned in law school which is, in fact, valuable to them and worth paying for.

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**Limited Assistance  
Without Court  
Appearance**

Most limited assistance representation arrangements do not require the attorney to go to court or put his or her name on the court papers. Massachusetts has a specific rule of court which states that attorneys who “ghostwrite” pleadings do not have to disclose their names. (See the Standing Order in Appendix 3.) This will not be an issue in most cases where you will be working behind the scenes, advising the client, gathering and organizing information, drafting documents and memos, and instructing the client on procedures and settlement negotiations. However, if you do put your name on a pleading, be sure you file it yourself, and do not give it to the client to file. Do not put yourself in the position of drafting a document with your name on it, only to find that the client has altered the content before it reaches the court file.

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**Limited Assistance  
Representation with  
Court Appearance**

Sometimes the nature of the assignment will require that you appear in court on behalf of the client. There are specific rules which govern how this is done.

A notice of limited appearance needs to be filed with the court and served on the opposing party if you are appearing of record on a limited appearance basis in Massachusetts. (The most current versions of this form are found on the Massachusetts Trial Courts’ websites). Sometimes you will be appearing only for a single hearing. Other times, you will be handling an entire issue or event, while the client represents him or herself on others. If you are involved in this kind of a representation agreement, the logistics can be tricky, especially if it is difficult to separate “your” issue from the one the client is responsible for. This should be part of your initial intake, when you make the professional determination whether limited scope is suited to this case. If the issue or task the client needs your help on is inextricably intertwined with one the client wants to handle, the purpose of limited scope may well be defeated. On the other hand, if your issue can be either bifurcated or heard first, you will be excused after your part is done. Suggestions on how this might be done are

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**Limited Assistance  
Representation with  
Court Appearance  
Continued**

in the scenarios which follow in the individual Trial Court modules.

In any event, if you appear of record, you need to use the appropriate notice of limited appearance form and, of course, if your scope changes, you must serve and file a new one which puts the court and your opponent on notice of the change. Finally, when you have completed the issue or event for which you have filed the Limited Appearance, you must file a Notice of Withdrawal of Limited Appearance. Withdrawal is not automatic. If you do not file a Withdrawal, your appearance will continue in the case.

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**Insurance  
Reassurances**

A word on insurance coverage issues. Limited assistance representation has been around for years in transactional and business legal work. It is the practice of law, and as such, should be covered by your carrier. Your carrier may be particularly interested in your office procedures for ensuring that limitations in scope are clear, informed, and in writing; that your file is well documented; and that you are meticulous in not stepping outside of the professional box that you and your client will draw around the specific services which you agree to perform. As with full service representations, your insurance carrier will want to know that you are careful about promptly documenting the end of your professional relationship, as it is as important as documenting the beginning and the limitations on scope.

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**Billing**

Because of the nature of the LAR arrangement, we recommend that limited assistance representation be “pay as you go.” You are not working on retainer, nor are you billing the client for work you have done in the past. The client consults with you, either writes you a check or charges a credit card at the end of that consultation, and goes away until the next consultation.

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## Billing Continued

If you have not done so already, it is a good idea to set up your office to take credit cards. It is up to you whether you charge an hourly rate or, if appropriate, a task-based flat fee. Most limited assistance lawyers still use an hourly rate, unless they are making a single court appearance on a very limited issue. How you do this is up to you and your client. However, if you elect to use an hourly rate, there are a couple of considerations which you should take into account when setting the rate:

- Remember that your professional responsibilities for the work you undertake within the limitation on scope are precisely the same as your responsibility for that work in the context of full service. There is no reason to charge a lower rate when your professional duties are the same, unless you elect to do that as a marketing tool or to provide *pro bono* representation.
  - Also, if your assignment includes work which will be done outside the client's presence, such as drafting or research, many practitioners require a deposit equal to the fee for a minimum number of hours, which is replenished as needed.
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**Introduction and  
Instructions for  
Review of Modules**

The following section of the manual includes Modules A, B, C, and D. Module A is specific to the Probate and Family Court, Module B to the Housing Court, Module C combines the Boston Municipal Court and District Court, and Module D is specific to the Land Court. You need only review the Module that is the most closely related to where you will practice LAR.

If you plan to practice LAR in multiple court departments, feel free to review multiple Modules (however, take note that you may experience some redundancies in doing so). The individual Modules are provided mainly for the purpose of offering dialogues specific to the practice in that court department, but the same general concepts are covered in each.

Hopefully, these dialogues will give you a better idea of how some of the conversations with your clients regarding LAR may play out in practice.

# MODULE A

## Probate and Family Court

### Contents



#### Page

18.....	Mission Statement
18.....	Jurisdiction
18.....	Specific Instructions
19.....	Sample Dialogues
	Intake Interview #1
	Intake Interview #2
	Ending #1
	Ending #2
	Intake Interview #3
	Intake Interview #4
	Related Issues #1
	Related Issues #2
	Related Issues #2A
	Change in Scope #1
	Change in Scope #2
	Opposing Counsel #1
	Conclusion of Representation #1
	Conclusion of Representation #2

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# Probate and Family Court

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## **Mission Statement**

To deliver timely justice to the public by providing equal access to a fair, equitable and efficient forum to resolve family and probate legal matters and to assist and protect all individuals, families and children in an impartial and respectful manner.

## **Jurisdiction**

The Probate and Family Court has jurisdiction over family matters such as divorce, paternity, child support, custody, visitation, adoption, termination of parental rights, and abuse prevention. Probate matters include jurisdiction over wills, administrations, guardianships, conservatorships and change of name. The Court also has general equity jurisdiction.

## **Specific Instructions**

For applicable forms, rules, and qualifications for the use of LAR in the Probate and Family Court, please refer to the Massachusetts Trial Court Website. For convenience, a few direct links have been provided below (also found in the Appendix).

Probate and Family Court LAR website:

<http://www.mass.gov/courts/courtsandjudges/courts/probateandfamilycourt/lar.html>

Statement of Qualification

<http://www.mass.gov/courts/courtsandjudges/courts/probateandfamilycourt/lar.html>

Notice of Limited Appearance Form:

<http://www.mass.gov/courts/courtsandjudges/courts/probateandfamilycourt/documents/noticoflimitedappearance.pdf>

Notice of Withdrawal of Limited Appearance Form:

<http://www.mass.gov/courts/courtsandjudges/courts/probateandfamilycourt/documents/noticofwithdrawaloflimitedappearance.pdf>

## INTAKE INTERVIEW #1

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- Attorney: I understand that you would like me to help you represent yourself in your divorce.
- Client: Yes. I really want to do this myself but need you to tell me about the law, the rules, and all that stuff.
- Attorney: All right. Let me go over a few things so we can decide whether I'll be able to do that in your case. I understand that you will be filing a motion for child custody and child support. What about spousal support?
- Client: You mean alimony? She makes almost as much as I do. Why would I pay her? I'm looking for child support from her since the kids spend more time with me. It's really quite simple. Oh, and I want to sell the house.
- Attorney: Well, some of it is simple, and some of it isn't. Does your wife agree that the kids will be primarily with you?
- Client: She travels all the time, so I think we can work it out. I just want to make it legal in case she changes her mind. And I've gone to the court self-help center, so I know what forms I need, and I've started filling them out. I'd like you to look them over before I file them to see that they are right. You'll tell me the procedures, won't you?
- Attorney: Yes. Are you comfortable speaking in court?
- Client: Of course. I'm a software trainer, and I'm used to public speaking.
- Attorney: What about preparing exhibits for the judge?
- Client: It's just pay stubs and stuff like that, isn't it? I can do that myself.
- Attorney: There are a few things you need to think about if you are going to represent yourself in court. First, the rules of evidence can be technical. Although I can anticipate some of the objections you might face, I can't predict them all. If you don't know the rules, you may not be able to get the information you want in front of the judge. Although you think you know the position your wife is going to take, you may be presented with arguments or evidence you didn't expect. Also, talking in public about your own kids and finances can be much more stressful than talking to strangers in a business setting. Are you comfortable taking that risk?
- Client: Yes. I think so. As long as you coach me, I'll be comfortable taking it from there. I really want to save money and don't want to pay you to go with me.

Attorney: Well, that is your choice as a consumer. My job is to make sure that you are aware of the risks of that choice, to the extent that they can be anticipated. I'm happy to coach you, although you need to understand that I can't teach you everything I know in a coaching session.

Client: That's fine. I'll take that risk. I'm pretty confident and I'll do my homework.

Attorney: All right. There are a couple of other issues we need to talk about. Has your wife agreed to the sale of the house?

Client: No. Why do I need her to agree? I had it before we were married, but I won't be able to afford to keep it.

Attorney: Massachusetts is an equitable property state, which means that a judge is required to consider a whole host of specific factors before deciding how property should be divided. That you held title in the house prior to the marriage is no guarantee, in itself, that a judge will award you all the equity in the house. Do you want me to address this issue for you, or handle it yourself?

Client: Let me think about that. For now, let's leave that on the list of things I'm going to do.

Attorney: [marking the checklist] OK. You can always change your mind. Now let's talk about the stock options. Are these options that your wife got through work? While you were married?

Client: Well, some were, and some weren't. I really don't have any information on them, though the paper says the stock has gone through the roof.

Attorney: I have to tell you that stock options are one of the most complicated areas of family law, and something attorneys usually leave to specialists. While I'm comfortable with your handling the other parts of the case with coaching, I strongly feel that this is too technical for a non-attorney. Do you have any experience with stock options?

Client: I have a few through my work, but I think they're different from hers.

Attorney: Well, you've identified two sets of options, yours and your wife's. They will require careful analysis to be sure that you receive the value you are entitled to. Since this is so technical, I don't feel comfortable simply coaching you on them. Too many things could go wrong if you don't know what to watch out for.

Client: Well, I don't know anything about them, but I know they can be really valuable, so I don't want to lose out. I don't mind paying you to handle that part of the case.

*Notice here how the attorney ascertained the client's comfort level with self-representation, skill at public speaking, and then went straight into diagnosing or analyzing the issues and facts. Note also how skillfully she underscored the highly technical character of the stock option issues and the fact that the potential value probably justifies the expense of legal assistance.*

*Now let us look at another way this might happen.*

## INTAKE INTERVIEW #2

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Attorney: Based upon our discussion, it appears that there are several aspects to your legal problem. You have to respond to the papers you got for an increase in child support and you have to deal with arrearages. You will need to tell your side of the story and prove that you have paid all of your past child support, even though your ex-wife says you haven't. You will have to complete the court forms to respond, file them with the court, and serve them on the other side. You also want an order for more time with your kids and getting your share of the pension. That will require a separate set of forms to get your requests before the court. You will have to subpoena the pension records. You have told me that you can't afford to pay me to do all of this, so we need to discuss how your litigation budget can best be spent. Have you considered limited assistance representation, where I do part of the case on your behalf and coach you how to represent yourself on other parts? Does that sound like something you would be interested in?

Client: Well, I sure want to save money, but I don't know much about the law.

Attorney: Here are some of the ways we might do it: You could write out your response to your ex-wife's declaration. Then I could review it and put it in proper legal form. Or you could get the forms from the court and do that part yourself. I could coach you on how to do that and what to say when you appear in court. On the other hand, subpoenas can be tricky to draft to be sure you get the information you need, and pension benefits are one of the more technical areas of the law. Do you have any experience in dealing with pension benefits, perhaps as part of your job?

Client: No, I really don't know how they work. I just know that she is collecting payments on a plan she had when we were married, and I think part should be mine.

Attorney: All right, then. It probably makes most sense if I draft the subpoena and gather the information you will need to prove the pension claim. How about writing your response to your wife's papers and the reasons why you think you should have more time with the children?

Client: I don't mind writing it out first, but I'd feel better if you looked it over so I am sure I said it right.

Attorney: Fine, I can do that. How about going to court? Are you comfortable representing yourself in court if I coach you beforehand?

Client: I don't have any problem telling the judge my side of the story. Is that all there is to it?

Attorney: It's more complicated than that. There are rules of evidence which tell the judge what information she can consider and what she has to ignore.

Client: Well, you'll tell me what they are, won't you?

Attorney: I can try to predict the testimony and evidence and possible objections. However, with the best coaching in the world, I can't teach you everything I learned in law school, nor can I anticipate everything that might come up in court.

Client: Can we change our agreement later if I decide that I need more help?

Attorney: Yes, we'll just need to make that change in writing.

Client: Well, I don't want to pay for you to go to court. I'd rather you did the technical stuff and told me what to do in court. I've been there before, and I think I have a pretty good idea what goes on.

Attorney: Well, that is your choice, and of course, I'd be happy to coach you. However, you need to be aware that you may be confronted with new issues or technical rules that you won't know how to address. Are you willing to take that risk?

Client: Yes, I'll chance it. I've got the canceled checks to prove that I paid her, even though she said I didn't, so I'm not too worried about that.

Attorney: OK, now, what about your request for more time with the children? Here's what I think should be done.

*Note how the attorney explained the risks of limited assistance and self-representation as part of her intake and apportionment of responsibility.*

*One of the issues which comes up in limited assistance representation, especially when the apportionment of responsibility is strictly task-based, is that the client develops an extremely mechanistic idea of how it works. Let's see how that might come up in practice.*

## ENDING #1

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- Attorney: I've told you the things I think need to be done to protect your interests. Which of these do you think you might be able to do yourself, if I coached you?
- Client: I think I can speak for myself in court. Will you go with me in case I mess it up?
- Attorney: Well, that doesn't make much economic sense. I'd have to charge you for my time, and in that case, I might as well make the arguments myself.
- Client: You mean you'd charge me even if you weren't doing anything for me but just sitting in the back of the courtroom?
- Attorney: Well, since I'm a professional, what I sell is my time and expertise. That's why we charge by the hour for our services. If I'm sitting in the back of the courtroom watching your hearing, that is time that I can't be helping another client.
- Client: What if we set my hearing on a day that you're going to be in court anyway?
- Attorney: That won't work. All that would mean is that my other client would be paying for my time helping you. That doesn't seem fair to them, does it?

*This issue isn't peculiar to limited assistance, of course. Even in full service representation there is often a disconnect between the fact that we, as lawyers, think we are selling hours, while the clients, as consumers, think they are buying results. It is sometimes helpful to reinforce the connection between time and cost. As with full service, this is also a good way to encourage the client to make good use of your time.*

*Now that the attorney and client have done the intake, it is critical that the scope be memorialized in writing. It defeats the purpose to follow each consultation with a lengthy confirming letter. Here's a way that it can be done efficiently, using the task and issues checklist in Appendix 9 in your materials.*

## ENDING #2

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- Attorney: All right, I think we're clear that you will get your payroll records and canceled checks and will write out your corrections to the statements in your wife's papers, and I'll talk to the daycare provider and prepare the papers asking for more time with the kids. As we've been talking, I've been marking a checklist I use to make sure that we cover all the important bases and there are no misunderstandings. I'm going to ask you to review it and make sure that it accurately reflects our agreement as to who is going to do what, and

then I'll copy it for you so that we each have a copy to refer to. [Hands checklist to client]

Client: (reviewing checklist). You'll be telling me what to watch out for in court, right?

Attorney: Yes, to the extent that it is possible to predict. As I've told you, new things often pop up in court.

Client: Looks fine to me.

Attorney: Good. We'll both sign this and then I'll make a copy so we each have one.

*This is a good use of the checklist. It is used to educate the client, remind the attorney of the related issues which should be at least discussed and excluded, and provides both the attorney and the client with a clear written record of the result, reducing the likelihood of later misunderstandings.*

*Of course, limited assistance isn't for every legal issue, every fact pattern, or every client, and it is the attorney's duty to ascertain whether it is reasonable in the context of the matter presented. Here's one way the issue of appropriateness might come up.*

### INTAKE INTERVIEW #3

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Client: This really isn't fair. You keep telling me I can't win. Every attorney I've talked to says the same thing. Doesn't anybody care about my rights? All I want is for you to tell me how to talk to the judge. I'm sure that if I only get a chance to tell her my side of the story, she'll agree with me that I should get more of the property because my wife cheated on me.

Attorney: I'm sorry. I know you feel strongly about this, but the result you want is not available to you under the law. No amount of coaching on my part will change the law into what you want it to be. My job is to tell you the truth, even if you don't want to hear it.

Client: I'm willing to pay you to coach me.

Attorney: I understand that, but this isn't about coaching. I can't make the law what you want it to be. My job is to give you the best advice I can, and I have done that. I don't think we are going to be able to work effectively as a team, since I can't give you what you want. I'm afraid I just won't be able to take you on as a client.

*One of the pitfalls to avoid is the unreasonable client, who goes from lawyer to lawyer hoping to be told what he wants to hear and, when he finds he isn't going to get that, deciding to hire a "coach" to help him win the unwinnable. This is unlikely to be a satisfied client when all is said and done. Be careful of this kind of client. Another potential problem to be aware of is the so-called "litigation lifer," who has been around the courthouse just long enough to be dangerous. This may be someone who has had prior divorces, or who has been fighting the same one off and on for years. If someone consults with you and says that he's had five prior lawyers, each one worse than the last, and now realizes that he would have been fine in the beginning if he'd only had a good coach to help him self-represent, WATCH OUT. Some of these problem clients and situations are set forth in your materials under "Best Practices" in Appendix 1.*

*Here's another situation to watch out for:*

#### **INTAKE INTERVIEW #4**

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Attorney: Thanks for faxing me your papers. That gave me a chance to review them before meeting with you. The issues seem to be relatively straightforward, and I've told you how I think the tasks might be apportioned between us. Do you agree? What would be your preference?

Client: (in heavily accented English) "You have translator, no?"

*As the professional, you have an obligation to determine whether the litigant is capable of performing the tasks which he is undertaking. That doesn't mean that he will do it as well as you do, but there must be a reasonable threshold of ability. By definition, someone whose ability to communicate or perform the contemplated tasks is limited by language or otherwise is not a good candidate for limited scope representation.*

*One of the other ethical duties you must be aware of is the requirement of advising the client on related issues, even if not asked. This can be tricky. Here's one way you might see it:*

#### **RELATED ISSUES #1**

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Attorney: All right, we've agreed that I will help you draft the pleadings to request more time with your children. You are paying \$700 per month child support under the current order. Is your income still the same as it was then?

Client: (suspiciously) Why do you need to know that? It's nobody's business but mine.

Attorney: Well, actually, if you are asking for a change in the time, it may well be the court's business. You see, changes in the amount of time you spend with the children may trigger changes in child support as well.

Client: Why is that? If I'm getting more time with the kids, my child support should go down, shouldn't it? (Plaintively) Anyway, I can't afford to pay you to do that. I've already spent as much time with you as I can afford.

Attorney: I'm sorry, but I have a responsibility to be sure that you understand all of the potential legal consequences of what you are about to do. I can only do that if you give me the information I need to determine whether there might be adverse consequences you haven't thought of. It doesn't mean you have to pay me to do these other things, but I have to at least advise you of what they are so that you can make an intelligent decision. I don't want you to file legal papers without knowing the likely consequences, both good and bad. Only when you know the likely benefits and risks can you be sure you've made a decision that is in your best interests.

Client: What difference does it make what I'm earning now? She's done just fine on what I've been paying her.

Attorney: Actually, I've seen this happen many times. One side requests a different visitation or custody order and the other responds by asking for more money, either in support or attorney fees. Both sides have to disclose all of their income and expenses to both the court and the other side. If you are earning more than you were when the original order was made, your child support might actually go up, even if your time with the kids goes up as well. By law, the court may be required to recalculate child support based on the new time schedule, and also based on your and your ex-wife's current income. You can't just assume that your child support will go down if your time with the children is increased.

*Related issues come up all the time in family law. We've focused on the most obvious, where a change in support is triggered by change in income or timeshare. This attorney did a good job of explaining why it is in the client's interest to share this information, even if the client is reluctant.*

*And then, sometimes the client is just belligerent:*

## **RELATED ISSUES #2**

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Client: (Plaintively) I knew it. You said you'd help me represent myself. You lawyers are all alike. All you want is to get people in so you can charge us hundreds of dollars for things we don't need. I don't need to tell you that

and I'M NOT GOING TO PAY YOU TO TALK ABOUT MONEY. We're here to talk about my kids, and that's all I'll pay you for.

Attorney: OK, I will exclude financial issues from the checklist and note that you are only authorizing me to assist you with time with the kids.

***This approach will not work!*** You have to assess and advise on related issues, even if not asked, and simply excluding them from the scope doesn't protect you. Frankly, if a client won't let you do this, he probably isn't a good candidate for limited assistance. Here's a better way to handle it.

## RELATED ISSUES #2A

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Attorney: I'm sorry you feel that way, but I've seen too many situations where one person files for a change in custody and the other responds with a request for more child support. I'm worried for you, and if you won't let me analyze your potential legal issues, I'm not comfortable coaching you. I need this information to assess potential related actions by you or your wife. I have to be able to understand the impact of the actions I'm assisting you with, including other matters that you may not be aware of. Otherwise, you may be creating more of a problem for yourself than you are solving. You don't need to hire me to assist you with the other issues, but I at least have to advise you of what they may be so that you can make a good decision.

Client: (wheedling) If I tell you, will you promise not to charge me for it?

*This is a much better way to handle it, since the attorney explains why related issues must be explored, and puts the problem in the context of protecting the client from unknown potential hazards.*

*We've outlined some of the issues you might face in limited scope representation, and illustrated some of them. While the rules are few, it is imperative that you watch out for them, and protect yourself and your client when they arise.*

*The most common, and most dangerous, is failure to document changes in scope.*

*As we know, family law cases tend to be fluid. What starts out as a garden-variety motion to modify child support may well morph into a request for one party to move away with the children, about which nothing is garden variety. New issues can pop up unexpectedly and frequently under extreme time pressure. We are trained to protect our client's interests and jump to their defense. However, if the new issue is outside the existing limitation on scope, nothing is more hazardous than to step outside the specific box you have taken such trouble to draw and document and start to assist the client on new issues before obtaining a new agreement documenting the change in scope. Doing so substantially increases the risk of a malpractice claim. It is far more likely in such a situation that there will be a*

*miscommunication between you and your client as to the boundaries of scope, which in turn increases the risk that something will slip through the cracks. If it does, and you no longer have a specific written agreement documenting the clear limits of your responsibility (and liability), who do you think is more likely to take the blame, you or the client?*

***Do not take this risk.***

*The appended materials contain a variety of checklists that are designed to identify the limitations in scope. We have referred extensively to the task checklist in Appendix 9. Another is based on breaking the case down by issue, with the attorney handling all aspects of a single complex issue, while the client is responsible for the simpler ones. You will be most likely to use the task-based approach when you are coaching the client but not appearing in court. The issue-based checklist may be better suited for litigating part of the case in court. These guidelines are not hard and fast, however, and it is up to your professional judgment to use the method of apportioning responsibility that best suits the needs of the specific client, case, and issue.*

*The checklists are designed to serve multiple purposes: they help you identify the components of a case that might be included or excluded from the limited scope representation as part of your intake interview. They memorialize the discussion between you and your client and are an important communication tool. We encourage you to copy them and give them to the client after discussion. They can be attached to a fee agreement and replaced with a new attachment if the scope changes. This is an easy way to document changes in scope without having to create a whole new agreement.*

*Here's an illustration of one of the ways in which the issue of change of scope may come up. Remember, too, that when new issues pop up, they frequently do so in an emergency situation.*

## **CHANGE IN SCOPE #1**

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Client: Thanks for calling me back so promptly. I'm really upset. I just got served with papers trying to cancel my summer vacation with the kids. It's a pack of lies. I've already faxed it to you. Somewhere I read that I have only 24 hours. Is that true? What should I do?

Attorney: You read it correctly. You have until noon tomorrow to file your papers. These are important charges, and you need to get your story before the judge.

Client: OK, write it up and fax it to me so I can sign it.

Attorney: We need to talk about this. Our limited assistance agreement says I'm only to represent you on the child support issues.

Client: (Emphatically) THIS IS IMPORTANT! I NEED YOU TO DO THIS NOW.

Attorney: I can help you right away—but first we need to discuss it. Your papers need to be filed right away, so I will need a new checklist outlining the scope of my involvement. When can you come in to sign it?

Client: I DON'T HAVE TIME FOR THAT. It's really busy here today, and I'm short-handed. Can't you mail it to me? I'll sign and return it next week.

Attorney: OK. Drop it through my mail slot on your way home from work one night next week. Now, tell me what really happened so I can start drafting your declaration. I'm really pressed for time, so I have to do this now if we are going to meet the court deadline.

***Not a good approach!!!** There are many things wrong with this picture. The attorney didn't explore the apportionment of new tasks/issues. More importantly, she didn't get a writing confirming the new scope of representation before stepping outside the original agreement. There is no guarantee that the new document will be signed and dropped off at all. Under the facts presented, it is certain that it won't happen until after the attorney performs services outside the original scope. There is no point in tightly restricting your representation and then stepping outside of that restriction. In fact, by blurring the line, this attorney has exposed herself to liability. Let's try to do it better.*

## CHANGE IN SCOPE #2

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Client: I DON'T HAVE TIME TO COME TO YOUR OFFICE. It's really busy here today, and I'm short-handed. Can't you mail it to me? I'll mail it back next week.

Attorney: Kevin, I know you are busy and the timing is inconvenient; however, this is important, and you will have to give it priority if the judge is going to hear your side of the story in time. I'm happy to help you deal with this emergency, but I can't exceed the terms of our contract without a new contract. I can fax it to you and you can sign it and fax it back to me, but it has to be done before I can do things outside my written authority.

The first priority is that we get clear on exactly what you are authorizing me to do. [Pulls out checklist] Do you want me to draft papers? For your signature or mine? Are you going to file and serve them or will I? Do you want me to go to court for you? If so, I need to know exactly what you want me to do and what you want to do yourself. What about the comments by your daycare provider? Are you going to call her or do you want me to? Are there other witnesses we should talk to?

Client: I don't know what to say in court. She's filled her papers with lies. I need you to tell the judge what really happened. And I'd be nervous going to court by myself. I'd really like you to go with me. It will be a disaster if we can't go to the family reunion. She knows how important that is to the kids. She'll ruin everything if she gets her way. What will I do? Should I change my plane reservations? What about the rental car?

Attorney: No one has made any orders yet, so let's focus on the issue at hand so that we can get your side of the story to the judge. There will be plenty of time to talk about the possible consequences after we've prepared your papers. In the meantime, we need to be clear on exactly what you want me to do. I understand that you want me to draft the pleadings and appear at the hearing if necessary. Is that correct?

Client: Yes. Can you get started now? I don't have time. It's really busy today. Can't you just sign the agreement for me, and sign my name to the court papers?

Attorney: No, I can't sign either of these papers on your behalf. I can get started drafting as soon as you have initialed the new limited assistance agreement. I'm filling it out now. I'll fax it to you to sign and fax it back to me. As soon as I get it, you can tell me what really happened, and I'll start drafting. When can you come in to sign the declaration?

Client: I don't have time today.

Attorney: Kevin, I know you are busy, but you have to review and sign these things yourself, and you don't have much time. As you point out, these issues are important and have serious consequences, so you'll have to give them priority if I am going to meet the court deadline for you. After the new agreement is signed, you'll need to set aside enough time to go over all the facts with me so I can draft an accurate declaration. Since it is under penalty of perjury, you have to make sure everything is correct. After I've drafted it I'll email it to you and you will have to go over everything carefully to be sure than I haven't misstated anything. What time will you be able to do that? I have a hearing before Judge X at 2:00 on another matter, so I'll have to get this done before that time if you are going to be able to review it today.

Client: This really is a pack of lies. Can I sue her for perjury?

*What could the attorney have done differently? How about the use of email to obtain the new limitation on scope and/or the declaration? It is a judgment call whether you are comfortable using email with an electronic signature, or insist on a faxed or scanned copy or an original. It may depend on the electronic sophistication of the client. Your*

*duty, whatever method you select, is to ensure that your file clearly demonstrates the discussion over the change in scope and the client's informed consent. What other things might the attorney have done to make it clearer to the client?*

*Before we leave this part of the topic, we'd like to highlight a relatively common fact pattern which particularly lends itself to LAR. This is a case where you have represented the client on a full service basis in the past. You know each other, and each is extremely familiar with what has gone before, including prior rulings, the opposing party and attorney, and the issues. At some point, the client may have determined that he or she couldn't afford you for full service representation any more. However, now he or she would like to consult with you periodically or, perhaps, retain your services for only the most technical or difficult part of the case. This is a particularly suitable situation for LAR. Since you know the client, you know whether you can trust the client to perform his or her part of the bargain. If you couldn't trust the client, presumably you wouldn't agree to LAR. Since you know the issues, the history, and opposing party, you can be particularly helpful in framing the issues and assisting the client. And since the client has had experience with the process, you can form a sound opinion of the client's ability to self-represent. If you find yourself in this situation, the best practice is to obtain, serve, and file your Notice of Limited Appearance Form so it is clear that you now represent the client on a limited basis.*

*Now let's consider how to deal with opposing attorneys who may not understand or wish to honor your LAR agreement with the client.*

## **OPPOSING COUNSEL #1**

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Attorney 1: My client tells me he has tried to negotiate the child support issues with you, but you have not returned his calls.

Attorney 2: I don't have to negotiate with your client. Besides, you're just trying to get me in trouble with the Board of Bar Overseers for talking directly to a represented party.

Attorney 1: I have served you with my Notice of Limited Assistance, and you are on notice that I am only representing him in connection with the pension issues. I've also written you a letter specifically telling you that.

Attorney 2: That doesn't matter. I'm not required to deal with him and I'm not going to. It's not proper.

Attorney 1: I suggest that you look closely again at the Massachusetts Rules of Professional Conduct on that point.

Attorney 2: Don't tell me how to practice law.

Attorney 1: If that is your position, you may be frustrating his attempts to settle the case, and unreasonably increasing my costs by refusing to deal with him on authorized topics. My client may want to decide if he wants the judge to consider whether your conduct is reasonable.

*We hope we have impressed how important it is to document the limitation in the scope of your attorney/client relationship, as well as any modifications in that scope. It is equally important to document the end of that relationship. Do not get lax about documenting the end. Again, the greatest potential for trouble in a limited assistance relationship is confusion about who is responsible for what aspects of the case. It is up to you to ensure that no such confusion exists. That means that when you have completed your assigned part of the case, you must immediately notify the client of that fact, and, if you have appeared of record, notify the court and the opposing party or counsel of your withdrawal.*

*The best practice is to file and serve a Notice of Withdrawal of Limited Assistance at the earliest possible time. As with any other attorney/client communication issue, this is always best handled up front and clearly. Explain the purpose of the Notice of Withdrawal of Limited Assistance before you begin your limited assistance representation.*

## **CONCLUSION OF REPRESENTATION #1**

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Attorney: We have agreed that I will appear in court for the hearing on the custody report. After that, I will be withdrawing from your representation. This is what the Notice of Withdrawal of Limited Appearance that I will be filing looks like.

Is there anything more that you would like me to do in addition to that hearing and drafting the order after hearing?

Client: No, I think I can take it from there.

Attorney: All right. After the order is returned by the court, I'll be withdrawing as your attorney. I'll send you a copy of the Notice of Withdrawal of Limited Appearance, which means that you will then become your own attorney for all parts of this case.

*Before filing your Notice of Withdrawal of Limited Appearance, always review your LAR fee agreement and your file to be certain that there is nothing else that you and your client agreed that you would complete.*

*Once you are out of the case, if there are other matters still pending, it may be a good idea to send the client a letter reminding her of pending deadlines. If you elect to send a closing letter (always a good idea), a sample closing letter is included in your materials in Appendix 12. Of course, if you send this letter, it is your responsibility to make sure it is complete and accurate.*

## CONCLUSION OF REPRESENTATION #2

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Client: I've received your Notice of Withdrawal of Limited Service in the mail today. I just wanted to call and thank you.

Attorney: That's very kind of you.

Client: No, really. I thought this experience was going to be a nightmare. All my friends told me it would cost thousands of dollars, and my brother-in-law told me I would be billed for lots of unnecessary work. You really worked with me to help me do the things I could, so I could save some money. I also really understand now why some of the things I needed were really too complicated for me to do without help. I'm going to call my brother-in-law and tell him he should have done it this way.

# MODULE B

## Housing Court

### Contents



#### Page

35.....	Mission Statement
35.....	Jurisdiction
35.....	Specific Instructions
36.....	Sample Dialogues
	Intake Interview #1
	Intake Interview #2
	Ending #1
	Ending #2
	Intake Interview #3
	Intake Interview #4
	Related Issues #1
	Related Issues #2
	Related Issues #2A
	Change in Scope #1
	Change in Scope #2
	Opposing Counsel #1
	Conclusion of Representation #1
	Conclusion of Representation #2

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# Housing Court

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## **Mission Statement**

The Housing Court's mission is to adjudicate all matters presented by litigants within its jurisdiction regarding housing in a fair, efficient, and timely manner according to the rule of law and the facts presented. In accordance with this mission, the Housing Court, through its operating philosophy and business practices, strives to present a citizen-oriented process to maximize access to justice for all such litigants.

## **Jurisdiction**

The Housing Court was established to handle cases involving residential housing. In addition to summary process (eviction) cases, the Housing Court's jurisdiction includes small claims and civil actions involving issues concerning the health, safety, or welfare of the occupants or owners of residential housing, such as personal injury, property damage, contract disputes, and discrimination. The Housing Court also has jurisdiction to hear appeals of local zoning board decisions that affect residential housing as well as appeals of tickets issued by state and local code enforcement agencies. Additionally, the Housing Court has jurisdiction to hear criminal cases that are brought to enforce local ordinances or the state sanitary, building, and fire prevention codes.

## **Specific Instructions**

For applicable forms, rules, and qualifications for the use of LAR in the Housing Court, please refer to the Massachusetts Trial Court Website. For convenience, a few direct links have been provided below (also found in the Appendix).

Housing Court LAR website:

<http://www.mass.gov/courts/courtsandjudges/courts/housingcourt/lar.html>

Notice of Limited Appearance Form:

<http://www.mass.gov/courts/courtsandjudges/courts/housingcourt/notice-of-limited-appearance.pdf>

Notice of Withdrawal of Limited Appearance Form:

<http://www.mass.gov/courts/courtsandjudges/courts/housingcourt/withdrawal-of-limited-appearance.pdf>

## INTAKE INTERVIEW #1

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- Attorney: I understand that you would like me to help you represent yourself in a summary process case.
- Client: Yes. I really want to do this myself, but need you to tell me about the law, the rules, and all that stuff.
- Attorney: All right. Let me go over a few things so we can decide whether I'll be able to do that in your case. I understand that you will be filing a motion to vacate the default judgment. For the judge to allow your motion, you'll need to show excusable neglect, a meritorious defense to the landlord's claims, and lack of substantial prejudice.
- Client: What does that mean?
- Attorney: The judge is going to consider a variety of factors in ruling on your motion. She will want to see that the reason you did not show up for trial is justifiable. Other things she will want to see are whether you have a real defense to the other side's claims and whether the other side would be unduly harmed if she allowed your motion.
- Client: I think I can handle that, but I'd like you to look over the motion before I file it to make sure it's right. You'll also tell me the procedures for going to court, won't you?
- Attorney: Yes. Are you comfortable speaking in court?
- Client: Of course. I'm a software trainer, and I'm used to public speaking.
- Attorney: What about preparing exhibits for the judge?
- Client: It's just my rent receipts, photos of the apartment, copies of the inspection reports from the health department, and stuff like that, isn't it? I can do that myself.
- Attorney: There are a few things you need to think about if you are going to represent yourself in court. First, the rules of evidence can be technical. Although I can anticipate some of the objections you might face, I can't predict them all. If you don't know the rules, you may not be able to get the information you want in front of the judge. Although you think you know the position the other side is going to take, you may be presented with arguments or evidence you didn't expect. Also, talking in public about your own case can be much more stressful than talking to strangers in a business setting. Are you comfortable taking that risk?

Client: Yes. I think so. As long as you coach me, I'll be comfortable taking it from there. I really want to save money and don't want to pay you to go with me.

Attorney: Well, that is your choice as a consumer. My job is to make sure that you are aware of the risks of that choice, to the extent that they can be anticipated. I'm happy to coach you, although you need to understand that I can't teach you everything I know in a coaching session.

Client: That's fine. I'll take that risk. I'm pretty confident and I'll do my homework.

Attorney: All right. There are a couple of other issues we need to talk about, including filing a motion to file late answer and requests for discovery. In an answer, you respond to the landlord's claims. You may also make certain claims against your landlord, called counterclaims, and request that your case be heard by a jury. Discovery allows you to get more information from your landlord about the circumstances of the case by asking questions and requesting documents. This information allows you to better understand your position as well as your landlord's position. Do you want me to address this issue for you, or would you prefer to handle it yourself?

Client: Let me think about that. For now, let's leave that on the list of things I'm going to do.

Attorney: [marking the checklist] OK. You can always change your mind. Now let's talk briefly about what's involved with a jury trial, should there be one. I have to tell you that some aspects of jury trials, such as voir dire and jury instructions, can be complicated. While I'm comfortable with you handling the other parts of the case with coaching, I strongly feel that this is too technical of a process for a non-attorney. Do you have any experience with representing yourself before a jury?

Client: Not really, but you can coach me, right?

Attorney: Since a lot of the process is so technical, I don't feel comfortable simply coaching you on this. Too many things could go wrong if you don't know what to watch out for.

Client: Well, I don't know anything about what goes on in a jury trial, but I'd prefer a jury decide this case and don't want to mess it up. I don't mind paying you to handle that part of the case if we have a jury trial.

*Notice here how the attorney ascertained the client's comfort level with self-representation, skill at public speaking, and then went straight into diagnosing or analyzing the issues and facts. Note also how skillfully she underscored the highly technical character of jury trials and the fact that the potential value probably justifies the expense of legal assistance.*

*Now let us look at another way this might happen.*

## INTAKE INTERVIEW #2

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- Attorney: Based upon our discussion, it appears that there are several aspects to your legal problem. You have to respond to the summary process summons and complaint. You will need to tell your side of the story and prove that you need the dog to assist you because of your disability, even though the opposing side is saying your lease doesn't allow you to have a dog. You will have to prepare your response, file it with the court, and serve it on the other side. You will also want to request discovery. That will require a separate set of documents. You may have to subpoena witnesses for trial. You have told me that you can't afford to pay me to do all of this, so we need to discuss how your litigation budget can best be spent. Have you considered limited assistance representation, where I do part of the case on your behalf and coach you how to represent yourself on other parts? Does that sound like something you would be interested in?
- Client: Well, I sure want to save money, but I don't know much about the law.
- Attorney: Here are some of the ways we might do it: You could write out your response to the complaint. Then I could review it and put it in proper legal form. Or you could get the form from the court and do that part yourself. I could coach you on how to do that and what to say when you appear in court. On the other hand, discovery requests can be tricky to draft to be sure you get the information you need and reasonable accommodation is one of the more complicated areas of landlord-tenant law. Do you have any experience in dealing with this issue?
- Client: No, I really just want this case to go away.
- Attorney: All right, then. It probably makes most sense if I draft the requests for discovery and gather the information you will need to prove the reasonable accommodation defense. How about writing your response to the other side's complaint?
- Client: I don't mind writing it out first, but I'd feel better if you looked it over so I am sure I said it right.
- Attorney: Fine, I can do that. How about going to court? Are you comfortable representing yourself in court if I coach you beforehand?
- Client: I don't have any problem telling the judge my side of the story. Is that all there is to it?
- Attorney: It's more complicated than that. There are rules of evidence which tell the judge what information she can consider and what she has to ignore.

Client: Well, you'll tell me what they are, won't you?

Attorney: I can try to predict the testimony and evidence and possible objections. However, with the best coaching in the world, I can't teach you everything I learned in law school, nor can I anticipate everything that might come up in court.

Client: Can we change our agreement later if I decide that I need more help?

Attorney: Yes, we'll just need to make that change in writing.

Client: Well, I don't want to pay for you to go to court. I'd rather you did the technical stuff and told me what to do in court. I've been to housing court before, and I think I have a pretty good idea what goes on.

Attorney: Well, that is your choice, and of course, I'd be happy to coach you. However, you need to be aware that you may be confronted with new issues or technical rules that you won't know how to address. Are you willing to take that risk?

Client: Yes, I'll chance it.

Attorney: OK, now what about your request for preliminary injunctive relief? Here's what I think should be done.

*Note how the attorney explained the risks of limited assistance and self-representation as part of her intake and apportionment of responsibility.*

*One of the issues which comes up in limited assistance representation, especially when the apportionment of responsibility is strictly task-based, is that the client develops an extremely mechanistic idea of how it works. Let's see how that might come up in practice.*

## ENDING #1

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Attorney: I've told you the things I think need to be done to protect your interests. Which of these do you think you might be able to do yourself, if I coached you?

Client: I think I can speak for myself in court. Will you go with me in case I mess it up?

Attorney: Well, that doesn't make much economic sense. I'd have to charge you for my time, and in that case, I might as well make the arguments myself.

Client: You mean you'd charge me even if you weren't doing anything for me but just sitting in the back of the courtroom?

Attorney: Well, since I'm a professional, what I sell is my time and expertise. That's why we charge by the hour for our services. If I'm sitting in the back of the courtroom watching your hearing, that is time that I can't be helping another client.

Client: What if we set my hearing on a day that you're going to be in court anyway?

Attorney: That won't work. All that would mean is that my other client would be paying for my time helping you. That doesn't seem fair to them, does it?

*This issue isn't peculiar to limited assistance, of course. Even in full service representation there is often a disconnect between the fact that we, as lawyers, think we are selling hours, while the clients, as consumers, think they are buying results. It is sometimes helpful to reinforce the connection between time and cost. As with full service, this is also a good way to encourage the client to make good use of your time.*

*Now that the attorney and client have done the intake, it is critical that the scope be memorialized in writing. It defeats the purpose to follow each consultation with a lengthy confirming letter. Here's a way that it can be done efficiently using the task and issues checklist in Appendix 9 in your materials.*

## ENDING #2

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Attorney: All right, I think we're clear that you will gather your records and write out your corrections to the statements in your opponent's papers and that I'll talk to the witnesses and prepare the papers asking for the production of documents and answers to interrogatories. As we've been talking, I've been marking a checklist I use to make sure that we cover all the important bases and there are no misunderstandings. I'm going to ask you to review it and make sure that it accurately reflects our agreement as to who is going to do what, and then I'll copy it for you so that we each have a copy to refer to. [Hands checklist to client]

Client: (reviewing checklist). You'll be telling me what to watch out for in court, right?

Attorney: Yes, to the extent that it is possible to predict. As I've told you, new things often pop up in court.

Client: Looks fine to me.

Attorney: Good. We'll both sign this, and then I'll make a copy so we each have one.

*This is a good use of the checklist. It is used to educate the client, remind the attorney of the related issues which should be at least discussed and excluded, and provides both the attorney and the client with a clear written record of the result, reducing the likelihood of later misunderstandings.*

*Of course, limited assistance isn't for every legal issue, every fact pattern, or every client, and it is the attorney's duty to ascertain whether it is reasonable in the context of the matter presented. Here's one way the issue of appropriateness might come up.*

### INTAKE INTERVIEW #3

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Client: This really isn't fair. You keep telling me I can't win. Every attorney I've talked to says the same thing. Doesn't anybody care about my rights? All I want is for you to tell me how to talk to the judge. I'm sure that if I only get a chance to tell her my side of the story, she'll agree with me that I'm not responsible for making any repairs because the tenant hasn't been paying any rent.

Attorney: I'm sorry. I know you feel strongly about this, but the result you want is not available to you under the law. No amount of coaching on my part will change the law into what you want it to be. My job is to tell you the truth, even if you don't want to hear it.

Client: I'm willing to pay you to coach me.

Attorney: I understand that, but this isn't about coaching. I can't make the law what you want it to be. My job is to give you the best advice I can, and I have done that. I don't think we are going to be able to work effectively as a team, since I can't give you what you want. I'm afraid I just won't be able to take you on as a client.

*One of the pitfalls to avoid is the unreasonable client, who goes from lawyer to lawyer hoping to be told what he wants to hear and, when he finds he isn't going to get that, deciding to hire a "coach" to help him win the unwinnable. This is unlikely to be a satisfied client when all is said and done. Be careful of this kind of client. Another potential problem to be aware of is the so-called "litigation lifer," who has been around the courthouse just long enough to be dangerous. This may be someone who has had prior cases or who has been fighting the same one off and on for years. If someone consults with you and says that he's had five prior lawyers, each one worse than the last, and now realizes that he would have been fine in the beginning if he'd only had a good coach to help him self-represent, WATCH OUT. Some of these problem clients and situations are set forth in your materials under "Best Practices" in Appendix 1.*

*Here's another situation to watch out for:*

## INTAKE INTERVIEW #4

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Attorney: Thanks for faxing me your papers. That gave me a chance to review them before meeting with you. The issues seem to be relatively straightforward, and I've told you how I think the tasks might be apportioned between us. Do you agree? What would be your preference?

Client: (in heavily accented English) "You have translator, no?"

*As the professional, you have an obligation to determine whether the litigant is capable of performing the tasks which he is undertaking. That doesn't mean that he will do it as well as you do, but there must be a reasonable threshold of ability. By definition, someone whose ability to communicate or perform the contemplated tasks is limited by language or otherwise is not a good candidate for limited scope representation.*

*One of the other ethical duties you must be aware of is the requirement of advising the client on related issues, even if not asked. This can be tricky. Here's one way you might see it:*

## RELATED ISSUES #1

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Attorney: All right, we've agreed that I will help you draft the pleading to evict your tenant. In addition to information about the lease agreement and the tenant's rent history, I'll need to know if the tenant ever complained to you about conditions of disrepair or if you've ever received a notice to repair code violations from the local health department?

Client: (suspiciously) Why do you need to know that? It's nobody's business but mine.

Attorney: Well, actually, if you are seeking to evict your tenant for non-payment of rent, it may well be the court's business.

Client: How is that fair? (Plaintively) Anyway, I can't afford to pay you to go over that stuff. I've already spent as much time with you as I can afford.

Attorney: I'm sorry, but I have a responsibility to be sure that you understand all of the potential legal consequences of what you are about to do. I can only do that if you give me the information I need to determine whether there might be adverse consequences you haven't thought of. It doesn't mean you have to pay me to do these other things, but I have to at least advise you what they are so that you can make an intelligent decision. I don't want you to file legal

papers without knowing the likely consequences, both good and bad. Only when you know the likely benefits and risks can you be sure you've made a decision that is in your best interests.

Client: What difference does it make that I've been ordered by the health department to fix a couple of things? What does that have to do with the fact that I'm not getting any rent from my tenant?

Attorney: Your tenant could have possible defenses to the eviction based on bad conditions in the apartment. The tenant may even assert counterclaims against you and be awarded damages by the court.

*Related issues come up all the time. This attorney did a good job of explaining why it is in the client's interest to share this information, even if the client is reluctant.*

*And then, sometimes the client is just belligerent:*

## RELATED ISSUES #2

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Client: (Plaintively) I knew it. You said you'd help me represent myself. You lawyers are all alike. All you want is to get people in so you can charge us hundreds of dollars for things we don't need. I don't need to tell you that and I'M NOT GOING TO PAY YOU TO TALK ABOUT ANYTHING BUT WHAT I NEED TO FILE TO GET THIS TENANT OUT. We're here to talk about my legal problem, and that's all I'll pay you for.

Attorney: OK, I will exclude advising you about the law relevant to your case from my part of the checklist and note that you are only authorizing me to assist you with preparing, serving, and filing the summary process summons and complaint.

***This approach will not work!*** You have to assess and advise on related issues, even if not asked, and simply excluding them from the scope doesn't protect you. Frankly, if a client won't let you do this, he probably isn't a good candidate for limited assistance. Here's a better way to handle it.

## RELATED ISSUES #2A

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Attorney: I'm sorry you feel that way, but I've seen too many situations where a landlord not only fails to regain possession of the premises but also is liable to the tenant for damages for failing to comply with her responsibilities as a landlord. I'm worried for you, and if you won't let me analyze your potential legal issues, I'm not comfortable coaching you. I need this information to

assess potential related claims by you or the opposing party. I have to be able to understand the impact of the actions I'm assisting you with, including other matters that you may not be aware of. Otherwise, you may be creating more of a problem for yourself than you are solving. You don't need to hire me to assist you with the other issues, but I at least have to advise you what they may be so that you can make a good decision.

Client: (wheedling) If I tell you, will you promise not to charge me for it?

*This is a much better way to handle it, since the attorney explains why related issues must be explored and puts the problem in the context of protecting the client from unknown potential hazards.*

*We've outlined some of the issues you might face in limited scope representation, and illustrated some of them. While the rules are few, it is imperative that you watch out for them, and protect yourself and your client when they arise.*

*The most common, and most dangerous, is failure to document changes in scope.*

*As we know, any civil case can be fluid. What starts out as a garden-variety summary process case may well morph into one involving foreclosure or reasonable accommodation issues, about which nothing is garden variety. New issues can pop up unexpectedly and frequently under extreme time pressure. We are trained to protect our client's interests and jump to their defense. However, if the new issue is outside the existing limitation on scope, nothing is more hazardous than to step outside the specific box you have taken such trouble to draw and document and start to assist the client on new issues before obtaining a new agreement documenting the change in scope. Doing so substantially increases the risk of a malpractice claim. It is far more likely in such a situation that there will be a miscommunication between you and your client as to the boundaries of scope, which in turn increases the risk that something will slip through the cracks. If it does, and you no longer have a specific written agreement documenting the clear limits of your responsibility (and liability), who do you think is more likely to take the blame, you or the client?*

***Do not take this risk.***

*The appended materials contain a variety of checklists that are designed to identify the limitations in scope. We have referred extensively to the task checklist in Appendix 9. Another is based on breaking the case down by issue, with the attorney handling all aspects of a single complex issue, while the client is responsible for the simpler ones. You will be most likely to use the task-based approach when you are coaching the client but not appearing in court. The issue-based checklist may be better suited for litigating part of the case in court. These guidelines are not hard and fast, however, and it is up to your professional judgment to use the method of apportioning responsibility that best suits the needs of the specific client, case, and issue.*

*The checklists are designed to serve multiple purposes: they help you identify the components of a case that might be included or excluded from the limited scope representation as part of your intake interview. They memorialize the discussion between you and your client and are an important communication tool. We encourage you to copy them and give them to the client after discussion. They can be attached to a fee agreement and replaced with a new attachment if the scope changes. This is an easy way to document changes in scope without having to create a whole new agreement.*

*Here's an illustration of one of the ways in which the issue of change of scope may come up. Remember too that when new issues pop up, they frequently do so in an emergency situation.*

## CHANGE IN SCOPE #1

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- Client: Thanks for calling me back so promptly. I'm really upset. I just got served with papers trying to evict me for breaking the agreement for judgment we signed. It's a pack of lies. I've already faxed it to you. Somewhere I read the hearing is scheduled for Monday. Is that true? What should I do?
- Attorney: You read it correctly. This is a serious matter, and you need to get your story before the judge.
- Client: OK, write it up and fax it to me so I can sign it.
- Attorney: We need to talk about this. Our limited assistance agreement says I'm only to prepare and file your answer and requests for discovery and represent you in mediation in connection with this matter.
- Client: (Emphatically) THIS IS IMPORTANT! I NEED YOU TO DO THIS NOW.
- Attorney: I can help you right away—but first we need to discuss it. I will need a new checklist amending the scope of my involvement. When can you come in to sign it?
- Client: I DON'T HAVE TIME FOR THAT. It's really busy here this week, and I'm short-handed. Can't you mail it to me? I'll sign and return it next week.
- Attorney: OK. Drop it through my mail slot on your way home from work one night next week. Now, tell me what really happened so I can start drafting. I'm really pressed for time, so I have to do this now if we are going to meet the court deadline.

***Not a good approach!!!*** *There are many things wrong with this picture. The attorney didn't explore the apportionment of new tasks/issues. More importantly, she didn't get a writing confirming the new scope of representation before stepping outside the original agreement. There is no guarantee that the new document will be signed and dropped off at all. Under the facts presented, it is certain that it won't happen until after the attorney performs services outside the original scope. There is no point in tightly restricting your representation and then stepping outside of that restriction. In fact, by blurring the line, this attorney has exposed herself to liability. Let's try to do it better.*

## CHANGE IN SCOPE #2

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Client: I DON'T HAVE TIME TO COME TO YOUR OFFICE. It's really busy here this week, and I'm short-handed. Can't you mail it to me? I'll mail it back next week.

Attorney: Kevin, I know you are busy and the timing is inconvenient; however, this is important, and you will have to give it priority if the judge is going to hear your side of the story in time. I'm happy to help you deal with this emergency, but I can't exceed the terms of our contract without a new contract. I can fax it to you and you can sign it and fax it back to me, but it has to be done before I can do things outside my written authority.

The first priority is that we get clear on exactly what you are authorizing me to do. [Pulls out checklist] Do you want me to draft the opposition? Are you going to file and serve it or will I? Do you want me to go to court for you? If so, I need to know exactly what you want me to do and what you want to do yourself?

Client: I don't know what to say in court. The papers are filled with lies. I need you to tell the judge what really happened. And I'd be nervous going to court by myself. I'd really like you to go with me. It would be a disaster if I had to move right now. What would I do?

Attorney: No one has made any orders yet, so let's focus on the issue at hand so that we can get your side of the story to the judge. There will be plenty of time to talk about the possible consequences after we've prepared your papers. In the meantime, we need to be clear on exactly what you want me to do. I understand that you want me to draft the opposition and appear at the hearing? Is that correct?

Client: Yes. Can you get started now? I don't have time. It's really busy this week. Can't you just sign the agreement for me and sign my name to the opposition?

Attorney: No, I can't sign either of these papers on your behalf. I can get started drafting as soon as you have initialed the new limited assistance agreement. I'm filling it out now. I'll fax it to you to sign and fax it back to me. As soon as I get it, you can tell me what really happened, and I'll start drafting. When can you come in to sign the papers?

Client: I don't have time this week.

Attorney: Kevin, I know you are busy, but you have to review and sign these things yourself, and you don't have much time. As you point out, these issues are important and have serious consequences, so you'll have to give them priority if I am going to meet the court deadline for you. After the new agreement is signed, you'll need to set aside enough time to go over all the facts with me so I can draft an accurate opposition. You have to make sure everything is correct. After I've drafted it, I'll email it to you and you will have to go over everything carefully to be sure that I haven't misstated anything. What time will you be able to do that? I have a hearing before Judge X at 2:00 on another matter, so I'll have to get this done before that time if you are going to be able to review it today.

Client: This really is a pack of lies. Can I sue the landlord for perjury?

*What could the attorney have done differently? How about the use of email to obtain the new limitation on scope? It is a judgment call whether you are comfortable using email with an electronic signature, or insist on a faxed or scanned copy or an original. It may depend on the electronic sophistication of the client. Your duty, whatever method you select, is to ensure that your file clearly demonstrates the discussion over the change in scope and the client's informed consent. What other things might the attorney have done to make it clearer to the client?*

*Before we leave this part of the topic, we'd like to highlight a relatively common fact pattern which particularly lends itself to LAR. This is a case where you have represented the client on a full service basis in the past. You know each other, and each is extremely familiar with what has gone before, including prior rulings, the opposing party and attorney, and the issues. At some point, the client may have determined that he or she couldn't afford you for full service representation any more. However, now he or she would like to consult with you periodically or, perhaps, retain your services for only the most technical or difficult part of the case. This is a particularly suitable situation for LAR. Since you know the client, you know whether you can trust the client to perform his or her part of the bargain. If you couldn't trust the client, presumably you wouldn't agree to LAR. Since you know the issues, the history, and opposing party, you can be particularly helpful in framing the issues and assisting the client. And since the client has had experience with the process, you can form a sound opinion of the client's ability to self-represent. If you find yourself in this situation, the best practice is to obtain, serve, and file your Notice of Limited Appearance Form so it is clear that you now represent the client on a limited basis.*

*Now let's consider how to deal with opposing attorneys who may not understand or wish to honor your LAR agreement with the client.*

## **OPPOSING COUNSEL #1**

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Attorney 1: My client tells me he has tried to negotiate the security deposit claim but you have not returned his calls.

Attorney 2: I don't have to negotiate with your client. Besides, you're just trying to get me in trouble with the Board of Bar Overseers for talking directly to a represented party.

Attorney 1: I have served you with my Notice of Limited Assistance, and you are on notice that I am only representing him in connection with the claims concerning the conditions in the apartment. I've also written you a letter specifically telling you that.

Attorney 2: That doesn't matter. I'm not required to deal with him and I'm not going to. It's not proper.

Attorney 1: I suggest that you look closely again at the Massachusetts Rules of Professional Conduct on that point.

Attorney 2: Don't tell me how to practice law.

Attorney 1: If that is your position, you may be frustrating his attempts to settle the case and unreasonably increasing my costs by refusing to deal with him on authorized topics. My client may want to decide if he wants the judge to consider whether your conduct is reasonable.

*We hope we have impressed how important it is to document the limitation in the scope of your attorney/client relationship, as well as any modifications in that scope. It is equally important to document the end of that relationship. Do not get lax about documenting the end. Again, the greatest potential for trouble in a limited assistance relationship is confusion about who is responsible for what aspects of the case. It is up to you to ensure that no such confusion exists. That means that when you have completed your assigned part of the case, you must immediately notify the client of that fact and, if you have appeared of record, notify the court and the opposing party or counsel of your withdrawal.*

*The best practice is to file and serve a Notice of Withdrawal of Limited Assistance at the earliest possible time. As with any other attorney/client communication issue, this is always best handled up front and clearly. Explain the purpose of the Notice of Withdrawal of Limited Assistance before you begin your limited assistance representation.*

## CONCLUSION OF REPRESENTATION #1

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Attorney: We have agreed that I will appear in court for the hearing on the motion to compel discovery. After that, I will be withdrawing from your representation. This is what the Notice of Withdrawal of Limited Appearance that I will be filing looks like.

Is there anything more that you would like me to do in addition to that hearing and drafting the order after hearing?

Client: No, I think I can take it from there.

Attorney: All right. At the conclusion of the hearing, I'll be withdrawing as your attorney. I'll send you a copy of the Notice of Withdrawal of Limited Appearance, which means that you will then become your own attorney for all parts of this case.

*Before filing your Notice of Withdrawal of Limited Appearance, always review your LAR fee agreement and your file to be certain that there is nothing else that you and your client agreed that you would complete.*

*Once you are out of the case, if there are other matters still pending, it may be a good idea to send the client a letter reminding her of pending deadlines. If you elect to send a closing letter (always a good idea), a sample closing letter is included in your materials in Appendix 12. Of course, if you send this letter, it is your responsibility to make sure it is complete and accurate.*

## CONCLUSION OF REPRESENTATION #2

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Client: I've received your Notice of Withdrawal of Limited Service in the mail today. I just wanted to call and thank you.

Attorney: That's very kind of you.

Client: No, really. I thought this experience was going to be a nightmare. All my friends told me it would cost thousands of dollars, and my brother-in-law told me I would be billed for lots of unnecessary work. You really worked with me to help me do the things I could so I could save some money. I also really understand now why some of the things I needed were really too complicated for me to do without help. I'm going to call my brother-in-law and tell him he should have done it this way.

# MODULE C

## Boston Municipal Court & District Court

### Contents



#### Page

51/52.....	Mission Statement
51/52.....	Jurisdiction
53.....	Specific Instructions
54.....	Sample Dialogues
.	Intake Interview #1
	Intake Interview #2
	Ending #1
	Ending #2
	Intake Interview #3
	Intake Interview #4
	Related Issues #1
	Related Issues #2
	Related Issues #2A
	Change in Scope #1
	Change in Scope #2
	Opposing Counsel #1
	Conclusion of Representation #1
	Conclusion of Representation #2

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# Boston Municipal Court & District Court

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## Boston Municipal Court (“BMC”)

### **Mission Statement**

Given our unique responsibility to advance the fair administration of justice, the Boston Municipal Court Department is devoted to the rule of law through the conscientious and expeditious resolution of disputes, with a commitment to restoring the human spirit through correction, education, respect and compassion.

### **Jurisdiction**

The Boston Municipal Court's Civil Department has jurisdiction over all defendants who reside or have a place of business in Suffolk County and defendants who live outside of Suffolk County, as long as the plaintiff resides or has a place of business in the Boston Municipal Court Judicial District (as defined by Massachusetts General Law, Chapter 218, Section 1).

The Boston Municipal Court's Civil Department also has jurisdiction over defendants outside of Massachusetts under the long arm statute (Massachusetts General Law, Chapter 223A, Sections 1 through 11).

The Court's civil jurisdiction includes contract and tort actions; cases remanded from the Superior Court; small claims, small claims jury appeals; mental health commitments; summary process; supplementary proceedings; unemployment compensation appeals; paternity and support actions; and domestic abuse actions. The Court also has jurisdiction for review of findings of the State Police Trial Board and equitable jurisdiction in lead poisoning prevention; landlord interference with quiet enjoyment or failure to provide utilities; family abuse prevention; sanitary code enforcement; and residential nuisances.

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## District Court

### **Mission Statement**

As the gateway to justice in the Commonwealth of Massachusetts, the District Court is dedicated to the administration of justice in a fair, impartial and timely manner in accordance with the rule of law. In fulfilling this role, the District Court shall provide the communities it serves with an environment that is safe, accessible and respectful to all. The District Court shall conduct its business with integrity, competence and a commitment to excellence in order to promote public trust and confidence in the judicial system.

### **Jurisdiction**

In civil matters, District Court judges conduct both jury and jury-waived trials and determine with finality any matter in which the likelihood of recovery does not exceed \$25,000. The District Court also tries small claims involving up to \$7,000 (initially tried to a magistrate, with a defense right of appeal either to a judge or to a jury). Fifteen of its judges serve on the Appellate Division, an appellate tribunal with published opinions that is organized in three geographical districts and sits in three-judge panels, to review questions of law that arise in civil cases.

The District Court's civil jurisdiction also includes many specialized proceedings: inquests; summary process (evictions); supplementary process (enforcement of money judgments); abuse prevention restraining orders; mental health matters (including involuntary civil commitments and medication orders and supervision of criminal defendants committed for mental observation, deemed incompetent to stand trial, or acquitted because insane); appeals from certain administrative agencies (involving, for example, firearms licenses or unemployment compensation); civil motor vehicle infractions (tried initially to a magistrate, with right of appeal to a judge); equitable injunctions (exercising specialized equity jurisdiction in all counties, plus general equity jurisdiction in small claims, summary process and civil money damage actions); and other miscellaneous civil matters.

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## Specific Instructions

For applicable forms, rules, and qualifications for the use of LAR in the Boston Municipal Court or District Court, please refer to the Massachusetts Trial Court Website. For convenience, a few direct links have been provided below (also found in the Appendix).

BMC LAR website:

<http://www.mass.gov/courts/courtsandjudges/courts/bostonmunicipalcourt/lar.html>

BMC Statement of Qualification Form:

<http://www.mass.gov/courts/courtsandjudges/courts/bostonmunicipalcourt/forms/bmc-attorney-statement-of-qualification.pdf>

BMC Notice of Limited Appearance Form:

<http://www.mass.gov/courts/courtsandjudges/courts/bostonmunicipalcourt/forms/bmc-notice-of-limited-appearance.pdf>

BMC Notice of Withdrawal of Limited Appearance Form:

<http://www.mass.gov/courts/courtsandjudges/courts/bostonmunicipalcourt/forms/bmc-notice-of-withdrawal-of-limited-appearance.pdf>

District Court LAR website:

<http://www.mass.gov/courts/courtsandjudges/courts/districtcourt/lar.html>

District Court Notice and Withdrawal of Limited Appearance Form:

<http://www.mass.gov/courts/courtsandjudges/courts/districtcourt/notice-of-limited-appearance.pdf>

## INTAKE INTERVIEW #1

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Attorney: I understand that you would like me to help you represent yourself in a collections matter.

Client: Yes. I really want to do this myself but need you to tell me about the law, the rules, and all that stuff.

Attorney: All right. Let me go over a few things so we can decide whether I'll be able to do that in your case. I understand that you will be filing a motion to vacate the default judgment. For the judge to allow your motion, you'll need to show that you have a meritorious defense to the plaintiff's claims as well as a good reason to remove the default.

Client: What does that mean?

Attorney: The judge is going to consider a variety of factors in considering your motion. She will want to see that the reason you defaulted was due to a mistake, inadvertence, or some other neglect that is deemed excusable on your part. Other things she will want to see are whether you have a viable defense to the other side's claims and whether the other side would be unduly harmed if she allowed your motion.

Client: I think I can handle that. By the way, I've gone to the court, so I know what forms I need if my motion is allowed. I've started filling them out, and I'd like you to look them over before I file them to see that they are right. You'll tell me the procedures, won't you?

Attorney: Yes. Are you comfortable speaking in court?

Client: Of course. I'm a software trainer, and I'm used to public speaking.

Attorney: What about preparing exhibits for the judge?

Client: It's just documents showing my payments and stuff like that, isn't it? I can do that myself.

Attorney: There are a few things you need to think about if you are going to represent yourself in court. First, the rules of evidence can be technical. Although I can anticipate some of the objections you might face, I can't predict them all. If you don't know the rules, you may not be able to get the information you want in front of the judge. Although you think you know the position the other side is going to take, you may be presented with arguments or evidence you didn't expect. Also, talking in public about your own case can be much

more stressful than talking to strangers in a business setting. Are you comfortable taking that risk?

Client: Yes. I think so. As long as you coach me, I'll be comfortable taking it from there. I really want to save money and don't want to pay you to go with me.

Attorney: Well, that is your choice as a consumer. My job is to make sure that you are aware of the risks of that choice, to the extent that they can be anticipated. I'm happy to coach you, although you need to understand that I can't teach you everything I know in a coaching session.

Client: That's fine. I'll take that risk. I'm pretty confident, and I'll do my homework.

Attorney: All right. There are a couple of other issues we need to talk about, including attachment and trustee process/garnishment. Do you want me to address this issue for you, or would you prefer to handle them yourself if they come up?

Client: Let me think about that. For now, let's leave that on the list of things I'm going to do.

Attorney: [marking the checklist] OK. You can always change your mind. Now let's talk about the underlying debt and who owns it. I have to tell you that assignment issues can sometimes be complicated. While I'm comfortable with you handling the other parts of the case with coaching, I strongly feel that this is too technical for a non-attorney. Do you have any experience with assignments and/or determining who holds the debt?

Client: Not really, but you can coach me, right?

Attorney: Since this is so technical, I don't feel comfortable simply coaching you on this. Too many things could go wrong if you don't know what to watch out for.

Client: Well, I don't know anything about notes and assignments, but I know it's really important, so I don't want to lose out. I don't mind paying you to handle that part of the case.

*Notice here how the attorney ascertained the client's comfort level with self-representation, skill at public speaking, and then went straight into diagnosing or analyzing the issues and facts. Note also how skillfully she underscored the highly technical character of the assignment issue and the fact that the potential value probably justifies the expense of legal assistance.*

*Now let us look at another way this might happen.*

## INTAKE INTERVIEW #2

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Attorney: Based upon our discussion, it appears that there are several aspects to your legal problem. You have to respond to the papers you got in this action seeking damages for injuries the opposing side allegedly sustained while at your home. You will need to tell your side of the story and prove that you are not responsible for the injuries, even though the opposing side is saying you are liable. You will have to complete the court forms to respond, file them with the court, and serve them on the other side. You should also request discovery from the plaintiff. That will require a separate set of documents to get your requests before the plaintiff. You should subpoena the plaintiff's medical records. You have told me that you can't afford to pay me to do all of this, so we need to discuss how your litigation budget can best be spent. Have you considered limited assistance representation, where I do part of the case on your behalf and coach you how to represent yourself on other parts? Does that sound like something you would be interested in?

Client: Well, I sure want to save money, but I don't know much about the law.

Attorney: Here are some of the ways we might do it: You could write out your response to the complaint. Then I could review it and put it in proper legal form. Or you could get the forms from the court and do that part yourself. I could coach you on how to do that and what to say when you appear in court. With respect to getting the information you need from the other side, it can be a technical process and subpoenas can be tricky to draft to be sure you get all the information you need. Do you have any experience in dealing with discovery in a case?

Client: No, I really just want this case to go away.

Attorney: All right, then. It probably makes most sense if I draft the subpoena and gather the information you will need to prove your defense. How about writing your response to the other side's papers and the reasons why you think you are not responsible for the plaintiff's injuries.

Client: I don't mind writing it out first, but I'd feel better if you looked it over so I am sure I said it right.

Attorney: Fine, I can do that. How about going to court? Are you comfortable representing yourself in court if I coach you beforehand?

Client: I don't have any problem telling the judge my side of the story. Is that all there is to it?

Attorney: It's more complicated than that. There are rules of evidence which tell the judge what information she can consider and what she has to ignore.

Client: Well, you'll tell me what they are, won't you?

Attorney: I can try to predict the testimony and evidence and possible objections. However, with the best coaching in the world, I can't teach you everything I learned in law school, nor can I anticipate everything that might come up in court.

Client: Can we change our agreement later if I decide that I need more help?

Attorney: Yes, we'll just need to make that change in writing.

Client: Well, I don't want to pay for you to go to court. I'd rather you did the technical stuff and told me what to do in court. I've been there before, and I think I have a pretty good idea of what goes on.

Attorney: Well, that is your choice, and of course, I'd be happy to coach you. However, you need to be aware that you may be confronted with new issues or technical rules that you won't know how to address. Are you willing to take that risk?

Client: Yes, I'll chance it.

*Note how the attorney explained the risks of limited assistance and self-representation as part of her intake and apportionment of responsibility.*

*One of the issues which comes up in limited assistance representation, especially when the apportionment of responsibility is strictly task-based, is that the client develops an extremely mechanistic idea of how it works. Let's see how that might come up in practice.*

## ENDING #1

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Attorney: I've told you the things I think need to be done to protect your interests. Which of these do you think you might be able to do yourself, if I coached you?

Client: I think I can speak for myself in court. Will you go with me in case I mess it up?

Attorney: Well, that doesn't make much economic sense. I'd have to charge you for my time, and in that case, I might as well make the arguments myself.

Client: You mean you'd charge me even if you weren't doing anything for me but just sitting in the back of the courtroom?

Attorney: Well, since I'm a professional, what I sell is my time and expertise. That's why we charge by the hour for our services. If I'm sitting in the back of the courtroom watching your hearing, that is time that I can't be helping another client.

Client: What if we set my hearing on a day that you're going to be in court anyway?

Attorney: That won't work. All that would mean is that my other client would be paying for my time helping you. That doesn't seem fair to them, does it?

*This issue isn't peculiar to limited assistance, of course. Even in full service representation there is often a disconnect between the fact that we, as lawyers, think we are selling hours, while the clients, as consumers, think they are buying results. It is sometimes helpful to reinforce the connection between time and cost. As with full service, this is also a good way to encourage the client to make good use of your time.*

*Now that the attorney and client have done the intake, it is critical that the scope be memorialized in writing. It defeats the purpose to follow each consultation with a lengthy confirming letter. Here's a way that it can be done efficiently, using the task and issues checklist in Appendix 9 in your materials.*

## ENDING #2

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Attorney: All right, I think we're clear that you will get your documents and records, and I will write out your corrections to the statements in your opponent's complaint, talk to the other witness, and prepare the discovery requests. As we've been talking, I've been marking a checklist I use to make sure that we cover all the important bases and there are no misunderstandings. I'm going to ask you to review it and make sure that it accurately reflects our agreement as to who is going to do what, and then I'll copy it for you so that we each have a copy to refer to. (Hands checklist to client).

Client: (reviewing checklist). You'll be telling me what to watch out for in court, right?

Attorney: Yes, to the extent that it is possible to predict. As I've told you, new things often pop up in court.

Client: Looks fine to me.

Attorney: Good. We'll both sign this and then I'll make a copy so we each have one.

*This is a good use of the checklist. It is used to educate the client, remind the attorney of the related issues which should be at least discussed and excluded, and provides both the attorney and the client with a clear written record of the result, reducing the likelihood of later misunderstandings.*

*Of course, limited assistance isn't for every legal issue, every fact pattern, or every client, and it is the attorney's duty to ascertain whether it is reasonable in the context of the matter presented. Here's one way the issue of appropriateness might come up.*

### INTAKE INTERVIEW #3

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Client: This really isn't fair. You keep telling me I can't win. Every attorney I've talked to says the same thing. Doesn't anybody care about my rights? All I want is for you to tell me how to talk to the judge. I'm sure that if I only get a chance to tell her my side of the story, she'll agree with me that this case should be dismissed because I'm not responsible for the damages since I'm not the owner of the car.

Attorney: I'm sorry. I know you feel strongly about this, but the result you want is not available to you under the law. No amount of coaching on my part will change the law into what you want it to be. My job is to tell you the truth, even if you don't want to hear it.

Client: I'm willing to pay you to coach me.

Attorney: I understand that, but this isn't about coaching. I can't make the law what you want it to be. My job is to give you the best advice I can, and I have done that. I don't think we are going to be able to work effectively as a team, since I can't give you what you want. I'm afraid I just won't be able to take you on as a client.

*One of the pitfalls to avoid is the unreasonable client, who goes from lawyer to lawyer hoping to be told what he wants to hear and, when he finds he isn't going to get that, deciding to hire a "coach" to help him win the unwinnable. This is unlikely to be a satisfied client when all is said and done. Be careful of this kind of client. Another potential problem to be aware of is the so-called "litigation lifer," who has been around the courthouse just long enough to be dangerous. This may be someone who has had prior cases or who has been fighting the same one off and on for years. If someone consults with you and says that he's had five prior lawyers, each one worse than the last, and now realizes that he would have been fine in the beginning if he'd only had a good coach to help him self-represent, WATCH OUT. Some of these problem clients and situations are set forth in your materials under "Best Practices" in Appendix 1.*

*Here's another situation to watch out for:*

## INTAKE INTERVIEW #4

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Attorney: Thanks for faxing me your papers. That gave me a chance to review them before meeting with you. The issues seem to be relatively straightforward, and I've told you how I think the tasks might be apportioned between us. Do you agree? What would be your preference?

Client: (in heavily accented English) "You have translator, no?"

*As the professional, you have an obligation to determine whether the litigant is capable of performing the tasks which he is undertaking. That doesn't mean that he will do it as well as you do, but there must be a reasonable threshold of ability. By definition, someone whose ability to communicate or perform the contemplated tasks is limited by language or otherwise is not a good candidate for limited scope representation.*

*One of the other ethical duties you must be aware of is the requirement of advising the client on related issues, even if not asked. This can be tricky. Here's one way you might see it:*

## RELATED ISSUES #1

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Attorney: All right, we've agreed that I will help you draft the pleading to evict your tenant. In addition to information about the lease agreement and the tenant's rent history, I'll need to know if the tenant ever complained to you about conditions of disrepair or if you've ever received a notice to repair code violations from the local health department?

Client: (suspiciously) Why do you need to know that? It's nobody's business but mine.

Attorney: Well, actually, if you are seeking to evict your tenant for non-payment of rent, it may well be the court's business.

Client: How is that fair? (Plaintively) Anyway, I can't afford to pay you to go over that stuff. I've already spent as much time with you as I can afford.

Attorney: I'm sorry, but I have a responsibility to be sure that you understand all of the potential legal consequences of what you are about to do. I can only do that if you give me the information I need to determine whether there might be adverse consequences you haven't thought of. It doesn't mean you have to pay me to do these other things, but I have to at least advise you what they are so that you can make an intelligent decision. I don't want you to file legal papers without knowing the likely consequences, both good and bad. Only

when you know the likely benefits and risks can you be sure you've made a decision that is in your best interests.

Client: What difference does it make that I've been ordered by the health department to fix a couple of things? What does that have to do with the fact that I'm not getting any rent from my tenant?

Attorney: Your tenant could have possible defenses to the eviction based on bad conditions in the apartment. The tenant may even assert counterclaims against you and be awarded damages by the court.

*Related issues come up all the time. This attorney did a good job of explaining why it is in the client's interest to share this information, even if the client is reluctant.*

*And then, sometimes the client is just belligerent:*

## RELATED ISSUES #2

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Client: (Plaintively) I knew it. You said you'd help me represent myself. You lawyers are all alike. All you want is to get people in so you can charge us hundreds of dollars for things we don't need. I don't need to tell you that and I'M NOT GOING TO PAY YOU TO TALK ABOUT ANYTHING BUT WHAT I NEED TO FILE TO GET THIS TENANT OUT. We're here to talk about my legal problem, and that's all I'll pay you for.

Attorney: OK, I will exclude advising you about the law relevant to your case from my part of the checklist and note that you are only authorizing me to assist you with preparing, serving, and filing the summary process summons and complaint.

***This approach will not work!*** *You have to assess and advise on related issues, even if not asked, and simply excluding them from the scope doesn't protect you. Frankly, if a client won't let you do this, he probably isn't a good candidate for limited assistance. Here's a better way to handle it.*

## RELATED ISSUES #2A

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Attorney: I'm sorry you feel that way, but I've seen too many situations where a landlord not only fails to regain possession of the premises but also is liable to the tenant for damages for failing to comply with her responsibilities as a landlord. I'm worried for you, and if you won't let me analyze your potential legal issues, I'm not comfortable coaching you. I need this information to

assess potential related claims by you or the opposing party. I have to be able to understand the impact of the actions I'm assisting you with, including other matters that you may not be aware of. Otherwise, you may be creating more of a problem for yourself than you are solving. You don't need to hire me to assist you with the other issues, but I at least have to advise you what they may be so that you can make a good decision.

Client: (wheedling) If I tell you, will you promise not to charge me for it?

*This is a much better way to handle it, since the attorney explains why related issues must be explored and puts the problem in the context of protecting the client from unknown potential hazards.*

*We've outlined some of the issues you might face in limited scope representation and illustrated some of them. While the rules are few, it is imperative that you watch out for them and protect yourself and your client when they arise.*

*The most common, and most dangerous, is failure to document changes in scope.*

*As we know, civil actions can be fluid. What starts out as a garden-variety collection case may well morph into a complicated contract or tort action, about which nothing is garden variety. New issues can pop up unexpectedly and frequently under extreme time pressure. We are trained to protect our client's interests and jump to their defense. However, if the new issue is outside the existing limitation on scope, nothing is more hazardous than to step outside the specific box you have taken such trouble to draw and document and start to assist the client on new issues before obtaining a new agreement documenting the change in scope. Doing so substantially increases the risk of a malpractice claim. It is far more likely in such a situation that there will be a miscommunication between you and your client as to the boundaries of scope, which in turn increases the risk that something will slip through the cracks. If it does, and you no longer have a specific written agreement documenting the clear limits of your responsibility (and liability), who do you think is more likely to take the blame, you or the client? **Do not take this risk.***

*The appended materials contain a variety of checklists that are designed to identify the limitations in scope. We have referred extensively to the task checklist in Appendix 9. Another is based on breaking the case down by issue, with the attorney handling all aspects of a single complex issue, while the client is responsible for the simpler ones. You will be most likely to use the task-based approach when you are coaching the client but not appearing in court. The issue-based checklist may be better suited for litigating part of the case in court. These guidelines are not hard and fast, however, and it is up to your professional judgment to use the method of apportioning responsibility that best suits the needs of the specific client, case, and issue.*

*The checklists are designed to serve multiple purposes: they help you identify the components of a case that might be included or excluded from the limited scope representation as part of your intake interview. They memorialize the discussion between you and your client and are an important communication tool. We encourage you to copy them and give them to the client after discussion. They can be attached to a fee agreement and replaced with a new attachment if the scope changes. This is an easy way to document changes in scope without having to create a whole new agreement. The important thing to remember, though, is that the agreement as to scope must be signed by the client BEFORE*

*you begin work on the new issue and modified BEFORE you undertake additional work outside your agreed scope. Scope can't be modified orally, and a confirming letter sent by you to the client will likely not be sufficient. You have the responsibility of demonstrating the client's informed consent to the limitations in scope, and that can only be done by a document signed by the client.*

*Here's an illustration of one of the ways in which the issue of change of scope may come up. Remember, too, that when new issues pop up, they frequently do so in an emergency situation.*

## CHANGE IN SCOPE #1

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Client: Thanks for calling me back so promptly. I'm really upset. I just got served with papers trying to attach my bank account. It's a pack of lies. I've already faxed it to you. Somewhere I read that I have only a couple of days. Is that true? What should I do?

Attorney: You read it correctly. These are important charges, and you need to get your story before the judge.

Client: OK, write it up and fax it to me so I can sign it.

Attorney: We need to talk about this. Our limited assistance agreement says I'm only to represent you on the answer to the complaint.

Client: (Emphatically) THIS IS IMPORTANT! I NEED YOU TO DO THIS NOW.

Attorney: I can help you right away—but first we need to discuss it. Your papers need to be filed right away, so I will need a new checklist outlining the scope of my involvement. When can you come in to sign it?

Client: I DON'T HAVE TIME FOR THAT. It's really busy here today, and I'm short-handed. Can't you mail it to me? I'll sign and return it next week.

Attorney: OK. Drop it through my mail slot on your way home from work one night next week. Now, tell me what really happened so I can start drafting your opposition and affidavit. I'm really pressed for time, so I have to do this now if we are going to meet the court deadline.

***Not a good approach!!!*** *There are many things wrong with this picture. The attorney didn't explore the apportionment of new tasks/issues. More importantly, she didn't get a writing confirming the new scope of representation before stepping outside the original agreement. There is no guarantee that the new document will be signed and dropped off at all. Under the facts presented, it is certain that it won't happen until after the attorney*

*performs services outside the original scope. There is no point in tightly restricting your representation and then stepping outside of that restriction. In fact, by blurring the line, this attorney has exposed herself to liability. Let's try to do it better.*

## CHANGE IN SCOPE #2

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Client: I DON'T HAVE TIME TO COME TO YOUR OFFICE. It's really busy here today and I'm short-handed. Can't you mail it to me? I'll mail it back next week.

Attorney: Kevin, I know you are busy and the timing is inconvenient; however, this is important, and you will have to give it priority if the judge is going to hear your side of the story in time. I'm happy to help you deal with this emergency, but I can't exceed the terms of our contract without a new contract. I can fax it to you and you can sign it and fax it back to me, but it has to be done before I can do things outside my written authority.

The first priority is that we get clear on exactly what you are authorizing me to do. [Pulls out checklist] Do you want me to draft papers? For your signature or mine? Are you going to file and serve them or will I? Do you want me to go to court for you? If so, I need to know exactly what you want me to do and what you want to do yourself.

Client: I don't know what to say in court. I need you to tell the judge what really happened, and I'd be nervous going to court by myself. I'd really like you to go with me. It will be a disaster if I can't access my bank account. What will I do?

Attorney: No one has made any orders yet, so let's focus on the issue at hand so that we can get your side of the story to the judge. There will be plenty of time to talk about the possible consequences after we've prepared your papers. In the meantime, we need to be clear on exactly what you want me to do. I understand that you want me to draft the opposition and affidavit and appear at the hearing if necessary. Is that correct?

Client: Yes. Can you get started now? I don't have time. It's really busy today. Can't you just sign the agreement for me and sign my name to the court papers?

Attorney: No, I can't sign any of these papers on your behalf. I can get started drafting as soon as you have initialed the new limited assistance agreement. I'm filling it out now. I'll fax it to you to sign and fax it back to me. As soon as I get it,

you can tell me what really happened, and I'll start drafting. When can you come in to sign your affidavit?

Client: I don't have time today.

Attorney: Kevin, I know you are busy, but you have to review and sign these things yourself, and you don't have much time. As you point out, these issues are important and have serious consequences, so you'll have to give them priority if I am going to meet the court deadline for you. After the new agreement is signed, you'll need to set aside enough time to go over all the facts with me so I can draft an accurate affidavit. Since it is under penalty of perjury, you have to make sure everything is correct. After I've drafted it, I'll email it to you, and you will have to go over everything carefully to be sure than I haven't misstated anything. What time will you be able to do that? I have a hearing before Judge X at 2:00 on another matter, so I'll have to get this done before that time if you are going to be able to review it today.

Client. This whole case really is a pack of lies. Can I sue her for perjury?

*What could the attorney have done differently? How about the use of email to obtain the new limitation on scope? It is a judgment call whether you are comfortable using email with an electronic signature or insist on a faxed or scanned copy or an original. It may depend on the electronic sophistication of the client. Your duty, whatever method you select, is to ensure that your file clearly demonstrates the discussion over the change in scope and the client's informed consent. What other things might the attorney have done to make it clearer to the client?*

*Before we leave this part of the topic, we'd like to highlight a relatively common fact pattern which particularly lends itself to LAR. This is a case where you have represented the client on a full service basis in the past. You know each other, and each is extremely familiar with what has gone before, including prior rulings, the opposing party and attorney, and the issues. At some point, the client may have determined that he or she couldn't afford you for full service representation any more. However, now he or she would like to consult with you periodically or, perhaps, retain your services for only the most technical or difficult part of the case. This is a particularly suitable situation for LAR. Since you know the client, you know whether you can trust the client to perform his or her part of the bargain. If you couldn't trust the client, presumably you wouldn't agree to LAR. Since you know the issues, the history, and opposing party, you can be particularly helpful in framing the issues and assisting the client. And since the client has had experience with the process, you can form a sound opinion of the client's ability to self-represent. If you find yourself in this situation, the best practice is to obtain, serve, and file your Notice of Limited Appearance Form so it is clear that you now represent the client on a limited basis.*

*Now let's consider how to deal with opposing attorneys who may not understand or wish to honor your LAR agreement with the client.*

## OPPOSING COUNSEL #1

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- Attorney 1: My client tells me he has tried to negotiate the amount of debt and interest owed with you, but you have not returned his calls.
- Attorney 2: I don't have to negotiate with your client. Besides, you're just trying to get me in trouble with the Board of Bar Overseers for talking directly to a represented party.
- Attorney 1: I have served you with my Notice of Limited Assistance, and you are on notice that I am only representing him in connection with the unfair debt collection practices claims. I've also written you a letter specifically telling you that.
- Attorney 2: That doesn't matter. I'm not required to deal with him, and I'm not going to. It's not proper.
- Attorney 1: I suggest that you look closely again at the Massachusetts Rules of Professional Conduct on that point.
- Attorney 2: Don't tell me how to practice law.
- Attorney 1: If that is your position, you may be frustrating his attempts to settle the case and unreasonably increasing my costs by refusing to deal with him on authorized topics. My client may want to decide if he wants the judge to consider whether your conduct is reasonable.

*We hope we have impressed how important it is to document the limitation in the scope of your attorney/client relationship as well as any modifications in that scope. It is equally important to document the end of that relationship. Do not get lax about documenting the end. Again, the greatest potential for trouble in a limited assistance relationship is confusion about who is responsible for what aspects of the case. It is up to you to ensure that no such confusion exists. That means that when you have completed your assigned part of the case, you must immediately notify the client of that fact and, if you have appeared of record, notify the court and the opposing party or counsel of your withdrawal.*

*The best practice is to file and serve a Notice of Withdrawal of Limited Assistance at the earliest possible time. As with any other attorney/client communication issue, this is always best handled up front and clearly. Explain the purpose of the Notice of Withdrawal of Limited Assistance before you begin your limited assistance representation.*

## CONCLUSION OF REPRESENTATION #1

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Attorney: We have agreed that I will appear in court for the hearing on the motion for summary judgment. After that, I will be withdrawing from your representation. Is there anything more that you would like me to do in addition to preparing your opposition to the motion and representing you at the hearing?

Client: No, I think I can take it from there.

Attorney: All right. At the conclusion of the hearing, I'll be withdrawing as your attorney. I'll send you a copy of the Notice of Withdrawal of Limited Appearance, which means that you will then become your own attorney for all parts of this case.

*Before filing your Notice of Withdrawal of Limited Appearance, always review your LAR fee agreement and your file to be certain that there is nothing else that you and your client agreed that you would complete.*

*Once you are out of the case, if there are other matters still pending, it may be a good idea to send the client a letter reminding her of pending deadlines. If you elect to send a closing letter (always a good idea), a sample closing letter is included in your materials in Appendix 12. Of course, if you send this letter, it is your responsibility to make sure it is complete and accurate.*

## CONCLUSION OF REPRESENTATION #2

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Client: I've received your Notice of Withdrawal of Limited Service in the mail today. I just wanted to call and thank you.

Attorney: That's very kind of you.

Client: No, really. I thought this experience was going to be a nightmare. All my friends told me it would cost thousands of dollars, and my brother-in-law told me I would be billed for lots of unnecessary work. You really worked with me to help me do the things I could, so I could save some money. I also really understand now why some of the things I needed were really too complicated for me to do without help. I'm going to call my brother-in-law and tell him he should have done it this way.

# MODULE D

## Land Court

### Contents



#### Page

69.....	Mission Statement
69.....	Jurisdiction
70.....	Specific Instructions
71.....	Sample Dialogues
	Intake Interview #1
	Intake Interview #2
	Ending #1
	Ending #2
	Intake Interview #3
	Intake Interview #4
	Related Issues #1
	Related Issues #2
	Related Issues #2A
	Change in Scope #1
	Change in Scope #2
	Opposing Counsel #1
	Conclusion of Representation #1
	Conclusion of Representation #2

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# Land Court

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## **Mission Statement**

The Land Court's mission is to provide an accessible forum where specialized expertise is applied to resolve disputes involving the ownership, development, and use of real property throughout the Commonwealth. The judges and staff are committed to serving the public and the real estate and trial bars in a respectful, efficient manner by issuing decisions that are equitable and legally well reasoned, and by providing readily available, reliable guidance to property owners and registries of deeds regarding registered land transactions.

## **Jurisdiction**

The Land Court has statewide jurisdiction. While the court has jurisdiction throughout the Commonwealth, the justices of the Land Court normally sit in Boston. However, it is usual, where the circumstances warrant and counsel request, for the court to hold trials in other locations within the state. The court has exclusive, original jurisdiction over the registration of title to real property and over all matters and disputes concerning such title subsequent to registration. The court also exercises exclusive original jurisdiction over the foreclosure and redemption of real estate tax liens. The court shares, with certain other court departments, jurisdiction over other property matters and over petitions for partitions of real estate. Under G.L. c. 40A and 41, the court shares jurisdiction over matters arising out of decisions by local planning boards and zoning boards of appeal. Both the Land Court and the Superior Court Department have jurisdiction over the processing of mortgage foreclosure cases and determining the military status of the mortgagor. Additionally, the court has superintendency authority over the registered land office in each registry of deeds.

Pursuant to Chapter 205 of the Acts of 2006 (An Act Relative to Streamlining and Expediting the Permitting Process in The Commonwealth), effective August 2, 2006, the Legislature established a separate session of the Land Court Department, known as the permit session. This session has original jurisdiction, concurrent with the Superior Court Department over certain civil actions involving land use and environmental permitting. Cases filed in the permit session are limited to those involving either 25 or more dwelling units or the construction or alteration of 25,000 square feet or more of gross floor area or both.

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**Specific Instructions**

For applicable forms, rules, and qualifications for the use of LAR in the Land Court, please refer to the Massachusetts Trial Court Website. For convenience, a few direct links have been provided below (also found in the Appendix).

Land Court LAR website:

<http://www.mass.gov/courts/courtsandjudges/courts/landcourt/lc-limited-assistance-representation.html>

Notice of Limited Appearance Form:

<http://www.mass.gov/courts/courtsandjudges/courts/landcourt/notice-of-limited-appearance.pdf>

Notice of Withdrawal of Limited Appearance Form:

<http://www.mass.gov/courts/courtsandjudges/courts/landcourt/notice-of-withdrawal-of-limited-appearance.pdf>

## INTAKE INTERVIEW #1

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- Attorney: I understand that you would like me to help you represent yourself in your lawsuit over your driveway access.
- Client: Yes. I really want to do this myself but need you to tell me about the law, the rules, and all that stuff.
- Attorney: All right. Let me go over a few things so we can decide whether I'll be able to do that in your case. I understand that you will be filing a motion for preliminary injunction. For the judge to allow your motion, you will need to present evidence that you will be harmed if you don't get the injunction and that you are likely to win on the merits. What about the deed rights of other owners along your common driveway and the recorded covenants?
- Client: Why do you need to worry about those? It's really quite simple. Oh, and my next-door neighbor also says my fence is on her property.
- Attorney: Well, some of it is simple and some of it isn't. Does the other side agree with your right to use this way?
- Client: I think we can work it out. I just want to make it legal in case she changes her mind. And, I've gone to the court self-help center, so I know what forms I need, and I've started filling them out. I'd like you to look them over before I file them to see that they are right. You'll tell me the procedures, won't you?
- Attorney: Yes. Are you comfortable speaking in court?
- Client: Of course. I'm a software trainer, and I'm used to public speaking.
- Attorney: What about preparing exhibits for the judge?
- Client: It's just pictures and the plot plan and stuff, isn't it? I can do that myself.
- Attorney: There are a few things you need to think about if you are going to represent yourself in court. First, the rules of evidence can be technical. Although I can anticipate some of the objections you might face, I can't predict them all. If you don't know the rules, you may not be able to get the information you want in front of the judge. Although you think you know the position the other side is going to take, you may be presented with arguments or evidence you didn't expect. Also, talking in public about your own case can be much more stressful than talking to strangers in a business setting. Are you comfortable taking that risk?
- Client: Yes. I think so. As long as you coach me, I'll be comfortable taking it from there. I really want to save money and don't want to pay you to go with me.

Attorney: Well, that is your choice as a consumer. My job is to make sure that you are aware of the risks of that choice, to the extent that they can be anticipated. I'm happy to coach you, although you need to understand that I can't teach you everything I know in a coaching session.

Client: That's fine. I'll take that risk. I'm pretty confident and I'll do my homework.

Attorney: All right. There are a couple of other issues we need to talk about. [Attorney reviews these]. Do you want me to address these issues for you, or would you prefer to handle it yourself?

Client: Let me think about that. For now, let's leave these on the list of things I'm going to do.

Attorney: [marking the checklist] OK. You can always change your mind. Now let's talk about the rights of other lot owners to use the way. I have to tell you that rights in private ways are one of the most complicated areas of the law and something attorneys usually leave to specialists. While I'm comfortable with your handling the other parts of the case with coaching, I strongly feel that this is too technical for a non-attorney. Do you have any experience with the derelict fee statute, common schemes, easements, or restrictive covenants?

Client: Not really, but you can coach me, right?

Attorney: Since this is so technical, I don't feel comfortable simply coaching you on this. Too many things could go wrong if you don't know what to watch out for.

Client: Well, I don't know anything about rights in ways, but I need to be able to use my driveway, so I don't want to lose out. I don't mind paying you to handle that part of the case.

*Notice here how the attorney ascertained the client's comfort level with self-representation, skill at public speaking, and then went straight into diagnosing or analyzing the issues and facts. Note also how skillfully she underscored the highly technical character of the private way issues and the fact that the potential value probably justifies the expense of legal assistance.*

*Now let us look at another way this might happen.*

## INTAKE INTERVIEW #2

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Attorney: Based upon our discussion, it appears that there are several aspects to your legal problem. You have to respond to the papers you got for a preliminary injunction. You will need to tell your side of the story and prove that you are

not interfering with the use of the way, even though the opposing side is saying you are liable. You will have to prepare a response and an affidavit, file them with the court, and serve them on the other side. You also want to file a counterclaim and obtain a lis pendens. That will require a separate document to get your claims before the court. You will have to do discovery. You have told me that you can't afford to pay me to do all of this, so we need to discuss how your litigation budget can best be spent. Have you considered limited assistance representation, where I do part of the case on your behalf and coach you how to represent yourself on other parts? Does that sound like something you would be interested in?

Client: Well, I sure want to save money, but I don't know much about the law.

Attorney: Here are some of the ways we might do it: You could write out your response to the complaint and the preliminary injunction motion. Then I could review it and put it in proper legal form. Or I could coach you on how to respond and what to say when you appear in court. On the other hand, discovery requests can be tricky to draft to be sure you get the information you need, and rights in private ways is one of the more technical areas of the law. Do you have any experience in dealing with rights in private ways?

Client: No, I really just want this case to go away.

Attorney: All right, then. It probably makes most sense if I draft the discovery requests and gather the information you will need to prove your right to use the way. How about writing your response to the complaint and PI motion and the reasons why you think the PI motion should be denied?

Client: I don't mind writing it out first, but I'd feel better if you looked it over so I am sure I said it right.

Attorney: Fine, I can do that. How about going to court? Are you comfortable representing yourself in court if I coach you beforehand?

Client: I don't have any problem telling the judge my side of the story. Is that all there is to it?

Attorney: It's more complicated than that. There are rules of evidence which tell the judge what information she can consider and what she has to ignore.

Client: Well, you'll tell me what they are, won't you?

Attorney: I can try to predict the evidence and possible objections. However, with the best coaching in the world, I can't teach you everything I learned in law school, nor can I anticipate everything that might come up in court.

Client: Can we change our agreement later if I decide that I need more help?

Attorney: Yes, we'll just need to make that change in writing.

Client: Well, I don't want to pay for you to go to court. I'd rather you did the technical stuff and told me what to do in court. I've been there before, and I think I have a pretty good idea what goes on.

Attorney: Well, that is your choice, and of course, I'd be happy to coach you. However, you need to be aware that you may be confronted with new issues or technical rules that you won't know how to address. Are you willing to take that risk?

Client: Yes, I'll chance it.

Attorney: OK, now, what about your opposition to the PI? Here's what I think should be done.

*Note how the attorney explained the risks of limited assistance and self-representation as part of her intake and apportionment of responsibility.*

*One of the issues which comes up in limited assistance representation, especially when the apportionment of responsibility is strictly task-based, is that the client develops an extremely mechanistic idea of how it works. Let's see how that might come up in practice.*

## ENDING #1

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Attorney: I've told you the things I think need to be done to protect your interests. Which of these do you think you might be able to do yourself, if I coached you?

Client: I think I can speak for myself in court. Will you go with me in case I mess it up?

Attorney: Well, that doesn't make much economic sense. I'd have to charge you for my time, and in that case, I might as well make the arguments myself.

Client: You mean you'd charge me even if you weren't doing anything for me but just sitting in the back of the courtroom?

Attorney: Well, since I'm a professional, what I sell is my time and expertise. That's why we charge by the hour for our services. If I'm sitting in the back of the courtroom watching your hearing, that is time that I can't be helping another client.

Client: What if we set my hearing on a day that you're going to be in court anyway?

Attorney: That won't work. All that would mean is that my other client would be paying for my time helping you. That doesn't seem fair to them, does it?

*This issue isn't peculiar to limited assistance, of course. Even in full service representation there is often a disconnect between the fact that we, as lawyers, think we are selling hours, while the clients, as consumers, think they are buying results. It is sometimes helpful to reinforce the connection between time and cost. As with full service, this is also a good way to encourage the client to make good use of your time.*

*Now that the attorney and client have done the intake, it is critical that the scope be memorialized in writing. It defeats the purpose to follow each consultation with a lengthy confirming letter. Here's a way that it can be done efficiently, using the task and issues checklist in Appendix 9 in your materials.*

## ENDING #2

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- Attorney: All right, I think we're clear that you will get your deeds, photographs, and closing documents and will write out your corrections to the statements in your opponent's papers, and I'll talk to the building inspector and prepare the counterclaim and motion for lis pendens. As we've been talking, I've been marking a checklist I use to make sure that we cover all the important bases and there are no misunderstandings. I'm going to ask you to review it and make sure that it accurately reflects our agreement as to who is going to do what, and then I'll copy it for you so that we each have a copy to refer to. [Hands checklist to client]
- Client: (reviewing checklist). You'll be telling me what to watch out for in court, right?
- Attorney: Yes, to the extent that it is possible to predict. As I've told you, new things often pop up in court.
- Client: Looks fine to me.
- Attorney: Good. We'll both sign this and then I'll make a copy so we each have one.

*This is a good use of the checklist. It is used to educate the client, remind the attorney of the related issues which should be at least discussed and excluded, and provides both the attorney and the client with a clear written record of the result, reducing the likelihood of later misunderstandings.*

*Of course, limited assistance isn't for every legal issue, every fact pattern, or every client, and it is the attorney's duty to ascertain whether it is reasonable in the context of the matter presented. Here's one way the issue of appropriateness might come up.*

### INTAKE INTERVIEW #3

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Client: This really isn't fair. You keep telling me I can't win. Every attorney I've talked to says the same thing. Doesn't anybody care about my rights? All I want is for you to tell me how to talk to the judge. I'm sure that if I only get a chance to tell her my side of the story, she'll agree with me that I should have my prescriptive easement.

Attorney: I'm sorry. I know you feel strongly about this, but this is registered land, which means the result you want is not available to you under the law. No amount of coaching on my part will change the law into what you want it to be. My job is to tell you the truth, even if you don't want to hear it.

Client: I'm willing to pay you to coach me.

Attorney: I understand that, but this isn't about coaching. I can't make the law what you want it to be. My job is to give you the best advice I can, and I have done that. I don't think we are going to be able to work effectively as a team, since I can't give you what you want. I'm afraid I just won't be able to take you on as a client.

*One of the pitfalls to avoid is the unreasonable client, who goes from lawyer to lawyer hoping to be told what he wants to hear and, when he finds he isn't going to get that, deciding to hire a "coach" to help him win the unwinnable. This is unlikely to be a satisfied client when all is said and done. Be careful of this kind of client. Another potential problem to be aware of is the so-called "litigation lifer," who has been around the courthouse just long enough to be dangerous. This may be someone who has had prior cases or who has been fighting the same one off and on for years. If someone consults with you and says that he's had five prior lawyers, each one worse than the last, and now realizes that he would have been fine in the beginning if he'd only had a good coach to help him self-represent, WATCH OUT. Some of these problem clients and situations are set forth in your materials under "Best Practices" in Appendix 1.*

*Here's another situation to watch out for:*

### INTAKE INTERVIEW #4

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Attorney: Thanks for faxing me your papers. That gave me a chance to review them before meeting with you. The issues seem to be relatively straightforward, and I've told you how I think the tasks might be apportioned between us. Do you agree? What would be your preference?

Client: (in heavily accented English) "You have translator, no?"

*As the professional, you have an obligation to determine whether the litigant is capable of performing the tasks which he is undertaking. That doesn't mean that he will do it as well as you do, but there must be a reasonable threshold of ability. By definition, someone whose ability to communicate or perform the contemplated tasks is limited by language or otherwise is not a good candidate for limited scope representation.*

*One of the other ethical duties you must be aware of is the requirement of advising the client on related issues, even if not asked. This can be tricky. Here's one way you might see it:*

## RELATED ISSUES #1

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- Attorney: All right, we've agreed that I will help you draft the answer, counterclaim, and case management conference statement. In addition to your mortgage and deed, I'll need to see the note, the closing documents, and the documents concerning your mother's estate.
- Client: (suspiciously) Why do you need to know that? It's nobody's business but mine.
- Attorney: Well, actually, if you are seeking to bring a counterclaim against your brother, it may well be the court's business.
- Client: Why is that? (Plaintively) Anyway, I can't afford to pay you to go over that stuff. I've already spent as much time with you as I can afford.
- Attorney: I'm sorry, but I have a responsibility to be sure that you understand all of the potential legal consequences of what you are about to do. I can only do that if you give me the information I need to determine whether there might be adverse consequences you haven't thought of. It doesn't mean you have to pay me to do these other things, but I have to at least advise you of what they are so that you can make an intelligent decision. I don't want you to file legal papers without knowing the likely consequences, both good and bad. Only when you know the likely benefits and risks can you be sure you've made a decision that is in your best interests.
- Client: What difference does it make that I've borrowed money against the house? What does that have to do with the fact that I want to keep my mother's house?
- Attorney: Actually, I've seen this happen many times. It's possible that your mortgage might be seen as evidence of a bad faith attempt to deprive your brother of his interest in your mother's estate. You can't just assume that you will get clear title to your mother's house just because you are bringing this counterclaim.

*Related issues come up all the time in real estate law. We've focused on the most obvious, where a claim of equitable right to title in property can lead to an investigation of the client's own actions. This attorney did a good job of explaining why it is in the client's interest to share this information, even if the client is reluctant.*

*And then, sometimes the client is just belligerent:*

## RELATED ISSUES #2

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Client: (Plaintively) I knew it. You said you'd help me represent myself. You lawyers are all alike. All you want is to get people in so you can charge us hundreds of dollars for things we don't need. I don't need to tell you that and I'M NOT GOING TO PAY YOU TO TALK ABOUT my boundary issue. We're here to talk about my driveway and that's all I'll pay you for.

Attorney: OK, I will exclude advising you about the law on the boundary issues from my part of the checklist and note that you are only authorizing me to assist you with the claims that relate to your driveway.

***This approach will not work!*** *You have to assess and advise on related issues, even if not asked, and simply excluding them from the scope doesn't protect you. Frankly, if a client won't let you do this, he probably isn't a good candidate for limited assistance. Here's a better way to handle it.*

## RELATED ISSUES #2A

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Attorney: I'm sorry you feel that way, but I've seen too many situations where a simple claim to use a driveway can lead to a dispute about the entire title and boundaries of the property. I'm worried for you, and if you won't let me analyze your potential legal issues, I'm not comfortable coaching you. I need this information to assess potential related actions by you or the opposing party. I have to be able to understand the impact of the actions I'm assisting you with, including other matters that you may not be aware of. Otherwise, you may be creating more of a problem for yourself than you are solving. You don't need to hire me to assist you with the other issues, but I at least have to advise you of what they may be so that you can make a good decision.

Client: (wheedling) If I tell you, will you promise not to charge me for it?

*This is a much better way to handle it, since the attorney explains why related issues must be explored and puts the problem in the context of protecting the client from unknown potential hazards.*

*We've outlined some of the issues you might face in limited scope representation, and illustrated some of them. While the rules are few, it is imperative that you watch out for them, and protect yourself and your client when they arise.*

*The most common, and most dangerous, is failure to document changes in scope.*

*As we know, real estate cases can be fluid. What starts out as a garden-variety dispute over a driveway easement may well morph into a challenge to title to the property or an adverse possession or prescriptive easement claim, about which nothing is garden variety. New issues can pop up unexpectedly and frequently under extreme time pressure. We are trained to protect our client's interests and jump to their defense. However, if the new issue is outside the existing limitation on scope, nothing is more hazardous than to step outside the specific box you have taken such trouble to draw and document and start to assist the client on new issues before obtaining a new agreement documenting the change in scope. Doing so substantially increases the risk of a malpractice claim. It is far more likely in such a situation that there will be a miscommunication between you and your client as to the boundaries of scope, which in turn increases the risk that something will slip through the cracks. If it does, and you no longer have a specific written agreement documenting the clear limits of your responsibility (and liability), who do you think is more likely to take the blame, you or the client? **Do not take this risk.***

*The appended materials contain a variety of checklists that are designed to identify the limitations in scope. We have referred extensively to the task checklist in Appendix 9. Another is based on breaking the case down by issue, with the attorney handling all aspects of a single complex issue, while the client is responsible for the simpler ones. You will be most likely to use the task-based approach when you are coaching the client but not appearing in court. The issue-based checklist may be better suited for litigating part of the case in court. These guidelines are not hard and fast, however, and it is up to your professional judgment to use the method of apportioning responsibility that best suits the needs of the specific client, case, and issue.*

*The checklists are designed to serve multiple purposes: they help you identify the components of a case that might be included or excluded from the limited scope representation as part of your intake interview. They memorialize the discussion between you and your client and are an important communication tool. We encourage you to copy them and give them to the client after discussion. They can be attached to a fee agreement and replaced with a new attachment if the scope changes. This is an easy way to document changes in scope without having to create a completely new agreement.*

*Here's an illustration of one of the ways in which the issue of change of scope may come up. Remember, too, that when new issues pop up, they frequently do so in an emergency situation.*

## CHANGE IN SCOPE #1

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Client: Thanks for calling me back so promptly. I'm really upset. I just got served with papers trying to bar me from using my driveway. It's a pack of lies. I've already faxed it to you. Somewhere I read that I have until Monday to respond. Is that true? What should I do?

Attorney: You read it correctly. You have until Monday to file your opposition. This is a serious matter, and you want to make sure to get all of the relevant facts and legal arguments before the judge.

Client: OK, write it up and fax it to me so I can sign it.

Attorney: We need to talk about this. Our limited assistance agreement says I'm only to represent you on preparing your answer and case management conference statement and appearing at the case management conference in this matter.

Client: (Emphatically) THIS IS IMPORTANT! I NEED YOU TO DO THIS NOW.

Attorney: I can help you right away—but first we need to discuss it. Your opposition needs to be filed soon, so I will need a new checklist outlining the scope of my involvement. When can you come in to sign it?

Client: I DON'T HAVE TIME FOR THAT. It's really busy here this week, and I'm short-handed. Can't you mail it to me? I'll sign and return it next week.

Attorney: OK. Drop it through my mail slot on your way home from work one night next week. Now, tell me what really happened so I can start drafting. I'm really pressed for time, so I have to do this now if we are going to meet the court deadline.

***Not a good approach!!!*** There are many things wrong with this picture. The attorney didn't explore the apportionment of new tasks/issues. More importantly, she didn't get a writing confirming the new scope of representation before stepping outside the original agreement. There is no guarantee that the new document will be signed and dropped off at all. Under the facts presented, it is certain that it won't happen until after the attorney performs services outside the original scope. There is no point in tightly restricting your representation and then stepping outside of that restriction. In fact, by blurring the line, this attorney has exposed herself to liability. Let's try to do it better.

## CHANGE IN SCOPE #2

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Client: I DON'T HAVE TIME TO COME TO YOUR OFFICE. It's really busy here this week, and I'm short-handed. Can't you mail it to me? I'll mail it back next week.

Attorney: Kevin, I know you are busy and the timing is inconvenient; however, this is important, and you will have to give it priority if the judge is going to hear your side of the story in time. I'm happy to help you deal with this emergency, but I can't exceed the terms of our contract without a new contract. I can fax it to you and you can sign it and fax it back to me, but it has to be done before I can do things outside my written authority.

The first priority is that we get clear on exactly what you are authorizing me to do. [Pulls out checklist] Do you want me to draft the opposition? Are you going to file and serve it or will I? Do you want me to go to court for you? If so, I need to know exactly what you want me to do and what you want to do yourself. Are there witnesses I should talk to?

Client: I don't know what to say in court. The papers are filled with lies. I need you to tell the judge what really happened. And I'd be nervous going to court by myself. I'd really like you to go with me. It would be a disaster if I can't use my driveway. What will I do?

Attorney: No one has made any orders yet, so let's focus on the issue at hand so that we can get your side of the story to the judge. There will be plenty of time to talk about the possible consequences after we've prepared your papers. In the meantime, we need to be clear on exactly what you want me to do. I understand that you want me to prepare the opposition and your affidavit? Is that correct?

Client: Yes. Can you get started now? I don't have time. It's really busy this week. Can't you just sign the agreement for me, and sign my name to the court papers?

Attorney: No, I can't sign either of these papers on your behalf. I can get started drafting as soon as you have initialed the new limited assistance agreement. I'm filling it out now. I'll fax it to you to sign and fax it back to me. As soon as I get it, you can tell me what really happened, and I'll start drafting. When can you come in to sign the papers?

Client: I don't have time this week.

Attorney: Kevin, I know you are busy, but you have to review and sign these things yourself, and you don't have much time. As you point out, these issues are important and have serious consequences, so you'll have to give them priority if I am going to meet the court deadline for you. After the new agreement is signed, you'll need to set aside enough time to go over all the facts with me so I can draft an accurate affidavit. Since it is under penalty of perjury, you will have to make sure everything is correct. After I've drafted it I'll email it to you and you will have to go over everything carefully to be sure that I haven't misstated anything. What time will you be able to do that? I have a hearing before Judge X at 2:00 on another matter, so I'll have to get this done before that time if you are going to be able to review it today.

Client: This really is a pack of lies. Can I sue them for perjury?

*What could the attorney have done differently? How about the use of email to obtain the new limitation on scope? It is a judgment call whether you are comfortable using email with an electronic signature, or insist on a faxed or scanned copy or an original. It may depend on the electronic sophistication of the client. Your duty, whatever method you select, is to ensure that your file clearly demonstrates the discussion over the change in scope and the client's informed consent. What other things might the attorney have done to make it clearer to the client?*

*Before we leave this part of the topic, we'd like to highlight a relatively common fact pattern which particularly lends itself to LAR. This is a case where you have represented the client on a full service basis in the past. You know each other, and each is extremely familiar with what has gone before, including prior rulings, the opposing party and attorney, and the issues. At some point, the client may have determined that he or she couldn't afford you for full service representation any more. However, now he or she would like to consult with you periodically or, perhaps, retain your services for only the most technical or difficult part of the case. This is a particularly suitable situation for LAR. Since you know the client, you know whether you can trust the client to perform his or her part of the bargain. If you couldn't trust the client, presumably you wouldn't agree to LAR. Since you know the issues, the history, and opposing party, you can be particularly helpful in framing the issues and assisting the client. And since the client has had experience with the process, you can form a sound opinion of the client's ability to self-represent. If you find yourself in this situation, the best practice is to obtain, serve, and file your Notice of Limited Appearance Form so it is clear that you now represent the client on a limited basis.*

*Now let's consider how to deal with opposing attorneys who may not understand or wish to honor your LAR agreement with the client.*

## OPPOSING COUNSEL #1

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- Attorney 1: My client tells me he has tried to negotiate the fence issue with you, but you have not returned his calls.
- Attorney 2: I don't have to negotiate with your client. Besides, you're just trying to get me in trouble with the Board of Bar Overseers for talking directly to a represented party.
- Attorney 1: I have served you with my Notice of Limited Assistance and you are on notice that I am only representing him in connection with the driveway. I've also written you a letter specifically telling you that.
- Attorney 2: That doesn't matter. I'm not required to deal with him and I'm not going to. It's not proper.
- Attorney 1: I suggest that you look closely again at the Massachusetts Rules of Professional Conduct on that point.
- Attorney 2: Don't tell me how to practice law.
- Attorney 1: If that is your position, you may be frustrating his attempts to settle the case and unreasonably increasing my costs by refusing to deal with him on authorized topics. My client may want to decide if he wants the judge to consider whether your conduct is reasonable.

*We hope we have impressed how important it is to document the limitation in the scope of your attorney/client relationship, as well as any modifications in that scope. It is equally important to document the end of that relationship. Do not get lax about documenting the end. Again, the greatest potential for trouble in a limited assistance relationship is confusion about who is responsible for what aspects of the case. It is up to you to ensure that no such confusion exists. That means that when you have completed your assigned part of the case, you must immediately notify the client of that fact, and if you have appeared of record, notify the court and the opposing party or counsel of your withdrawal.*

*The best practice is to file and serve a Notice of Withdrawal of Limited Assistance at the earliest possible time. As with any other attorney/client communication issue, this is always best handled up front and clearly. Explain the purpose of the Notice of Withdrawal of Limited Assistance before you begin your limited assistance representation.*

## CONCLUSION OF REPRESENTATION #1

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Attorney: We have agreed that I will appear in court for the case management conference. After that, I will be withdrawing from your representation. This is what the Notice of Withdrawal of Limited Appearance that I will be filing looks like.

Is there anything more that you would like me to do in addition to preparing and filing the case management conference statement and appearing at the conference?

Client: No, I think I can take it from there.

Attorney: All right. At the conclusion of the conference, I'll be withdrawing as your attorney. I'll send you a copy of the Notice of Withdrawal, which means that you will then become your own attorney for all parts of this case.

*Before filing your Notice of Withdrawal of Limited Appearance, always review your LAR fee agreement and your file to be certain that there is nothing else that you and your client agreed that you would complete.*

*Once you are out of the case, if there are other matters still pending, it may be a good idea to send the client a letter reminding her of pending deadlines. If you elect to send a closing letter (always a good idea), a sample closing letter is included in your materials in Appendix 12. Of course, if you send this letter, it is your responsibility to make sure it is complete and accurate.*

## CONCLUSION OF REPRESENTATION #2

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Client: I've received your Notice of Withdrawal of Limited Service in the mail today. I just wanted to call and thank you.

Attorney: That's very kind of you.

Client: No, really. I thought this experience was going to be a nightmare. All my friends told me it would cost thousands of dollars, and my brother-in-law told me I would be billed for lots of unnecessary work. You really worked with me to help me do the things I could so I could save some money. I also really understand now why some of the things I needed were really too complicated for me to do without help. I'm going to call my brother-in-law and tell him he should have done it this way.

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# Appendices: Unbundling Materials

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These materials are designed to help you document your file and ensure that you and the client are in agreement on the limitations on the scope of your representation, which tasks you are going to perform, and just as importantly, which ones you are NOT going to perform. They are not official court forms but rather are designed as templates which should be tailored to your needs. Since limited assistance representation arrangements can be fluid, it is essential that you document not only the limitations in scope but also ALL changes to the scope and the representation's ultimate conclusion. These materials include a number of checklists to document your limited assistance representation and to note any changes; they are designed to allow you and your staff to easily track these issues so nothing is overlooked.

Use your judgment in tailoring the forms. You may use some or all of them, modify others, and select which ones best suit a given LAR arrangement. A brief overview of the materials and their intended use follows:

1. **Best Practices Tips.** These are designed to assist you in flagging the areas of special concern in limited assistance representation. Read them carefully and add to them as new issues arise in your practice.
2. **Links to Forms.** File and serve a Notice of Limited Appearance only if you are going to go of record or make a court appearance in Massachusetts, and serve the client and opposing counsel with copies. If you went of record or appeared in court, and if the client does not sign a substitution of attorney, use the Notice of Withdrawal of Limited Appearance to document the end of your involvement.
3. **Supreme Judicial Court Order.** *In re: Limited Assistance Representation*
4. **Limited Assistance Representation Description (Client Handout).** This form was designed to educate the client about the options available for limited assistance representation. Modify it to reflect your practice. Many clients will initially be unfamiliar with the many ways in which they can participate in their own representation. This form, or a variation, will help you educate them on the ways you can assist them in a limited assistance context. Use it as a basis for discussion as you do your intake and evaluate their legal needs. Give them a copy and note in your records the date on which you do so.
5. **Flow Charts.** There are two flow charts designed to visually set forth the steps in LAR from both the client's and the attorney's perspective. Use the client flow chart as a handout as part of educating your client on the options for limited assistance representation. Use the attorney chart as a tool to document your own file.
6. **Other Suggested Client Handouts.** You will do your clients a service if you collect or create other handouts that will assist them in performing their agreed-upon tasks. A list of suggested additional client handouts is included. Bar associations may make others available to their members. Consider gathering these materials and making them available to your clients. They augment others that

you may have developed for internal use, such as directions to your office or to the courthouse or directions on preparing for a deposition.

7. **Sample Intake Sheet.** Tailor this form for use as an intake tool for every new limited assistance representation client. Note the topics discussed, include related topics about which you advised the client, and use it to document your discussions about the nature and scope of your representation. Before the client leaves, you should each initial the form and then give the client a copy. Do a new one each time a new issue comes up.

8. **Sample Fee Agreements.** Four sample fee agreements are contained in Appendix 8, each tailored to a different form of LAR, from a single appointment/single task to coaching, ongoing consulting, document preparation, and making court appearances. ***Do not perform services until you have a signed agreement limiting the scope of your involvement. If the scope changes, do a new agreement.*** If the form of agreement you use includes a checklist to define the scope, do a new checklist to document the changed scope, sign, and date (both attorney and client). Don't just send a confirming letter to the client. If the scope changes, attach the tasks/issues checklists.

9. **Sample Tasks/Issues to be Apportioned Checklists.** Use these forms to document the issues you discussed with the client, the apportionment of responsibility, and the areas where the client agrees you are not to assume responsibility. You should each initial the checklists, and the client should receive an initialed copy of each. ***Do new checklists each time the scope of LAR changes,*** initial and date it, give copies to the client, and note the date on which you did this. If you're defining the limited assistance representation in an attachment to your fee agreement rather than in the body, use these checklists as attachments and modify them as needed. Attach these forms as the exhibits to Fee Agreement # 4 in Appendix 8 or any other fee agreement where the limitation on scope of representation is in an attachment rather than the body of the agreement.

10. **Sample Change in Scope Letter.** This is a sample letter to send the client when the scope of representation changes. The change in scope usually occurs either when a new issue arises that was unanticipated in the initial allocation of tasks or the client finds that s/he is unable to competently perform the tasks s/he has undertaken and asks the attorney to take over.

11. **Sample Follow-Up & Revised Tasks/Issues Checklist.** This form is designed to keep track of who is responsible for performing which tasks in an ongoing limited assistance representation. Fill it out as you talk to your client about responsibilities, give a copy to the client, and retain one for your records. Use it as often as necessary.

12. **Sample Closing Letter.** It is as important to document your exit from the case as it is your entry into the case. When you have performed all the tasks for which you were engaged, tailor the Sample Closing Letter to clearly communicate that fact to the client. Invite the client to advise you immediately if s/he disagrees that all tasks for which you were engaged are completed. If you have made an appearance as part of your representation, file a Notice of Withdrawal of Limited Appearance.

13. **Sample Tickler Checklist.** This is the key to keeping track of all of the above. Tailor it to your specific needs, photocopy it on brightly colored paper, and keep it on top of your file. Note the dates on which you obtained each of the checklists, retainer letters, documentation of changes in scope, and file closing. Add other tasks and forms that you find recur in your practice, and train your staff to keep the checklist current.

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# For Attorneys

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## APPENDIX 1

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### Best Practices for Limited Assistance Representation

**Limited Assistance Representation** (sometimes called unbundling) refers to matters in which a client hires an attorney to assist with specific elements of a matter, such as legal advice, document preparation or document review, and/or limited appearances in court. The client and the attorney agree on the specific discrete tasks to be performed by each. Depending on the nature of the attorney's involvement, the attorney may or may not enter an appearance with the court. The client represents him/herself in all other aspects of the case.

The special issues governing limited assistance fall into three general categories:

1. The limitations on scope must be informed and in writing;
2. Changes in scope must be documented;
3. An attorney has an affirmative duty to advise the client on related matters, even if not asked.

The following guidelines are designed to assist attorneys in addressing and avoiding malpractice liability in a limited assistance representation. LAR does not differ substantially from the rest of your practice, and most of the suggestions that follow are equally applicable to full scope service. However, there are some specialized issues that require consideration.

*It is important to note that limiting the scope of your representation does not limit your ethical obligations to the client, including the duty to maintain confidentiality, the duty to act competently, the duty not to communicate with another person known by you to be represented by legal counsel in the matter (absent written permission from counsel to do so), and the duty to avoid conflicts of interest. It is also important to note that limiting the scope of your representation does not limit your exposure to liability for work you have agreed to perform, nor is such a limitation permissible.*

## Deciding whether to take the case

1. **Work within your expertise.** As with full scope service, strongly consider rejecting a limited assistance matter in areas of law in which you or your firm have little or no experience. Taking a case for the gaining of experience is unwise in limited representation, or in any representation. Even where your representation is limited to particular tasks, 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 also of the possible need for other counsel regarding issues you have not agreed to handle.
  
2. **Don't be pressured by emergencies.** Pay particular attention to prospective clients who have last-minute emergencies and seek limited assistance representation. LAR does not exempt you from providing competent assistance or zealous advocacy. For example, being pressured to conduct a quick document review because of an upcoming deadline is much riskier if you will only be involved in that brief transaction. Consider advice on ways to move the deadline, if possible, to allow adequate time for review or representation.
  
3. **Be wary of clients who take a musical chairs approach to finding legal help.** Consider carefully requests from prospective limited assistance clients who have involved multiple attorneys in the same case. Bouncing around may be an indicator that the client is searching for the "right answer" after being given what they believe are unsatisfactory responses to previous analyses of their situation. You should avoid helping to facilitate situations in which a client may blame you for his/her discontent with the outcome. On the other hand, you may find that previous attorneys were uncomfortable with taking a piece of the case and that your prospective client simply had trouble finding an attorney like yourself who was willing to work effectively with him or her on a limited assistance basis. The client may have been viewed as difficult because s/he was seeking more of a partnership relationship than the traditional full scope representation envisions.
  
4. **Be wary of clients who have unrealistic expectations.** A prospective client may be unrealistic about what s/he can achieve alone or about the nature of your limited assistance representation. Part of your obligation in offering limited assistance services is to teach the client about the legal system and the available remedies. Few non-attorneys will arrive on your doorstep with totally realistic expectations. Their beliefs are likely to have been shaped by what they have seen on TV, what they believe is fair, or what they have been told by neighbors or friends. You bring your knowledge and experience with the legal system to the relationship. If you believe that you will not be successful at reining in a client's unrealistic expectations, you should decline the representation. It is important that the litigant hear your advice in order to partner successfully with you in the representation and carry out a plan with your guidance. Not every client is temperamentally suited to representing him/herself.
  
5. **Clients with limited capacity or language barriers may not be good candidates.** Limitations on assistance by definition must be informed and in writing. Clients who lack the capacity to give informed consent or assist in their own representation should be avoided. If the client's limitation is mental or emotional, the client is probably not a good candidate. If the limitation is one of language (and many potential limited scope clients have limited English skills), special issues are presented. If you are not bilingual yourself, you should insist on a translator. It is your responsibility to ensure that the client understands our adversary civil legal system and the limitations on scope and has the capacity

to assist in the representation. This is an individualized assessment. If you cannot represent the client, look for sources of pro bono or low cost assistance for him or her.

6. **Identify those with hidden motives.** Be wary if the prospective client has trouble focusing on the legal outcome even after you have carefully explained the possible remedies available. Emotional needs may be driving the request for assistance. While many cases involve an emotional component, self-represented litigants who seek revenge are likely to be unhappy with the limited results that the legal system provides and even unhappier with limited assistance services. Clients who require a lot of handholding are also unsuited to limited assistance representation.

7. **Make sure the limited assistance of your services is reasonable.** Although you and your client have substantial latitude in limiting the scope of your representation, the limitation must be reasonable under the circumstances and the client must give you informed consent. If you conclude that a short-term limited representation would not be reasonable under the circumstances, you may offer advice to the client but must also advise the client of the need for further assistance of legal counsel.

8. **Identify those with a history of domestic violence seeking limited legal assistance in cases involving the batterer.** Survivors of domestic violence face special issues when considering self-representation. The power inequities and intimidation present in an abusive situation must be considered. These issues may raise serious questions about the client's ability to maintain the balance necessary to pursue an action against the alleged batterer. The client may not be seeking limited assistance services solely for financial reasons; the client may be looking specifically for someone who can provide the tools to successfully enforce the client's own rights. Discuss these issues openly with the client.

9. **Clearly address the fee structure and its relation to services.** If during your initial interview you find that the prospective client is reluctant to discuss or agree on fees, **be cautious.** It is critical that the client understands that limited assistance services not only limit your fees but *also* limit the services that you will perform. If anything, your fee arrangement must be clearer in limited assistance representation than in full service. You must ensure that there is no misunderstanding about what limited services you have agreed to perform. In limited assistance representation, it is crucial to be on a pay-as-you-go basis, as you may never see the client again.

10. **A good diagnostic interview is critical.** It is critical to perform a good diagnostic interview to pick up all the salient issues in the case. Both experienced and inexperienced attorneys will find a checklist of issues in the relevant practice area to be extremely helpful in conducting a good diagnostic interview.

11. **Develop and use an intake form.** A good intake form should list the key issues and allow room to insert unusual ones. Give a completed copy to the client. It is a contemporaneous record that documents your file, reminds you to ask about related issues, memorializes the limitations on scope, and educates the client. Use and tailor the forms that appear in these materials to make them work for you.

12. **Advise the client of their right to seek advice on issues outside the scope of the limited assignment.** It is probably a good idea to include in your intake sheet or handouts a statement that the client has been advised of the right to seek counsel on other issues.

## After you take the case

13. **Use checklists.** Checklists document who is going to do what before the next meeting. Give a copy to the client. Sample checklists have been included in these materials. Tailor them to your specific practice, fill them out while the client is present, and make sure that you and your client each have an initialed copy.

14. **Use a clear fee agreement detailing the scope of representation.** A good limited services fee agreement will spell out exactly what you are doing for the client, and even more importantly, what you are *not* doing and will detail what responsibilities the client will assume. There should be no confusion about the scope of the representation. Four sample fee agreements are included in these appendices, for single occasion consulting situations, ongoing consulting, drafting and assistance with strategy and paperwork, and making an appearance for part of the case. Tailor them to each case and to your individual practice. A fee agreement which puts the limitations and checklist in an attachment is probably better suited to a case where you anticipate a change in scope.

15. **Create a support group of experienced colleagues.** Limited experience with handling LAR poses special challenges for newer attorneys or those new to a particular practice area. An experienced practitioner can confirm your analysis, suggest additional issues to explore, or divert you from a particular proposed course of action. You might want to locate colleagues who are experienced with offering limited assistance representation, and consider creating a study group, referral sources, or general references for each other. Meet with them periodically to discuss common problems and solutions. Most of the issues which will come up in LAR are practical rather than ethical, and it can be immensely helpful to talk to other practitioners who have faced the issues and developed solutions.

16. **Practice defensively and document all decisions.** This is good advice in any type of legal work. It is particularly essential to document instances in which you offer advice on a particular path for the *pro se* litigant to take. Use the Follow-Up Checklist in the materials to document your file and educate the client easily and efficiently.

17. **Memorialize any changes in the scope of your limited representation as they occur. Never** do work outside the scope of the original LAR agreement without a new limitation agreement signed by the client. Checklists that attach to the fee agreement are a simple and reliable way to remember to do this. A confirming letter that the client doesn't sign will probably be insufficient to effectively document the new limit in scope. Be sure that you and the client both sign off on any changes in scope. Use the Tickler Checklist in the materials to make sure you've done this.

18. **Use prepared handouts.** There are prepared handouts on common questions that arise in your practice. It is helpful to have one that describes limited assistance representation and details the specific options available. Note on your intake sheet which handouts you gave to the client and on what date. A sample client handout on LAR is included in the materials.

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

20. **Making non-client laypersons part of your team is hazardous.** Limited assistance representation may create an informal feeling in the attorney-client relationship. Remember that, despite the apparent informality, this is an attorney-client relationship. It is between you and your client, not you, your client, Aunt Mary, and others the client may want to have involved. Allowing third parties to participate may destroy the attorney-client privilege. If the client insists on utilizing non-clients, clearly advise the client, in writing, in advance, of the risks involved.

21. **Refrain from providing forms with no assistance or review.** Some of the forms that will be required may be simply too complicated for a self-represented litigant to complete without assistance. Your expert assistance in the completion of these forms is not only a best practice, but will also reduce any potential liability.

22. **Do not encourage a self-represented litigant to handle a matter that is too technical or difficult.** Part of your responsibility as an attorney is to counsel a person *against* handling such a matter pro se and to help litigants understand the cost/benefit analysis of using their litigation budget wisely to acquire expert assistance in the areas where they most need it. This responsibility depends on an individualized assessment of each litigant's situation.

23. **Do not expose a client to possible Rule 11 sanctions.** A best practice is to satisfy yourself that the pleading you assist the client to prepare would withstand scrutiny if your name were on it.

#### Ending the relationship

24. **Let the client know when your involvement has ended.** There should be no surprises either to you or the client about when your involvement in the matter has ended and no unstated expectations of continued participation on your part. Send out a notice at the end of your involvement in a matter that involves a series of steps. See the sample closing letter in the materials. Notify the client that you believe you have completed your part and advise him/her to get in touch with you immediately if s/he disagrees.

25. **If you have entered an appearance, let the court know about ending the relationship as well.** File a Notice of Withdrawal of Limited Appearance form as soon as possible after the appearance has concluded. Don't attach your limited assistance representation agreement to your Notice of Withdrawal Form, since that is a confidential communication.

Use good judgment. Many of these suggestions apply equally to full service representation. Your LAR clients are likely to be as satisfied as your full service clients if you follow these simple practices. These practices don't take much effort and will document your file and educate your clients in ways that substantially increase the likelihood of a satisfactory relationship for each of you.

## APPENDIX 2

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### Links to Forms

#### A. Probate and Family Court Links:

- (1) Probate and Family Court LAR website:  
<http://www.mass.gov/courts/courtsandjudges/courts/probateandfamilycourt/lar.html>
- (2) Statement of Qualification Form:  
<http://www.mass.gov/courts/courtsandjudges/courts/probateandfamilycourt/lar.html>
- (3) Notice of Limited Appearance Form weblink:  
<http://www.mass.gov/courts/courtsandjudges/courts/probateandfamilycourt/documents/noticelimitedappearance.pdf>
- (4) Notice of Withdrawal Limited Appearance Form weblink:  
<http://www.mass.gov/courts/courtsandjudges/courts/probateandfamilycourt/documents/noticewithdrawaloflimitedappearance.pdf>

#### B. Housing Court Links:

- (1) Housing Court LAR website:  
<http://www.mass.gov/courts/courtsandjudges/courts/housingcourt/lar.html>
- (2) Notice of Limited Appearance Form:  
<http://www.mass.gov/courts/courtsandjudges/courts/housingcourt/notice-of-limited-appearance.pdf>
- (3) Notice of Withdrawal of Limited Appearance Form:  
<http://www.mass.gov/courts/courtsandjudges/courts/housingcourt/withdrawal-of-limited-appearance.pdf>

C. Boston Municipal Court Links:

- (1) BMC LAR website:  
<http://www.mass.gov/courts/courtsandjudges/courts/bostonmunicipalcourt/lar.html>
- (2) Statement of Qualification Form:  
<http://www.mass.gov/courts/courtsandjudges/courts/bostonmunicipalcourt/forms/bmc-attorney-statement-of-qualification.pdf>
- (3) Notice of Limited Appearance Form weblink:  
<http://www.mass.gov/courts/courtsandjudges/courts/bostonmunicipalcourt/forms/bmc-notice-of-limited-appearance.pdf>
- (4) Notice of Withdrawal of Limited Appearance Form weblink:  
<http://www.mass.gov/courts/courtsandjudges/courts/bostonmunicipalcourt/forms/bmc-notice-of-withdrawal-of-limited-appearance.pdf>

D. District Court Links:

- (1) District Court LAR website:  
<http://www.mass.gov/courts/courtsandjudges/courts/districtcourt/lar.html>
- (2) Notice and Withdrawal of Limited Appearance Form weblink:  
<http://www.mass.gov/courts/courtsandjudges/courts/districtcourt/notice-of-limited-appearance.pdf>

E. Land Court Links:

- (1) Land Court LAR website:  
<http://www.mass.gov/courts/courtsandjudges/courts/landcourt/lc-limited-assistance-representation.html>
- (2) Notice of Limited Appearance Form:  
<http://www.mass.gov/courts/courtsandjudges/courts/landcourt/notice-of-limited-appearance.pdf>
- (3) Notice of Withdrawal of Limited Appearance Form:  
<http://www.mass.gov/courts/courtsandjudges/courts/landcourt/notice-of-withdrawal-of-limited-appearance.pdf>

## APPENDIX 3

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### SUPREME JUDICIAL COURT

SUFFOLK, S.S.

SUPREME JUDICIAL COURT

#### *In Re: Limited Assistance Representation*

#### **Background**

Limited Assistance Representation permits attorneys to assist a self-represented litigant on a limited basis without undertaking a full representation of the client on all issues related to the legal matter for which the attorney is engaged. After the completion and assessment of a Limited Assistance Representation Pilot Project in the Hampden, Suffolk, and Norfolk Divisions of the Probate and Family Court Department pursuant to a Standing Order dated August 1, 2006, as amended from time to time, the Justices have concluded that limited assistance representation can be of significant benefit in expanding access to justice in the Trial Courts, and should be available in such Divisions and in connection with such matters as each Trial Court Department Chief Justice, in his or her discretion and with the approval of the Chief Justice for Administration and Management, may prescribe.

#### **Order**

Limited Assistance Representation may be implemented in any Department of the Trial Court in such Divisions and in connection with such matters as each Trial Court Department Chief Justice, in his or her discretion and with the approval of the Chief Justice for Administration and Management, may prescribe. Notwithstanding any provision to the contrary in any Rule of Court or Standing Order, it is hereby ORDERED that the following procedures shall apply with respect to Limited Assistance Representation.

##### 1. Limited Assistance Representation

A qualified attorney may limit the scope of his or her representation of a client if the limitation is reasonable under the circumstances and the client gives informed consent. An attorney shall not be deemed a “qualified attorney” unless he or she completes an information session on Limited Assistance Representation approved by the Chief Justice of the Trial Court Department in which the attorney seeks to represent a client on a limited basis.

##### 2. Limited Appearance

An attorney making a limited appearance on behalf of an otherwise unrepresented party shall file a Notice of Limited Appearance in the form attached to this Order. The Notice shall state precisely the court event to which the limited appearance pertains, and, if the appearance does not extend to all issues to be considered at the event, the Notice shall identify the discrete issues within the event covered by the appearance. An attorney may not enter a limited appearance for the sole purpose of

making evidentiary objections. Nor shall a limited appearance allow both an attorney and a litigant to argue on the same legal issue during the period of the limited appearance. An attorney may file a Notice of Limited Appearance for more than one court event in a case. At any time, including during an event, an attorney may file a new Notice of Limited Appearance with the agreement of the client.

A pleading, motion or other document filed by an attorney making a limited appearance shall comply with Rule 11(a), Mass. R. Civ. P., and/or cognate Departmental Rules, and shall state in bold type on the signature page of the document: “Attorney of [party] for the limited purpose of [court event].” An attorney filing a pleading, motion or other document outside the scope of the limited appearance shall be deemed to have entered a general appearance, unless the attorney files a new Notice of Limited Appearance with the pleading, motion or other document.

Upon the completion of the representation within the scope of a limited appearance, an attorney shall withdraw by filing a Notice of Withdrawal of Limited Appearance in the form attached to this Order, which notice shall include the client's name, address and telephone number, unless otherwise provided by law. The attorney must file a Notice of Withdrawal of Limited Appearance for each court event for which the attorney has filed a Notice of Limited Appearance. The court may impose sanctions for failure to file such notice.

### 3. Service

Whenever service is required or permitted to be made upon a party represented by an attorney making a limited appearance, for all matters within the scope of the limited appearance, the service shall be made upon both the attorney and the party. Service upon a party shall be at the address listed for the party in the Notice of Limited Appearance. If the party's address has been impounded by court order or rule, service of process on the party shall be made in accordance with the court order or rule. Service upon an attorney making a limited appearance shall not be required for matters outside the scope of the limited appearance.

### 4. Assistance in the preparation of documents

An attorney may assist a client in preparing a pleading, motion or other document to be signed and filed in court by the client, a practice sometimes referred to as “ghostwriting.” In such cases, the attorney shall insert the notation “prepared with assistance of counsel” on any pleading, motion or other document prepared by the attorney. The attorney is not required to sign the pleading, motion or document, and the filing of such pleading, motion or document shall not constitute an appearance by the attorney.

Adopted April 10, 2009, effective May 1, 2009.

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# For Clients

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## APPENDIX 4

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### Client Handout Limited Assistance Representation

#### What is limited assistance representation?

Limited assistance representation (sometimes called “unbundling”) is a way that an attorney can help you with part of your case while you do the rest of your case. For example:

1. You can consult with an attorney to prepare or review your paperwork but attend the hearing yourself;
2. You can represent yourself through the whole case and periodically consult with an attorney who can coach you on the law, procedures, and strategy;
3. You can do the preparation yourself and hire an attorney just to make the court appearance for you;
4. You can do your own investigation of the facts (“discovery”) and ask the attorney to assist you in putting the information in a format which is useful to the court;
5. You can ask the attorney to be on “standby” while you attend the settlement conference yourself.

With limited scope assistance, you may be able to handle the whole case yourself, except for a few technical areas where the attorney can help you. It really is between you and the attorney to determine how much of your case you hire the attorney to do. If you choose limited assistance representation, it is important to keep returning to the same attorney. Otherwise, you’re paying a new person to get up to speed on your case each time that you consult.

Some areas of the law are *extremely technical*, and it is rare for non-attorneys to effectively handle them. You will almost certainly need the assistance of an attorney if your case involves any of these issues.

#### Why it is important to discuss your case thoroughly with your attorney?

It is important to thoroughly discuss **all aspects** of your case (even those which **you** think are simple) with your attorney before deciding which parts you want to do yourself and which ones the attorney will assist you with. It is equally important to realize that there may be important issues presented by your case that you aren’t even aware of. You could be at serious legal risk about an issue you don’t even realize exists. If you don’t discuss the entire case with your attorney, how will you know if you are missing something important?

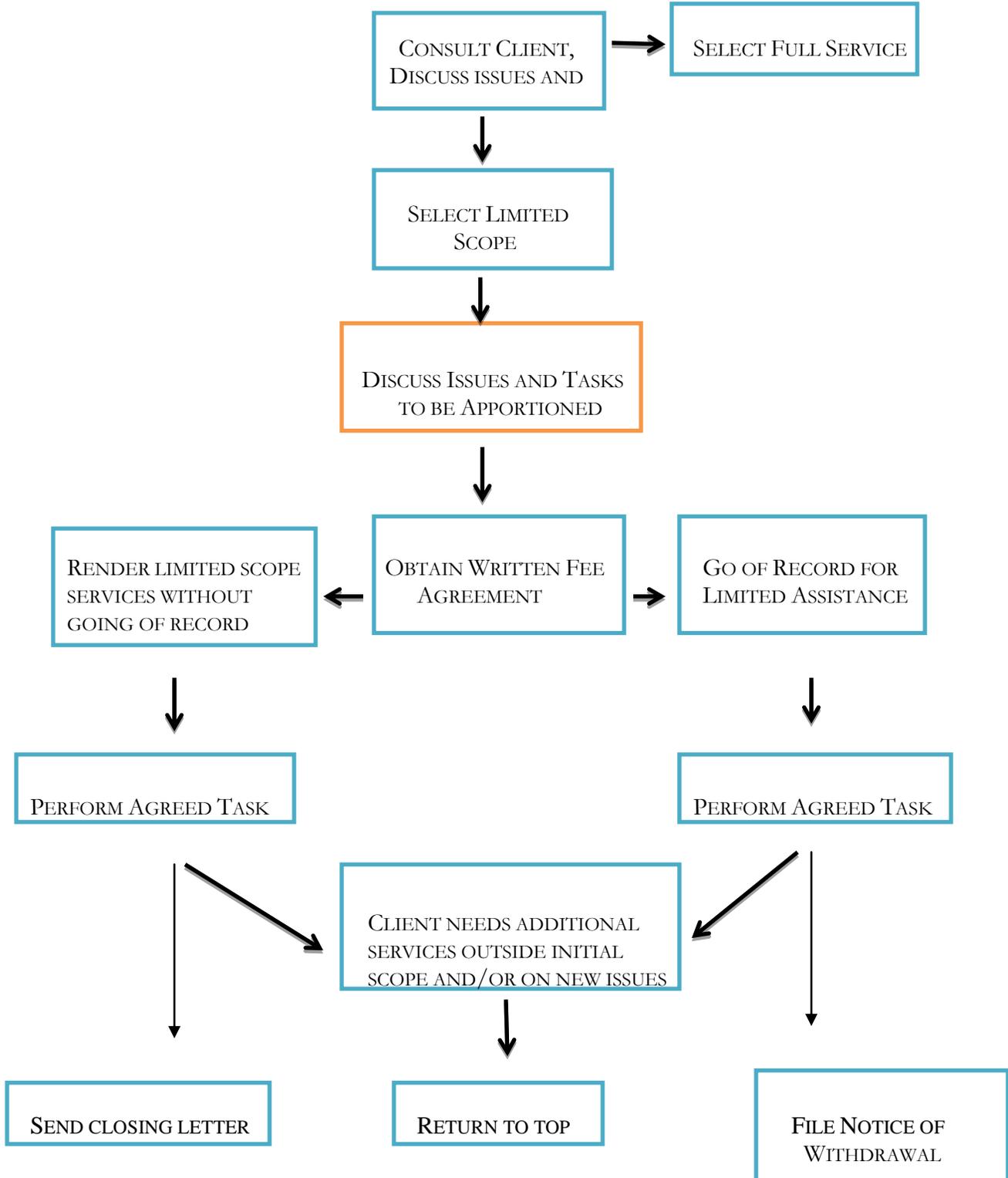
**Never** make assumptions about the law that applies to your case. **The law shows you’ve seen on TV are rarely accurate**, and just because you’ve “seen it on TV,” doesn’t mean it is correct or even “legal.” The **only** way to know the legal strengths and weaknesses of your case is to talk it over with a qualified attorney.

Sometimes new issues will pop up after your case is started. If they do, it is important to discuss them with your attorney, so that you know the potential legal consequences. Remember that your attorney can only advise you on matters you tell him/her about, so it is essential that you provide complete information about your case.

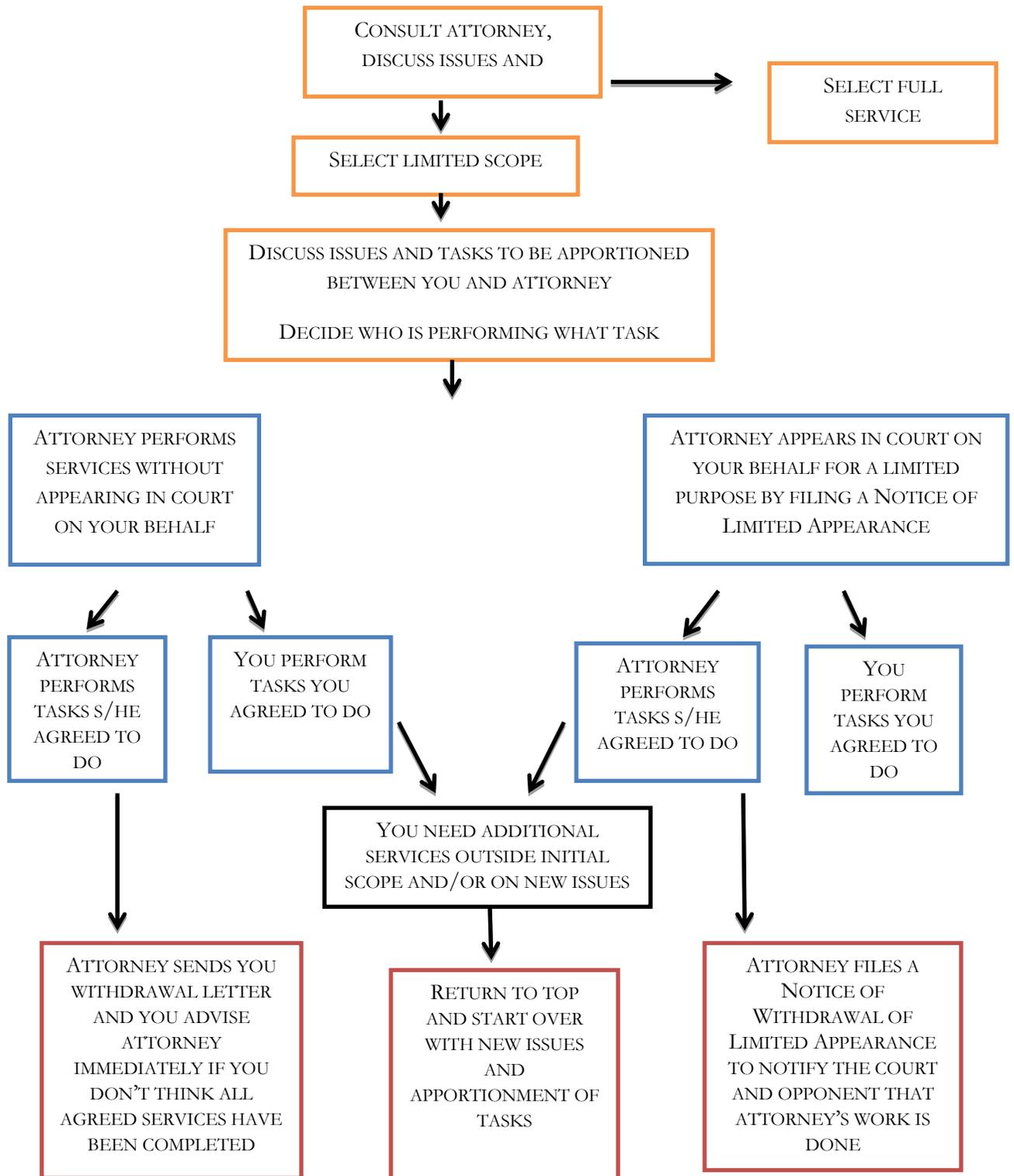
Remember, you and your attorney are working as a team. That means good communication and a clear understanding of each person's assignments is essential.

## APPENDIX 5

### LIMITED ASSISTANCE REPRESENTATION FLOW CHART FOR ATTORNEYS



**LIMITED ASSISTANCE REPRESENTATION FLOW CHART FOR CLIENTS**



## APPENDIX 6

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### SUGGESTED CLIENT HANDOUTS

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#### LIMITED ASSISTANCE REPRESENTATION

There are many handouts that you may wish to have available to assist your limited assistance clients. Consider having some or all of the following available:

1. Driving and public transportation directions to your office, the local courts, law library, etc.
2. A list of websites with information for self-represented litigants, such as online forms and information sources, self-help sites, and the like. Do not forget *Representing Yourself in a Civil Case: Things to Consider When Going to Court*, available at <http://www.mass.gov/courts/selfhelp/index.html>
3. Referral information for legal assistance programs for which they may qualify, including pro bono and low fee panels.
4. Handouts with suggested methods for dividing personal property, terminating tenancies, securing money judgments, or other matters relevant to your area(s) of practice.

Note: Always note on the Tickler Checklist what handouts you gave the client and when.



## APPENDIX 8

### FEE AGREEMENT #1 - SINGLE CONSULTATION AGREEMENT

On _____, 20____, _____ (Client) consulted with _____ (Attorney), who performed a conflicts check on _____ for limited scope assistance and advice. At that time, attorney provided the following service:	
	Review of court documents (describe):
	Information about document preparation:
	Assistance with document preparation:
	Advice regarding Client's rights and responsibilities
	Advice about the law and strategy relevant to issues as identified by Client
	Preparing calculations/ Advising regarding proposed calculations
	Information about fact gathering and discovery
	Guidance about procedural information and filing and service of documents
	Advice about negotiation and the preparation and presentation of evidence
	Advice about law and strategy related to an ongoing mediation/negotiation or litigation
	Legal Research
	Advising on trial or negotiating techniques
	Advising on Settlement Agreement
	Review and analysis of Client's case or trial strategy
	Other (specify):
	Client has paid Attorney for his/her time. All tasks which Client requested of Attorney have been completed and no further services are requested or expected from Attorney. Neither Client nor Attorney contemplates or expects a further professional relationship. Client acknowledges that he/she has been advised of the Client's right to seek separate legal advice from other counsel of Client's choice with regard to all legal matters that are outside the scope of the specific limited services provide by Attorney under this agreement.
Date:	Date:
CLIENT'S SIGNATURE:	ATTORNEY'S SIGNATURE:

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**FEE AGREEMENT #2 - CONSULTING SERVICES AGREEMENT**

Identification of Parties: This Agreement, executed in duplicate with each party receiving an executed original, is made between \_\_\_\_\_, hereafter referred to as “Attorney,” and \_\_\_\_\_, hereafter referred to as “Client.”

Nature of Case: Client consulted Attorney in the following matter: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

1. Client Responsibilities and Control: Client will remain responsible for and in control of his/her own case at all times. This means that Client will be responsible for understanding the issues, resolution options, and potential consequences of those resolution options. In addition, Client agrees to:
  - a. Cooperate with Attorney or his/her office by complying with all reasonable requests for information in connection with the matter for which Client is requesting services.
  - b. Inform Attorney of the specific parts of the case that Client requests Attorney’s assistance with.
  - c. Review and evaluate all information provided by Attorney.
  - d. Keep Attorney or his/her office advised of Client’s concerns and any information pertinent to the Client’s case.
  - e. Provide Attorney with copies of all correspondence to and from Client relevant to the case.
  - f. Notify Attorney of any pending negotiations, hearings, contractual deadlines, or litigation.
  - g. Keep all documents related to the case in a file for review by Attorney.
  - h. Sign all relevant papers, agreements, or findings relative to the case.
  - i. Immediately notify Attorney of any changes of work or home addresses or telephone numbers of the Client.
  - j. Immediately notify Attorney if the Client receives any new pleading, motion, letter, or other documents from the other party, the other party’s lawyer, any expert, appraiser, or evaluator hired by either party or appointed by the Court, or any Special Master, or any documents

from the Court, and provide the Attorney with a copy of the item received, as well as the date it was received by the Client.

2. Scope of Services: Client requests Attorney to perform or *not to perform* the following services related to the issues identified here or attachment hereto:

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Write “Yes” if the task is assigned to the Attorney and “No” if it is not.

a.		Advice about law and strategy related to an ongoing mediation, negotiation, or litigation
b.		Information about document preparation
c.		Assistance with document preparation
d.		Information about fact gathering and discovery
e.		Assistance with drafting discovery requests
f.		Assistance with computer support programs
g.		Guidance and procedural information regarding filing and serving documents
h.		Advice about negotiations and the preparation and presentation of evidence
i.		Legal research
j.		Coaching on trial or negotiating techniques
k.		Review and analysis of Client’s trial strategy
l.		Advice about an appeal
m.		Procedural assistance with an appeal
n.		Assistance with substantive legal argument
o.		Other:

3. Limitation of Attorney’s Responsibilities: Attorney will perform the specific legal tasks identified by the word “Yes” in paragraph 2 above consistent with Attorney’s ethical and professional responsibilities, including observing strict confidentiality, and based on the information available to Attorney. In providing those services, Attorney *will not*:

- a. Represent, speak for, appear for, or sign papers on Client’s behalf.
- b. Provide services in paragraph 2 which are identified with the word “No.”

- c. Make decisions for Client about any aspect of the case.
- d. Litigate Client's case on Client's behalf.

Attorney will NOT perform any services identified by the word "No" in paragraph 2 above. The Client may request that Attorney provide additional services. If Attorney agrees to provide additional services, they will be specifically listed in an amendment to this Agreement and initialed by both parties. The date that both the Attorney and the Client initial any such list of additional services to be provided will be the date on which the Attorney becomes responsible for providing those additional services. If the Client decides to retain the Attorney as the Client's Attorney of record for handling the entire case on the Client's behalf, the Client and the Attorney will enter into a new written Agreement setting forth that fact and the Attorney's additional responsibilities in the Client's case.

4. Method of Payment for Services:

- a. Hourly Fee: The current hourly fee charged by the Attorney for services under this Agreement is \$ \_\_\_\_\_. The hourly fee will be payable at the time of the service unless a different fee arrangement is established in clause 4b below. Attorney will charge in increments of one-tenth of an hour, rounded off for each particular activity to the nearest one-tenth of an hour.
- b. Payment from Deposit: For a continuing consulting role, Client will pay to Attorney a deposit of \$ \_\_\_\_\_ to be received by Attorney on or before \_\_\_\_\_ and to be applied against Attorney's fees and costs incurred by Client. This amount will be deposited by Attorney in Attorney's trust account. Client authorizes Attorney to withdraw the principal from the trust account to pay Attorney's fees and costs as the Client incurs them. Any interest earned will be paid to the Massachusetts IOLTA Committee to fund legal services for indigent persons. The deposit is refundable. At the termination of services under this Agreement, the remaining balance of the deposit, if any, will be refunded to the Client.
- c. Costs: All costs payable to third parties in connection with Client's case including filing fees, investigation fees, deposition fees and other fees shall be paid directly by Client. Attorney will not advance costs to third parties on Client's behalf.
- d. Client acknowledges that Attorney has made no promises about the total amount of Attorney's fees to be incurred by Client under this Agreement.

5. Discharge of Attorney: Client may discharge Attorney at any time by written notice effective when received by Attorney. Attorney will provide no further services after receipt of this notice unless specifically agreed to by Attorney and Client. Notwithstanding the discharge, Client will remain obligated to pay Attorney at the agreed rate for all services provided prior to such discharge.

6. Withdrawal of Attorney: Attorney may withdraw at any time as permitted under the Massachusetts Rules of Professional Conduct. The circumstances under which the Rules permit such withdrawal include, but are not limited to:
  - a. The Client consents,
  - b. The Client's conduct renders it unreasonably difficult for Attorney to carry out the employment effectively, and
  - c. The Client fails to pay Attorney's fees or costs as required by his or her agreement with Attorney.
  - d. Notwithstanding Attorney's withdrawal, Client will remain obligated to pay Attorney at the agreed rate for all services provided. At the termination of services under this Agreement, Attorney will release promptly to Client, on request, all of Client's papers and property.
  
7. Disclaimer of Guarantee: Although Attorney may offer an opinion about possible results regarding the subject matter of this Agreement, Attorney cannot guarantee any particular result. Client acknowledges that Attorney has made no promises about the outcome and that any opinion offered by Attorney in the future will not constitute a guarantee.
  
8. Arbitration of Fee Dispute: If a dispute arises between Attorney and Client regarding Attorney's fees or costs under this Agreement, Client agrees to submit the arbitration to the Massachusetts Bar Association for resolving the dispute.
  
9. Entire Agreement: This Agreement is the complete Agreement between Attorney and Client. If Attorney and Client decide to amend this Agreement, in any way, the amendment must be in writing, signed by both parties, and attached to this Agreement.
  
10. Effective Date of Agreement: The effective date of this Agreement will be the date when, having been executed by Client, one copy of the Agreement is received by Attorney and Attorney receives the deposit required by Paragraph 4b above. Once effective, this Agreement will also apply to services provided by Attorney on this matter prior to the effective date.

The foregoing is agreed to by:

(Print Client Name)	(Print Attorney Name)
(Client signature)	(Attorney Signature)
Date:	Date:

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**FEE AGREEMENT #3 - ONGOING CONSULTING AGREEMENT**

Identification of Parties: This Agreement, executed in duplicate with each party receiving an executed original, is made between \_\_\_\_\_, hereafter referred to as “Attorney,” and \_\_\_\_\_, hereafter referred to as “Client.”

Nature of Case: Client consulted Attorney in the following matter: \_\_\_\_\_

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1. Client Responsibilities and Control: Client will remain responsible for the conduct of the case and understands that he/she will remain in control of and be responsible for all decisions made in the course of the case except for those specific aspects assigned to Attorney. Client agrees to:
  - a. Cooperate with Attorney or his/her office by complying with all reasonable requests for information in connection with the matter for which Client is requesting services;
  - b. Keep Attorney or his/her office advised of Client’s concerns and any information pertinent to the Client’s case;
  - c. Provide Attorney with copies of all pleadings and correspondence to and from Client regarding this case;
  - d. Immediately provide Attorney with any new pleadings or motions received from the other party; and
  - e. Keep all documents related to the case in a file for review by Attorney.
  
2. Scope of Services to be Performed by Attorney: Client and Attorney have agreed that Attorney will provide the following services, indicated by a YES or NO next to each item. Client understands Attorney *will not perform* any services indicated with the word NO.

Write “Yes” next to the letter if the task is assigned to the Attorney and “No” if it is not.

a.		Legal advice by office visit, phone call, fax, mail, and/or email;
b.		Evaluation of Client’s self-diagnosis of the case and advising Client about legal rights and responsibilities;

c.	Advice about availability of alternative means to resolving the dispute, including mediation and arbitration;
d.	Advice about law and strategy related to an ongoing mediation, negotiation, or litigation;
e.	Suggest documents to be prepared;
f.	Assistance with drafting pleadings and motions;
g.	Guidance and procedural information for filing or serving documents;
h.	Information about fact gathering (contacting witnesses, public record searches);
i.	Assistance with drafting discovery requests (interrogatories, depositions, requests for document production);
j.	Assistance with computer support programs;
k.	Evaluate settlement options;
l.	Advice about negotiations (including role-playing with Client);
m.	Advice about planning for court (preparation and presentation of evidence, including role-playing with Client);
n.	Legal research and analysis;
o.	Review and analysis of Client's trial strategy;
p.	Refer Client to expert witnesses, special masters, or other counsel;
q.	Advice about an appeal;
r.	Procedural assistance with an appeal;
s.	Assistance with substantive legal argument in an appeal;
t.	Provide preventive planning; create legal check-up schedule;
u.	Other:

3. Limitation of Attorney's Responsibilities: Attorney will perform the specific legal tasks identified by the word "Yes" in paragraph 2 above consistent with Attorney's ethical and professional responsibilities, including observing strict confidentiality, and based on the information available to Attorney. In providing those services, Attorney *will not*:
- a. Represent, speak for, appear for, or sign papers on Client's behalf.
  - b. Provide services in paragraph 2 which are identified with the word "No."
  - c. Make decisions for Client about any aspect of the case.
  - d. Litigate Client's case on Client's behalf.
  - e. Protect Client's property by means of restraining orders while discovery and/or negotiations are in progress.

Attorney will NOT perform any services identified by the word “No” in paragraph 2 above. The Client may request that Attorney provide additional services. If Attorney agrees to provide additional services, they will be specifically listed in an amendment to this Agreement, and initialed by both parties. The date that both the Attorney and the Client initial any such list of additional services to be provided will be the date on which the Attorney becomes responsible for providing those additional services. If the Client decides to retain the Attorney as the Client’s Attorney of record for handling the entire case on the Client’s behalf, the Client and the Attorney will enter into a new written Agreement setting forth that fact and the Attorney’s additional responsibilities in the Client’s case.

4. Right to Seek Advice of Other Counsel: Client is advised of the right to seek the advice and professional services of other counsel with respect to those services in Paragraph 3 which are identified with the word “No” at any time during or following this Ongoing Consulting Agreement.
5. Method of Payment for Services:
  - a. Hourly Fee: The current hourly fee charged by the Attorney for services under this Agreement is \$\_\_\_\_\_. The hourly fee will be payable at the time of the service unless a different fee arrangement is established in clause 5b below. Attorney will charge in increments of one-tenth of an hour, rounded off for each particular activity to the nearest one-tenth of an hour.

If, while this Agreement is in effect, Attorney increases the hourly rate(s) being charged to clients in general for Attorney’s fees, that increase may be applied to fees incurred under this Agreement provided the Client receives written notice of the increase thirty (30) days in advance of such increase. If Client chooses not to consent to the increased rate(s), Client may terminate Attorney’s services under this Agreement by written notice, effective upon receipt of notice by Attorney.
  - b. Payment from Deposit: For a continuing consulting role, Client will pay to Attorney a deposit of \$ \_\_\_\_\_, to be received by Attorney on or before \_\_\_\_\_ and to be applied against Attorney’s fees and costs incurred by Client. This amount will be deposited by Attorney in Attorney’s trust account. Client authorizes Attorney to withdraw the principal from the trust account to pay Attorney’s fees and costs as the Client incurs them. Any interest earned will be paid to the Massachusetts IOLTA Committee to fund legal services for indigent persons. The deposit is refundable. At the termination of services under this Agreement, the remaining balance of the deposit, if any, will be refunded to the Client.
  - c. Costs: All costs payable to third parties in connection with Client’s case including filing fees, investigation fees, deposition fees, and other fees shall be paid directly by Client. Attorney will not advance costs to third parties on Client’s behalf.
  - d. Client acknowledges that Attorney has made no promises about the total amount of Attorney’s fees to be incurred by Client under this Agreement.

6. Discharge of Attorney: Client may discharge Attorney at any time by written notice effective when received by Attorney. Attorney will provide no further services after receipt of this notice unless specifically agreed to by Attorney and Client. Notwithstanding the discharge, Client will remain obligated to pay Attorney at the agreed rate for all services provided prior to such discharge.
7. Withdrawal of Attorney: Attorney may withdraw at any time as permitted under the Massachusetts Rules of Professional Conduct. The circumstances under which the Rules permit such withdrawal include, but are not limited to:
  - a. The Client consents,
  - b. The Client's conduct renders it unreasonably difficult for Attorney to carry out the employment effectively, and
  - c. The Client fails to pay Attorney's fees or costs as required by his or her agreement with Attorney.
  - d. Notwithstanding Attorney's withdrawal, Client will remain obligated to pay Attorney at the agreed rate for all services provided. At the termination of services under this Agreement, Attorney will release promptly to Client, on request, all of Client's papers and property.
8. Disclaimer of Guarantee: Although Attorney may offer an opinion about possible results regarding the subject matter of this Agreement, Attorney cannot guarantee any particular result. Client acknowledges that Attorney has made no promises about the outcome and that any opinion offered by Attorney in the future will not constitute a guarantee.
9. Resolving Disputes between Client and Attorney:
  - a. Notice and Negotiation: If any dispute between Attorney and Client arises under this Agreement regarding the payment of fees for Attorney's professional services rendered to or for Client, and any other disagreement, regardless of the nature of the facts or legal theories involved, both Attorney and Client agree to meet and confer within ten (10) days of written notice by either Attorney or Client that the dispute exists. The purpose of this meeting and conference will be to negotiate a solution short of further dispute resolution proceedings.
  - b. Mediation: If the dispute is not resolved through negotiation, Attorney and Client will attempt to agree on a neutral mediator whose role will be to facilitate further negotiations. If the Attorney and Client cannot agree on a neutral mediator, they will request that the Massachusetts Bar Association, American Arbitration Association or similar organization select a mediator. The mediation shall occur within fifteen (15) days after the mediator is selected. The Attorney and Client shall share the costs of the mediation, provided that the payment of costs and any attorney's fees may be mediated.

c. **Litigation:** Should it be necessary to institute legal action for the enforcement of this Agreement, the prevailing party shall be entitled to receive all court costs and reasonable attorney fees incurred in such action from the other party.

10. **Entire Agreement:** This Agreement is the complete Agreement between Attorney and Client. If Attorney and Client decide to amend this Agreement, in any way, the amendment must be in writing, signed by both parties, and attached to this Agreement.

11. **Effective Date of Agreement:** The effective date of this Agreement will be the date when, having been executed by Client, one copy of the Agreement is received by Attorney and Attorney receives the deposit required by Paragraph 4b above. Once effective, this Agreement will also apply to services provided by Attorney on this matter prior to the effective date.

The foregoing is agreed to by:

(Print Client Name)	(Print Attorney Name)
(Client signature)	(Attorney Signature)
Date:	Date:

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**FEE AGREEMENT #4 - LAR AGREEMENT INCLUDING COURT APPEARANCE**

Identification of Parties: This Agreement, executed in duplicate with each party receiving an executed original, is made between \_\_\_\_\_, hereafter referred to as “Attorney,” and \_\_\_\_\_, hereafter referred to as “Client.”

Nature of Case: Client consulted Attorney in the following matter: \_\_\_\_\_

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1. Client Responsibilities and Control: Client will remain responsible for the conduct of the case and understands that he/she will remain in control of and be responsible for all decisions made in the course of the case. Client agrees to:
  - a. Cooperate with Attorney or his/her office by complying with all reasonable requests for information in connection with the matter for which Client is requesting services;
  - b. Keep Attorney or his/her office advised of Client’s concerns and any information pertinent to the Client’s case;
  - c. Provide Attorney with copies of all pleadings and correspondence to and from Client regarding this case;
  - d. Immediately provide Attorney with any new pleadings or motions received from the other party; and
  - e. Keep all documents related to the case in a file for review by Attorney.
  
2. Services to be Performed by Attorney:
  - a. Client seeks the services from Attorney as set forth in the Tasks and Issues to be Apportioned checklist (See Appendix 9) attached as Exhibit A. Attorney and Client shall designate the services to be rendered by Attorney by writing “yes” in the column labeled “Attorney Shall Do” next to the services they agree Attorney will do. Attorney and Client shall designate the services Client shall undertake him/herself by writing the word “yes” under the column labeled “Client to Do” next to those services. If a service is to be rendered by another attorney or some other third person, the word “Other Attorney” or other similar designation shall be written in the blank opposite the service. Attorney and Client shall each retain an original of this Agreement and the designation of services in Exhibit A attached.

- b. The Client may request that Attorney provide additional services. If Attorney agrees to provide additional services, those additional services will be specifically listed in an amendment to this Agreement and initialed and dated by both parties. The date that both Attorney and Client initial any such list of additional services to be provided will be the date on which the Attorney becomes responsible for providing those additional services. If Client decides to retain Attorney as Client's Attorney of record for handling the entire case on Client's behalf, Client and Attorney will enter into a new written Agreement setting forth that fact and Attorney's additional responsibilities in Client's case.
3. Right to Seek Advice of Other Counsel: Client is advised of the right to seek the advice and professional services of other counsel with respect to those services in Paragraph 2 and Exhibit A and successor exhibits detailing the scope of representation which are identified with the words "no" or "client to do" at any time during or following this Limited Representation Agreement.
4. Attorney of Record: It is the intention of Attorney and Client that Attorney shall only perform those services specifically requested of Attorney. Some of those services may require Attorney to become attorney of record or make a court appearance in Client's case in order to perform the service requested. Attorney and Client specifically agree that Attorney's becoming attorney of record for such purposes shall not authorize or require Attorney to expand the scope of representation beyond the specific services designated. In the event that any court requires Attorney, as attorney of record for one or more authorized issues or tasks, to assume the responsibility for other tasks or issues reserved to Client or a third party professional, Attorney may, at his/her option, elect to withdraw from representation and Client agrees to execute any forms reasonably requested by Attorney.
5. Method of Payment for Services:
- a. Hourly Fee: The current hourly fee charged by the Attorney for services under this Agreement is as follows:
- (1) Attorney           \$\_\_\_\_\_.
  - (2) Associate         \$\_\_\_\_\_.
  - (3) Paralegal         \$\_\_\_\_\_.
  - (4) Law Clerk         \$\_\_\_\_\_.

Unless a different fee arrangement is established in Paragraph 5b of this Agreement, the hourly fee shall be payable at the time of the service. Attorney will charge in increments of one-tenth of an hour, rounded off for each particular activity to the nearest one-tenth of an hour. If, while this Agreement is in effect, Attorney increases the hourly rate(s) being charged to clients in general for Attorney's fees, that increase may be applied to fees incurred under this Agreement provided the Client receives written notice of the increase thirty (30) days in advance of such increase. If Client chooses not to consent to the increased rate(s), Client may terminate Attorney's services under this Agreement by written notice, effective upon receipt of notice by Attorney.

- b. Payment from Deposit: For a continuing consulting role, Client will pay to Attorney a deposit of \$ \_\_\_\_\_, to be received by Attorney on or before \_\_\_\_\_ and to be applied against Attorney's fees and costs incurred by Client. Attorney will deposit this amount in Attorney's trust account. Client authorizes Attorney to withdraw the principal from the trust account to pay Attorney's fees and costs as Client incurs them. Any interest earned will be paid to the Massachusetts IOLTA Committee to fund legal services for indigent persons. The deposit is refundable. At the termination of services under this Agreement, the remaining balance of the deposit, if any, will be refunded to Client.
  - c. Costs: All costs payable to third parties in connection with Client's case including filing fees, investigation fees, deposition fees and other fees shall be paid directly by Client. Attorney will not advance costs to third parties on Client's behalf.
  - d. Client acknowledges that Attorney has made no promises about the total amount of Attorney's fees to be incurred by Client under this Agreement.
6. Discharge of Attorney: Client may discharge Attorney at any time by written notice effective when received by Attorney. Attorney will provide no further services after receipt of this notice unless specifically agreed to by Attorney and Client. Notwithstanding the discharge, Client will remain obligated to pay Attorney at the agreed rate for all services provided prior to such discharge.
7. Withdrawal of Attorney: Attorney may withdraw at any time as permitted under the Massachusetts Rules of Professional Conduct. The circumstances under which the Rules permit such withdrawal include, but are not limited to:
- a. Client consents,
  - b. Client's conduct renders it unreasonably difficult for Attorney to carry out the employment effectively, and
  - c. Client fails to pay Attorney's fees or costs as required by his or her agreement with Attorney.
  - d. Notwithstanding Attorney's withdrawal, Client will remain obligated to pay Attorney at the agreed rate for all services provided. At the termination of services under this Agreement, Attorney will release promptly to Client, on request, all of Client's papers and property.
8. Disclaimer of Guarantee: Although Attorney may offer an opinion about possible results regarding the subject matter of this Agreement, Attorney cannot guarantee any particular result. Client acknowledges that Attorney has made no promises about the outcome and that any opinion offered by Attorney in the future will not constitute a guarantee.

9. Resolving Disputes between Client and Attorney:

- a. Notice and Negotiation: If any dispute between Attorney and Client arises under this Agreement regarding the payment of fees for Attorney's professional services rendered to or for Client, and any other disagreement, regardless of the nature of the facts or legal theories involved, both Attorney and Client agree to meet and confer within ten (10) days of written notice by either Attorney or Client that the dispute exists. The purpose of this meeting and conference will be to negotiate a solution short of further dispute resolution proceedings.
- b. Mediation: If the dispute is not resolved through negotiation, Attorney and Client will attempt to agree on a neutral mediator whose role will be to facilitate further negotiations. If the Attorney and Client cannot agree on a neutral mediator, they will request that the Massachusetts Bar Association, American Arbitration Association or similar organization select a mediator. The mediation shall occur within fifteen (15) days after the mediator is selected. The Attorney and Client shall share the costs of the mediation, provided that the payment of costs and any attorney's fee may be mediated.
- c. Litigation: Should it be necessary to institute legal action for the enforcement of this Agreement, the prevailing party shall be entitled to receive all court costs and reasonable attorney fees incurred in such action from the other party.

10. Entire Agreement: This Agreement is the complete Agreement between Attorney and Client. If Attorney and Client decide to amend this Agreement in any way, the amendment must be in writing, signed by both parties, and attached to this Agreement. If Client wishes to obtain additional services from Attorney as defined in Paragraph 2b, a photocopy of Paragraph 2b and the amendment which clearly denotes which extra services are to be provided, signed and dated by both Attorney and Client and attached to this Agreement, shall qualify as an amendment.

11. Severability in Event of Partial Invalidity: If any provision of this Agreement is held in whole or in part to be unenforceable for any reason, the remainder of that provision and of the entire Agreement will be severable and remain in effect.

12. Effective Date of Agreement: The effective date of this Agreement will be the date when, having been executed by Client, one copy of the Agreement is received by Attorney and Attorney receives the deposit required by Paragraph 4b above. Once effective, this Agreement will also apply to services provided by Attorney on this matter prior to the effective date.

13. I have carefully read this Agreement and believe that I understand all of its provisions. I signify my agreement with the following statements by initialing each one:

- a. \_\_\_\_\_ I have accurately described the nature of my case in Paragraph 1.
- b. \_\_\_\_\_ I will be responsible for the conduct of my case and will be in control of my case at all times as described in Paragraph 1.

- c. \_\_\_\_\_ The services that I want Attorney to perform in my case are identified by the word “yes” in Exhibit A. I take full responsibility for all other aspects of my case.
- d. \_\_\_\_\_ I will pay Attorney for services as described in Paragraph 6.
- e. \_\_\_\_\_ I will resolve any disputes I may have with Attorney under this Agreement in the manner prescribed in Paragraph 9.
- f. \_\_\_\_\_ I understand that any amendments to this Agreement will be signed and in writing, as described in Paragraph 10.
- g. \_\_\_\_\_ I acknowledge that I have been advised by Attorney that I have the right to consult with another independent attorney to review this Agreement and to have that attorney advise me on my rights as a client *before* I sign this Agreement.

The foregoing is agreed to by:

(Print Client Name)	(Print Attorney Name)
(Client signature)	(Attorney Signature)
Date:	Date:

## APPENDIX 9

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### SAMPLE TASKS/ISSUES TO BE APPORTIONED

Two checklists follow. They address the two ways in which limited assistance representation arrangements may be apportioned. In the first, the client and the attorney agree which tasks are to be performed by each of them. This is by far the most common arrangement. In the other model, the attorney handles one or more discrete issues from start to finish, with the client assuming responsibility for the other issues.

The checklists should be tailored to your practice and to each case and may be used in two ways:

1. Use them as part of your intake to memorialize your discussions with the client regarding the limitations on scope, and do a new one each time the scope changes (as it frequently does).
2. Use them as exhibits to the fee agreement of your choice, and replace them each time the scope changes.

### Tasks to Be Apportioned May Look Like This:

- \_\_\_ Client instructs attorney not to do discovery and undertakes the information gathering role;
- \_\_\_ Client asks attorney to draft motions or responsive pleadings for a hearing the client attends alone;
- \_\_\_ 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 that the client has drafted;
- \_\_\_ Client asks attorney to prepare subpoenas;
- \_\_\_ Client asks attorney to write a brief to be filed by the client in client's own name;
- \_\_\_ Client asks attorney to run computer calculation program for her or review and analyze calculations proposed by the opposing party;

**Issues to Be Apportioned May Look Like This:**

- \_\_\_\_\_ Attorney represents client in connection with [X] and [Y] events or issues in court; client self-represents on [Z] events or issues in court;
- \_\_\_\_\_ Attorney collects any remunerations due from opposing party;
- \_\_\_\_\_ Attorney obtains preliminary injunction and client self-represents on all other issues;
- \_\_\_\_\_ Attorney prepares a form [dividing pension, dissolving corporation, etc.], while client self-represents on other issues.

**\*Note: Each limited assistance arrangement is different, and *must* be tailored to the client, case, events, and issues presented. These checklists are designed to be flexible and should be tailored to each case.\***

**ATTACHMENT TO LIMITED ASSISTANCE FEE AGREEMENT - TASKS TO BE APPORTIONED**

<b>Tasks to be Apportioned</b>	<b>Assigned to Attorney</b>	<b>Assigned to Client</b>	<b>Date Completed</b>
Draft papers to start case			
File and serve papers			
Draft motions			
Draft affidavits and declarations			
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			
Run computer programs			
Prepare subpoenas for documents			
Take depositions			
Review depositions and documents obtained from others			
Legal research and analysis			
Contact witnesses			
Draft or analyze settlement proposals			
Contact expert witnesses			
Draft orders and judgments			
Outline testimony			
Trial or negotiation preparation			
Review orders and judgments drafted by client			
Draft disclosure documents			
Advice regarding appeal			
Enforce orders			
Draft other papers as necessary:			
Other:			
Signatures: Attorney _____ Date: _____	Client _____ Date _____		

## APPENDIX 10

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### SAMPLE CHANGE IN SCOPE LETTER

Re: Limited Assistance Representation

Dear \_\_\_\_\_:

Per our [telephone] conversation of \_\_\_\_\_, 20\_\_, you have asked me to perform additional tasks that are not included in our original Agreement for Limited Assistance Representation dated \_\_\_\_\_ [and modified \_\_\_\_\_] (copies enclosed).

You have requested and I have agreed to do the following:

1. [Enumerate the specific tasks/issues that you have agreed to undertake for the client.]
2. [e.g. to prepare \_\_\_\_\_ in response to the motion recently filed.]

I understand that you wish to continue handling all other matters yourself as set forth in our original Agreement.

It is essential that we both have the same understanding of our respective responsibilities in connection with your case. I have prepared and enclosed two copies of a new Checklist, which I believe covers the changes to the prior Agreement for Limited Assistance Representation. I am unable to begin work on the new task[s] until one copy of the signed Revised Checklist has been returned to me. Please review the Checklist carefully and, if you agree, initial/sign BOTH copies and return one to me in the envelope provided. The other copy is for your records and should be attached to your copy of our Agreement for Limited Assistance Representation.

[If applicable] Some of the tasks you want me to undertake have significant time constraints that could seriously impact your legal rights. It is therefore extremely important that you complete and initial this new Tasks/Issues Checklist to memorialize the new scope of my involvement in your case. Because time is of the essence in taking the necessary steps to protect your rights in this new area, you should consider either coming to my office to sign the Checklist or faxing or emailing me a signed copy so I can start work.

I encourage you to seek the advice of other counsel in connection with tasks that I have not undertaken. Also, please feel free to consult with another attorney of your choice regarding this Revised Checklist before initialing/signing and returning it to me.

I look forward to working with you on this new matter.

Very truly yours,

Enclosures: Two copies of Revised Tasks/Issues Checklist  
Return envelope for your convenience

# APPENDIX 11

## SAMPLE REVISED TASKS/ISSUES CHECKLIST

FOLLOW-UP CHECKLIST	
Client:	
Attorney and Client consulted on _____	(fill in date)
By _____	(fill in date) Client will:
Obtain the following documents:	
Contact the following witnesses:	
Complete the following forms:	
Prepare the following information for coaching:	
By _____	(fill in date) Attorney will:
Draft the following documents:	
Prepare the following forms:	
Contact the following witnesses:	
Research the law/procedure on:	
Review the following documents:	
Other:	
Attorney initials/signature: _____	Client initials/signature: _____

## APPENDIX 12

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### SAMPLE CLOSING LETTER

Re: Limited Assistance Representation

Dear \_\_\_\_\_:

I have now completed all of the tasks that we agreed I would do in our Agreement dated \_\_\_\_\_ [and modified on \_\_\_\_\_]. I know of no other matters on which you have requested my assistance. If you believe that I am incorrect, and you are relying on my assistance for some additional task, please contact me *immediately*.

[Use only if attorney has appeared of record with the court] If I do not hear from you within the next week, I will file the Notice of Withdrawal of Limited Appearance with the court and the opposition notifying them that my representation of you is concluded.

[If applicable] Do not forget that there is still a hearing on \_\_\_\_\_ at which time you will be representing yourself. Your opposition paperwork must be served and filed on \_\_\_\_\_. You also agreed to contact \_\_\_\_\_ at ( )\_\_\_\_-\_\_\_\_ to do the following: \_\_\_\_\_.

The following items, on which you have declined my assistance, are still pending:

1. \_\_\_\_\_
2. \_\_\_\_\_

I am enclosing the following original documents. Please be sure to keep them in a safe place in the event you need to refer to them in the future.

1. \_\_\_\_\_
2. \_\_\_\_\_

I would like to take this opportunity to thank you for allowing me to assist you in this matter. If you need further assistance in the future, I hope you will not hesitate to contact me.

Very truly yours,

Enclosures

