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New way to practice wins support

By Diane Curtis
Staff Writer

San Benito Superior Court Commissioner Jean Flanagan has a solution for people who don't want or cannot afford full representation by an attorney but who would like some professional legal help. One answer, she says, is limited scope representation.

"I think if more people knew about it, more would use it," states Flanagan, who isn't talking strictly about clients. She says a lot of attorneys think they are obligated to take on a client's full case or they have an erroneous idea of limited scope representation (LSR) "as something of a semi-pro bono thing, which it is not," she says.

As defined by the Judicial Council, LSR, also known as unbundling, is "a relationship between an attorney and a person seeking legal services in which they have agreed that the scope of the legal services will be limited to specific tasks that the attorney will perform for the person."

The Santa Clara County Superior Court Self Service Center offers some examples of LSR on its scselfservice.org Web site:

- You can just consult a lawyer and get legal information and advice about your case when you need it.
- You can hire the lawyer to represent you on certain issues in your case (such as child support and/or custody) while you do the rest yourself.
- You can hire the lawyer to prepare the forms and other court documentation but file them yourself and represent yourself at the hearings.
- You can hire the lawyer to coach you on how to represent yourself at the court hearings and help in the preparation of evidence that you will present in court.
- You can hire the lawyer to help you with the more complicated parts of your case such as discovery and legal research while you do the simpler tasks yourself.

Jonathan Stein, a solo practitioner in Elk Grove, says he has used it in a number of debt collection cases, where he does the preliminary work and then sends his clients to Small Claims Court. Kevin Durant, owner of a martial arts studio and a client of Stein's, hasn't had to go to court yet — most people pony up the money they owe when they get that first letter on Stein's letterhead — but he says he's prepared.

"Mr. Stein is making sure that I fill out the paperwork correctly, making sure that I understand what he's done to date as far as letters and conversations and he's educated me on what the next steps are and what next to do," Durant says. In addition, Stein has prepped him on going into court (if he has to) so that Durant speaks the judge's language.

Without Stein's tutelage, Durant says he'd probably have just said to the judge, "They're delinquent and I want payment." Instead, he plans to refer to the contract and its specifics. "The contract clearly states that we're not responsible for you to attend class. The lights are on; the doors are open. It's no different than your gym membership that you sign. They still expect your payment." Durant calls his arrangement with Stein "perfect because I can't afford to have a lawyer take me through the whole process every time."

Jennie Winter and Sharon Bashan of the Pro Bono Project in Santa Clara County believe there is a psychological, as well as a financial, reward for clients who elect to do some of the legal work themselves. “In my opinion, it is much better to involve your client and have them doing stuff,” says Winter, attorney/ director of the Pro Bono Project. “Then it becomes a partnership. If I take a case and I am totally in control and I don’t let the client have any say in anything, frankly, I’m much more likely to get sued. The other thing that happens when you partner with a client is that no matter what happens — even if it doesn’t come out exactly the way they want it — they’re satisfied. . . . Most people just want to be heard.”

Adds Bashan, director of the office’s Domestic Violence Limited Scope Representation program: “One of the reasons that limited scope is so important and so good is because it empowers clients in those cases Often, there’s a disconnect between the person and the system. They don’t fully understand what’s taking place. By really understanding and taking part in what happens, they feel more invested.”

The Domestic Violence LSR program has engaged volunteer lawyers who could not devote themselves to a full case but who were willing to take the time for a part of a case. Gilroy family law attorney Sheila Petersen is one such volunteer. “It’s a great thing for domestic violence cases,” says Petersen. “You can go in, cover a hearing, cover if there’s a continuance. You might have to do the order afterwards and do some discussion with the client after, but then you close it up.”

She’s found she likes LSR in her practice for similar reasons. “I’m not saying your practice is going to be solely LSR, although it could be because you wouldn’t have any of those long-term, hanging-on cases that just drive you bananas.”

Forrest Mosten, a Los Angeles certified family law specialist known in some circles as “the father of unbundling,” says he uses LSR in three major ways: He will ghostwrite, do a little research for clients, write a letter or check their letters; he will serve as a consultant in mediation; he will work as a collaborative lawyer. “I never go to court,” he says, adding, “I’ve never seen a (family law) client who won in court be happy — let alone those who lose. Generally, you lose control and families are ruined. I don’t want to be an accomplice to that.”

LSR has been used in family law for years. It wasn’t until the beginning of this year, however, that the Judicial Council extended LSR to civil cases. M. Sue Talia, an expert on LSR and a certified family law specialist in Danville, notes the four ethics rules that are essential to limited scope :

- Limitations on scope must be informed and in writing.
- Limitations on scope must be reasonable under the circumstances.
- Changes in scope must be memorialized.
- Clients must be informed of related issues even if they do not ask.

Supporters of LSR argue that it’s a win for everyone — clients who can get legal representation they otherwise might not be able to afford, attorneys who get new business and are able to take cases that don’t hang on forever and the courts, where sometimes confused pro se litigants with badly prepared paperwork and stumbling arguments create more work and consume more time for judges and court officials.

Talia has called LSR in California “a quiet revolution” by forward-thinking attorneys who “are recognizing this as a significant marketing opportunity and offering legal services to a huge pool of paying clients who are unrepresented.”

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