



MLAN MEMORANDUM

Informal National Survey of Ethical Opinions Related to “Discrete Task Lawyering” *Updated November 2003*

The following states have issued *at least one ethical opinion* on a topic related to “unbundled” legal services a/k/a discrete task lawyering: AL, AK, AZ, CA, CO, CT, DC, DE, FL, GA, IL, IA, IN, KS, ME, MD, MA, MI, MN, MO, MS, MT, NC, NE, NH, NJ, NM, NY, PA, SC, SD, TX, UT, VA, WA, and WI.

The following states have indicated (either through direct contact or via website lists of current ethical opinions) that no current opinions exist: AR, HI, ID, LA, NV, ND, OH, OK, OR, RI, TN, VT, and WV.

According to Wyoming Bar staff members, the Wyoming State Bar does not publish ethical opinions. However, the Wyoming State Bar does publish disciplinary press releases that can be found on their website. Currently there are no releases concerning discrete task lawyering.

The survey was conducted by the Maryland Legal Assistance Network (MLAN), a project of the Maryland Legal Services Corporation. All 50 states were contacted and all states with bar association web pages have been reviewed on-line.

• Facilitates Unbundling

Alaska: A lawyer may assist pro se litigants who are seeking modifications in child support to fill out forms and to prepare motions. A lawyer’s assistance must be disclosed unless the lawyer merely helped the client fill out forms designed for pro se litigants. *Alaska Bar Association Ethics Opinion 93-1, “Preparation of a Client’s Legal Pleadings in a Civil Action Without Filing An entry of Appearance,” (May 25, 1993).*

Arizona: In a domestic relations matter, an attorney can represent a client for the purposes of giving advice and preparing pleadings without appearing in court. *Arizona Opinion No. 91-03, (January 15, 1991).*

Arizona: No matter what limitations are placed on the assistance provided to the pro per litigants, the Rules of Professional Conduct still apply to the attorney. *State Bar of Arizona, “Assisting Pro Per Litigants, Ethical Considerations”.*

California: There are ethical issues arising from dispensing legal advice solely by telephone. Legal services provided solely over the telephone must use a format that enables the attorney to perform services in a competent and ethical manner and inform his or her client effectively of any limitations on the legal services being provided. Attorney-client relationships normally are formed between the callers and the attorneys. Even when attorney-client relationships are not formed, professional responsibilities can attach to the relationship. *The State Bar of California Standing Committee on Professional Responsibility and Conduct, Interim Opinion No. 95-0015.*

California: It is not unethical for an attorney to limit his/her professional engagement to the consulting, counseling, and guiding of self-representing lay persons in litigation matters, provided that the client is fully informed and expressly consents to the limited scope of representation. *Los Angeles County Bar Association Professional Responsibility And Ethics Committee, Opinion No. 483, Los Angeles Lawyer, (February 1996).*

California: If a client chooses to appear pro per (pro se) and there is not a court rule to the contrary, the attorney does not have to disclose the limited scope of representation to the court in which the matter is pending. An attorney may limit the scope of representation of a litigation client as long as the client consents to the limited representation. *Los Angeles County Bar Association Professional Responsibility And Ethics Committee, Opinion No. 502, Los Angeles Lawyer, (November 4, 1999).*

Colorado¹: A lawyer must clearly explain limits of their representation and must not limit their duty to the client when providing unbundled legal services. *Colorado Bar Association Ethics Committee Formal Opinion No. 101, "Unbundled Legal Services," (January 17, 1998).*

Connecticut: Legal Aid agencies in lieu of representation, may offer a class on pro se divorce to individuals seeking a simple uncontested divorce and for more complicated divorces, provided clients are fully advised of the risks of proceeding pro se. *Connecticut Informal Opinion 90-18, Legal Assistance Organizations and Pro Se Divorce.*

Connecticut: With regard to "ghost writing" an attorney may assist a pro se litigant, however an attorney who prepares and controls the content of a pleading, brief or other document to be filed with a court must, in some form satisfactory to the court, inform the court that the document was prepared by the lawyer. *Connecticut Informal Opinion 98-5; Duties To The Court Owed By A lawyer Assisting A Pro Se Litigant*

Delaware: A legal services organization may properly limit its involvement to advising clients and preparing documents for the client. The organization must disclose their involvement, if "the organization provides significant assistance to a litigant". *Delaware State Bar Association Committee on Professional Ethics, Opinion 1994-2, (May 6, 1994).* Note: This is currently a debated issue in the State of Delaware. The State Bar Association, the State Court System, and the Private Bar are working together to develop a "Resource Center" for pro se litigants. The program is being designed with the assistance of the Disciplinary Committee of the State Bar Association.

District of Columbia: It is permissible for lawyers to take part in on-line chat rooms and similar arrangements through which attorneys engage in back-and-forth communications, in "real time" or nearly "real time," with internet users seeking legal information, provided they comply with all applicable rules of professional conduct. To avoid formation of attorney-client relationships through such chat room conversations, lawyers should avoid giving specific legal advice. *Washington D.C. Bar Association, Legal Ethics Committee Opinion No. 316*

Florida: A chief judge, by local rule, may establish a self-help program to facilitate access to family courts. The purpose of a self-help program is to assist self-represented litigants, within the bounds of this rule, to achieve fair and efficient resolution to their family law case. *Florida Supreme Court, Appendix Family Self-Help Programs Opinion, www.law.ufl.edu/opinions/su...mily-self-help-programs.*

Florida: Pleadings or other papers prepared by an attorney and filed with the court on behalf of a pro se litigant must indicate "Prepared with Assistance of Counsel". In addition, although a lawyer and client may agree to a limited scope relationship and purpose, the lawyer owes that client the same ethical obligations they would owe any other client. *Florida Bar Association, Opinion 79-7 (Reconsideration), (February 15, 2000).*

Illinois: Pursuant to prior agreement with client, it is not improper for an attorney to limit the scope of his/her representation. An attorney may prepare pleadings in a dissolution of marriage proceeding, without appearing or taking any part of the proceeding itself. The client must be fully informed of the consequences of the limited agreement, and the attorney must take any steps necessary to avoid foreseeable prejudice to the client's rights. Opinion affirmed, January 1991. *Illinois State Bar Association, ISBA Advisory Opinion on Professional Conduct; "Limiting Scope of Representation", Opinion Number 849 (December 1983).*

Kansas: Law firms can provide services through a 900 telephone number as long as they follow all ethical rules. *Kansas Bar Association 92-06 (1992).*

Kentucky: The Court and the opponent should not be misled as to the extent of counsel's role. Counsel should not aid a litigant in a deception that the litigant is not represented, when in fact the litigant is represented behind the scenes. Counsel may limit his or her undertaking and provide assistance in the preparation of initial pleadings. The

¹ In *Johnson V. Board of County Commissions for the County of Fremont*, 85 F.3rd 489 (1996), the Court held the attorney violated the Colorado Rules of Professional Conduct that permit a lawyer to limit the objectives of their representation only if the client consents after consultation. The Court found the attorney failed to demonstrate that she either consulted or brought the matter to the attention of the district court.

overriding consideration should be the recognition and satisfaction of the legal needs of indigent persons. *Opinion KBA E-343 (January, 1991)*

Maine: Since the lawyer's representation of the client was limited to preparation of the complaint, the lawyer was not required to sign the complaint or otherwise enter his appearance in court as counsel for the plaintiff, and the plaintiff was entitled to sign the complaint and proceed pro se. *Maine State Bar Ethics Opinion No. 89, (August 31, 88).*

Michigan: In Michigan, it is ethical for an attorney to limit the objectives of representation of the client if the client consents after consultation. *Michigan Rules of Professional Conduct, 1.2 (b).*

Michigan: There is no client-lawyer relationship between a legal services agency and the participant of a pro se, self-help clinic, when no confidential information has been divulged and when the participant has signed an agreement where the agency has disavowed legal representation. Also, a legal services agency that offers pro-se self-help clinics is not disqualified from actively representing a party to pro se litigation when the litigation has been filed by an individual that participated in one of the agency's self-help clinics. *State Bar of Michigan, Ethics Opinion, RI-301 (September 29, 1997).*

Mississippi: Where an attorney provides limited legal advice in a public service, multi-discipline counseling program, an attorney-client relationship is created for purposes of determining ethical obligations. *Opinion No. 176 Of the Mississippi State Bar, (September 7, 1990).*

Missouri: The propriety of drafting an Entry of Appearance and accompanying cover letter is dependent on the actual language used. It is permissible to draft a very simple Entry of Appearance and submit it to an unrepresented opposing party. The cover letter should clearly indicate at the beginning that the Attorney does not represent the opposing party. The letter should also indicate that the opposing party should consult an independent attorney if he or she has any questions. *Missouri Bar Association, Legal Ethics Counsel Advisory Opinion No. 940161.*

New York State: A lawyer who does not appear as counsel of record for a pro se litigant may prepare responsive pleadings and demands for financial disclosure, provided the lawyer investigates the matter adequately. *New York Opinion 613, (September 24, 1990).*

North Carolina: Attorneys may give legal advice and assist persons wishing to proceed pro se with drafting documents without appearing as counsel of record. This opinion consists of seven specific inquiries relating to this topic, providing answers to each inquiry. *North Carolina State Bar Association, RPC 114 (July 12, 1991).*

North Carolina: The lawyer for a plaintiff may not prepare the answer to a complaint for an unrepresented adverse party to file pro se. *North Carolina State Bar Association, Formal Ethics Opinion 6 (January 24, 2003).*

Pennsylvania: It is not the unauthorized practice of law when a non-lawyer "fills in the blanks" of a standard form prepared by an attorney. A supervising attorney is not in violation of the Rules of Professional Conduct, assuming the agent is doing nothing more than "filling in the blanks". *Philadelphia Bar Association Opinion 94-29, (December 1994).*

South Carolina: A lawyer may draft and submit a responsive pleading and waiver of appearance on behalf of an opposing party in a divorce action while representing the interests of his own client when he/she determines that the preparation and submission of the pleadings does not constitute representation. *South Carolina Bar: Ethics Advisory Opinion 90-18.*

Utah: An attorney may provide limited representation to a party engaged in a divorce. However, this must be limited to advising the party and assisting with pleadings. The attorney should not so limit the representation without first fully informing the party of the proposed limitation and obtaining the party's informed consent, and providing advice about the relevant law. *Utah State Bar Ethics Advisory Opinions Committee, Opinion No. 02-10 (December 18, 2002).*

Washington: Unbundled legal services (in the family law context) is defined as a party engaging an attorney to take limited measures, such as helping to prepare initial pleadings and perform child support calculations, without either the lawyer or the client being obligated to the other for the duration of the proceedings. *Washington State Bar Association, Informal Ethical Opinion No. 1763 (1997)*.

This article discusses ethical considerations when limiting the scope of an attorney's representation. The author concludes the "unbundling" of legal services is ethically permissible. *Althoff, Barrie, "Limiting the Scope of Your Representation: Questions of Cost, Candor, and Disclosure", Washington State Bar Association, Chief Disciplinary Counsel, Defined Task Representation workshop Access to Justice Conference, (June 1997) not an ethical opinion.*

Wisconsin: A lawyer may prepare and disseminate an "Ask the Lawyer" column as long as they shun personal publicity and the lawyer is motivated by the desire to assist one who does not realize that he/she may have a particular legal problem or who does not know of his/her legal rights or obligations. Public dissemination by a lawyer does not prevent his accepting employment as a result of the advice given, so long as he/she does not emphasize his/her own professional experiences or reputation. *State Bar of Wisconsin, Wisconsin Ethics Opinions, E-79-5, "Ask the Lawyer" Column, (July 1998)*.

Virginia: It is ethically permissible for a lawyer to advise and assist the pro se litigant and provide: general legal advice, recommendations for courses of action to follow discovery, legal research, and redrafting of documents prepared by the litigant. Specifically, it is not unethical for an attorney to prepare discovery requests, pleadings, or briefs for signature by the pro se litigant. The opinion goes on to add that failure to disclose that the attorney provided active or substantial assistance, including the drafting of pleadings, may be a misrepresentation. *Virginia State Bar Association, Legal Ethics Opinion 1127, "Attorney-client Relationship-Pro Se Litigant: Rendering Legal Advice", Committee Opinion, (November 21, 1988)*.

● Raises Concerns with Unbundling Issues

ABA: The extent of assistance by counsel is an important issue and if it goes to a certain extent without counsel disclosing his/her assistance there may be a misrepresentation. *American Bar Association Informal Ethics Opinion 1414, "Conduct of Lawyer Who Assists Litigant Appearing Pro Se," (June 6, 1978)*.

Illinois: A lawyer aids in the unauthorized practice of law, and may violate rules pertaining to confidentiality, conflicts, and the duty to communicate with and explain matters to a client, by limiting his role in a real estate transaction to the drafting of documents and delegating to the real estate broker. *Illinois State Bar Association Advisory Opinion on Professional Conduct, Opinion No. 94-1, (July, 1994)*.

Indiana: The drafting and providing of generic "fill in the blank" articles of incorporation forms, by-laws, lease documents, and promissory notes to an accountant to be used by the accountant in assisting the accountant's small business clients constitutes aiding in the unauthorized practice of law. *Indiana State Bar Association, Legal Ethics Committee Opinion No. 2 (1995)*.

Iowa: "Ghostwriting" of pleadings is a deception on the court, where the pleading is represented as pro se, but the party has received counseling and advice from a lawyer. *Iowa Board Opinion 94-35, (May 23, 1995)*.

Massachusetts: Although an attorney may provide a pro se litigant with limited legal services, the situation raises multiple ethical concerns. Attorney ghostwriting has been viewed as an attempt to gain an unfair advantage. Liability for services rendered extends to all services actually rendered. *Massachusetts Bar Association Committee on Professional Ethics, Confidential Opinion, January 9, 1998*.

Massachusetts: An attorney may provide limited background advice and counseling to pro se litigants. However, providing more extensive services, such as drafting ("ghostwriting") litigation documents, especially pleadings, would usually be misleading to the court and other parties and therefore would be prohibited. *Opinions of the Massachusetts Bar Association Committee on Professional Ethics, Opinion 98-1, (May 27, 1998)*.

Missouri: In a divorce case, it is unethical for an attorney to prepare the Entry of Appearance, Waiver of Service and pro forma Answer for the unrepresented spouse of the attorney's client. Also, in a case for separation, it is unethical for attorney to draft the Answer to a petition for a marriage separation for the unrepresented spouse of the Attorney's client. *Missouri Bar Association, Legal Ethics Counsel Advisory Opinion No.940049.*

Montana: The sale of "do it yourself" divorce kits containing legal forms, etc. is unethical. Such a sale presents the very real possibility that the client will suffer harm as a result of failure of the kit to meet particular needs. *Montana State Bar Association, Advisory Ethics Opinion, No. 900409.*

Nebraska: Non-lawyers may not, through a "900" number telephone service, provide legal advice to the public. Attorneys encouraging such an enterprise would be in violation of DR 3-101, which prohibits a lawyer from aiding a non-lawyer in the practice of law. *Advisory Committee to the Nebraska State Bar Association, Advisory Ethics Opinion No. 94-2.*

New Hampshire: A lawyer should not assist a client if the lawyer knows or suspects that the client will misuse the assistance. A lawyer may draft a complaint for a long-time client for a collection action in small claims court, based on the lawyer's familiarity with both the client and the client's business dealings, and the lawyer reasonably believes there is a substantial basis for the claim. *New Hampshire Bar Association, Practical Ethics Article: Unbundled Services – Assisting the Pro Se Litigant, (May 12, 1999).*

New Jersey: The establishment of a 900 number pay-per-call service is not per se unethical. However, there are several problem areas, which if not addressed, could result in malpractice liability and/or ethical exposure. *New Jersey State Bar Opinions on Advertising, 26 CAA Opinions, Professional Responsibility in New Jersey, Opinion No. 17, (April 25, 1994).*

New Mexico: A lawyer may participate in pro bono clinics that provide educational programs to individuals interested in pro se representation, provided the programs do not provide specific legal advice to the individual. *State Bar of New Mexico Advisory Opinions Committee Advisory Opinion 1987-6.*

New York: Undisclosed participation by a lawyer in drafting pleadings or in rendering other active and substantial assistance to a litigant who thereafter represents himself/herself as being without professional assistance is improper and prohibited. *The Association of the Bar of the City of New York, No. 1987-2, Committee on Professional and Judicial Ethics, Formal Opinion, (March 23, 1987).*

South Dakota: South Dakota lawyer may not participate in an Internet Referral Service taking an advertising fee and a share of legal fees to refer cases to South Dakota lawyers and provide no legal services. *State Bar of South Dakota Ethics Opinion 98-10, (January 12, 1999).*

Texas²: A Texas attorney addressed the ethics committee, submitting a "Divorce Kit for Do-it-Yourselfers". The Committee opined, "the 'kit' practice would encourage rather than discourage self-representation; put an undue burden on the Clerks and Courts, and probably, in many instances, result in improper representation of a client". *Texas Ethics Committee, Opinion 364, (April, 1973).*

Utah: A disclaimer stating that no attorney/client relationship existed for advice given over a 900 # is ineffective to negate such a relationship. *Utah State Bar Ethics Opinion 96-12, January 24, 1997.*

² Upon petition by the state bar in a subsequent case, *Unauthorized Practice of Law Committee v. Parsons Technology Inc.* 1999 WL 47235 (N.D. Tex 1999), the court enjoined the sale of "Quicken Family Lawyer", a self-help software package. During the appeal to the Fifth Circuit, 179 F.3d 956 (1999), the Texas state legislature enacted a 1999 amendment to §81.101 which provides that "the 'practice of law' does not include the design, creation, publication, distribution, display, or sale...[of] computer software, or similar products clearly and conspicuously state that the products are not a substitute for the advice of an attorney". A May 2000 Texas State Bar UPL Task Force has recently recommended the relaxation of the requirements to practice law, "where the legal service being provided can be readily determined to be of a simple nature and/or where others have skills, training, and ethical standards which provide some assurance of protection to the public".(available at www.texasbar.com)

Source

The initial survey was conducted by Marla Zide, MLAN research assistant. (June-August 2000) .

The material was updated in October 2003 by Richard Chambers, MLAN research intern (October 2003).

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The Maryland Legal Assistance Network (MLAN) is a collaborative effort among Maryland legal services providers to improve the delivery of legal services to low and moderate-income persons in Maryland. MLAN's goal is to increase access to justice in civil justice matters through coordination and support of the state's legal services providers, lawyer referral programs and the private bar. MLAN is a project of the Maryland Legal Services Corporation.

What is the MLAN project? The Project consists of 6 components designed to increase legal assistance to the public and support the organizations that provide free and reduced fee legal help on civil matters.

- A **public access, legal information and self-help website (Peoples Law Library)** with information on topics such as family law, consumer law, landlord/tenant law, government benefits and how someone might represent themselves in court or find a lawyer. www.peoples-law.org. **Outreach sites** have been set up around the state in 18 libraries, court houses or community centers to help provide better public access to the website and other MLAN services.
- A **single 800# will offer the public easy access** to major legal aid providers in the state that provide free help. Calls are answered by staff at the major statewide partners, which include the Legal Aid Bureau, Maryland Volunteer Lawyers' Service, House of Ruth and the Women's Law Center.
- A **central database on the web will help courts, government agencies and legal aid providers** to match persons with legal problems with the right legal aid or private attorney program.
- A **password-protected website support center** to help legal aid and pro bono attorneys better serve their clients.
- **Legal self-help** - MLAN supports services provided by the Maryland courts and legal aid providers to help people better understand the law, decide if they need legal representation, and help them represent themselves in appropriate cases.
- MLAN works with the private bar and legal services providers to come up with ways to make legal help more affordable through systems that provide **for limited legal help**.

MLAN is supported by grants, funding and other support from the Open Society Institute, Maryland Legal Services Corporation, the Maryland Administrative Office of the Courts and other sources. MLAN also receives in-kind support from legal aid and pro bono programs throughout Maryland, working together to provide "equal justice for all" in our state.

Who Is Involved in the Project?

The Project's Oversight Committee under the leadership of Chief Judge Bell (whose membership includes representatives from the Maryland State Bar Association, legal services provider community, judiciary and law schools), MLSC grantees, the judiciary, lawyer referral programs, the private bar and any other (nonprofit or for-profit) interested parties providing services to the same constituency.

What is the Role of MLSC? The Maryland Legal Services Corporation (MLSC) was the recipient of a three-year grant from the Open Society Institute used to initially develop the Network. Through the MLAN Project, MLSC coordinates and manages these Network activities. MLSC also provide significant in-kind and direct resource support to the Project. The Project is housed at the MLSC office in Baltimore.