



New Hampshire BAR ASSOCIATION

Equal Justice Under Law

www.nhbar.org

Member Login

Username

Password

Login

Member Login Required for Casemaker



Home

About the Bar

For Members

For the Public

Legal Links

Publications

Newsroom

Online Store

Vendor
Directory

NH BAR FOUNDATION

Judicial Branch
State of New Hampshire

NHMCLE
SC RULE 53

Need a Lawyer?

Law-Related
Education

NHBA
CLE

NHBA Insurance
Agency

Go

Bar News - April 16, 2010

Unbundled Legal Services: Help in Bridging the Gap Between Rich and Poor

By: **Peter G. Beeson**

With New Hampshire and the rest of the country suffering through a protracted recession, the financial burden of quality legal representation is broadening the divide between those who can afford an attorney and the middle class and the poor for whom legal services are becoming increasingly unaffordable.

At the same time, the providers of legal services for the poor are besieged by increasing demands for services and the erosion of their financial support.

The chief source of funding for legal services for the poor in NH comes through NH lawyers' participation in the IOLTA program. Most lawyers and firms keep qualifying client trust funds in IOLTA bank accounts. Interest generated on these accounts has been a source of sustained financial support for agencies such as New Hampshire Legal Assistance (NHLA), the Bar's Pro Bono Referral Program, and the Legal Advice & Referral Center (LARC), which serve the state's poor, elderly and disadvantaged.

Funding Shortfall for Legal Services

Unfortunately, the economic decline has created an IOLTA grant funding crisis that affects thousands of the state's most vulnerable residents. In order to meet its existing IOLTA grant obligations during the 2008-2009 grant year, the Bar Foundation depleted the IOLTA financial reserve that had grown regularly for many years. The grants for 2009-2010 were cut in half. This meant that NHLA suffered a \$540,000 reduction in IOLTA grant funds, and Pro Bono lost close to \$108,000 or roughly 20 percent of its overall funding. Little or no rebound is expected in the 2010-2011 grant year. Despite ongoing support from the legislature and other sources, these dramatic IOLTA grant reductions threaten the ability of NHLA and Pro Bono to maintain an already-reduced staff of lawyers and professionals.

Commendably, even during these difficult times our profession's charitable giving has increased. The Campaign for Legal Services, which raises funds from law firms, lawyers and other private sources for the legal services triumvirate of NHLA, LARC and the Pro Bono Referral Program, generated more than \$228,000.00 in 2009. (See [March 19 Bar News article](#), and a Campaign for Legal Services update on page 29.)

Significantly, individual attorneys also continue to give of their time in representing low-income families and seniors, both on their own and through the organized Pro Bono Referral Program. The Pro Bono Program estimates the value of these contributions at approximately \$2 million in free legal services annually.

Pro bono representation and charitable giving will continue. This is the nature of our profession. However, these efforts on their own will never meet the increasing needs of the poor and elderly for basic legal representation. A systemic change is needed for our profession to narrow the enormous gap between the needs of the poor, and the resources available to meet those needs.

The use of unbundled legal services in civil litigation is one step our profession is taking in that direction.

More than five years ago, a Supreme Court task force reported on the prevalence of pro se representation in New Hampshire courts: at least one party appears pro se in 85 percent of district court civil cases, and in 48 percent of superior court civil cases. Both sides are unrepresented in 38 percent of probate cases. Faced with these numbers, the Court's Advisory Committee on Rules, in

Depression...Alcoholism...
Addiction...Personal or
Professional Crises...

Support for
NH Attorneys,
Judges, Law
Students

Meaningful
Assistance

Outreach
&
Education

Strictly
Confidential

NH Lawyers Assistance
can help you put the
pieces back together.
877-224-6060

STAPLES

Business Advantage

Strength in Numbers

conjunction with the NHBA Ethics Committee and the Pro Bono Program, drafted a comprehensive package of changes to the professional conduct rules and trial court procedural rules. Final rules approved by the Court in May of 2006 now authorize limited-scope representation - also referred to as "unbundled" or "limited assistance" representation - in litigation in the state courts.

NH's Limited-Scope Representation Rules

New Hampshire's unbundled representation rules, which have received national recognition, are intended to facilitate and encourage piecemeal representation of parties in litigation. Instead of entering a general appearance and taking on the client's case from start to finish, the unbundled rules allow trial lawyers and their clients to carve out particular areas of a litigated case for the attorney – document drafting, evidentiary hearings, mediation etc. – while leaving responsibility for other parts of the case solely with the client.

Most importantly, New Hampshire's rules create "limited appearances" which can now be filed for specific litigation tasks, and which allow withdrawal – regardless of the stage of the litigation and without court approval, after the work is done.

In a recent *New York Times* editorial written jointly by NH Chief Justice John Broderick and California Chief Justice Ronald George, the authors emphasized that "for those whose only option (when faced with litigation) is to go it alone, at least some valuable, affordable time with a lawyer is a valuable option we should all encourage".

Limited scope representation can also facilitate flat-fee billing that would otherwise be difficult in a civil litigation context, eliminate high retainers, and assist with the efficiency of courtroom proceedings through counseling and "ghost writing" for *pro se* litigants.

With the program still in its initial years, there are no comprehensive statistics on the extent of unbundled representation in litigation. The Pro Bono program has encouraged its use by its volunteers. Clients and volunteer lawyers are encouraged to identify limited areas in which free legal support is most important; thus allowing practicing lawyers to take on scheduled pieces of work that fit into their schedules with greater certainty and flexibility.

As one example, the Bar's Pro Bono program is overseeing two pilot DOVE (Domestic Violence Emergency) projects based on an unbundled model. The "DOVE-North Country Outreach Program" matches pro bono qualified clients in Coos, Carroll and Upper Grafton Counties with specially-trained lawyers who provide legal advice but not representation in court. The "Bridges Crisis Center Pilot Project" provides representation in family law matters in which the welfare or safety of the client or children are at risk – again limited to out-of-court legal assistance.

In other Pro Bono cases, clients may receive referrals for assistance with part of a case, such as the QDRO portion of a divorce, or for representation limited to a specific proceeding, such as court-ordered mediation in a parenting case. Depending on the complexity of the issues and individual needs, Pro Bono may help clients with issues ranging from landlord-tenant matters to debt collection by referring them to attorneys for advice or brief services.

The Bar Association's Reduced Fee Referral Program and its Lawyer Referral Service also offer consumers options for limited scope services through referrals to attorneys signed on to provide unbundled representation, particularly in but not limited to family law matters.

Risk Management and Unbundled Legal Services

Unbundled representation does not come naturally to experienced trial lawyers. Their professional careers have included the experience and, on occasion, the enormous satisfaction that can come from weathering litigation with a client from start to finish. The idea of piecemeal or "a la carte" representation is contrary to their instincts and their knowledge of the requirements for quality representation in litigation.

There are precautions that can be taken to minimize these risks. It is important to recognize the potential for clients to be confused about the scope of the lawyer's representation in this context. New Hampshire Professional Conduct Rule 1.2(g) contains a written disclosure/consent form that will minimize this problem.

Other risks that attorneys providing limited-scope services need to keep in mind include:

- the difficulty he or she may encounter defending the claim that the lawyer's limited involvement

- was the cause of a bad result;
- the importance of clear "disengagement letters" at the close of the agreed-upon work;
- disclosure of "ghostwriting" services provided for pleadings. New Hampshire's trial court rules [consistent with earlier guidance from the Ethics Committee] require that ghostwritten pleadings "conspicuously" state: "This pleading was prepared with the assistance of a New Hampshire attorney.", see, e.g. Superior Court Rule 15.(f));
- avoiding the trap of straying into areas not covered by the limited appearance. See also *NHBA Bar News*, 5/18/07, "[NHBA Insurance: Unbundled Legal Services and your Malpractice Insurance.](#)"

These problems are manageable. The benefits for clients, lawyers and the justice system through greater use of limited scope representation far outweigh the risks.

Unbundled legal services will not produce the quality of representation provided to clients who can afford comprehensive legal support. Nor will the new rules eliminate the disparity in legal access between the rich and the poor, or achieve the level of legal representation of the poor in civil litigation that we see in criminal cases due to constitutional requirements. But as our citizens learn that a cost-effective alternative exists to pure *pro se* representation; and that lawyers can take on defined litigation responsibilities for flat fees and without prohibitive retainers; the use of unbundled legal services should expand, resulting in benefits for all who have a stake in improved access to the court system.

Peter G. Beeson is an attorney at the Devine, Millimet & Branch law firm. He is a member of the NHBA Ethics Committee.



Peter G. Beeson

Getting help doesn't sabotage your career ...
but not getting help can.
 NEW HAMPSHIRE LAWYERS ASSISTANCE PROGRAM
A confidential, independent resource

[Home](#) | [About the Bar](#) | [For Members](#) | [For the Public](#) | [Legal Links](#) | [Publications](#) | [Online Store](#)
[Lawyer Referral Service](#) | [Law-Related Education](#) | [NHBA♦CLE](#) | [NHBA Insurance Agency](#) | [NHMCLE](#)
[Search](#) | [Calendar](#)

New Hampshire Bar Association
 2 Pillsbury Street, Suite 300, Concord NH 03301
 phone: (603) 224-6942 fax: (603) 224-2910
 email: NHBAinfo@nhbar.org
 © NH Bar Association [Disclaimer](#)