

Written Assignment II: Limited Scope Services

1. How do you assess whether Judith is a Self-Represented Litigant (SLR) when you first come into contact with her?

First, I would ask her about why she came to see me and if she has spoken to or worked with any other attorneys to resolve her dispute. If she says no (whether it be for financial reasons or inadequate resources),¹ I could infer that she was planning to represent herself in court. I would also ask her how she heard of my practice because she may have done some research into alternative dispute resolution after realizing how difficult and tedious court can be. Some self-represented litigants begin the process with a reasonable sense of confidence but others begin with trepidation and within a short amount of time, most SRLs become frustrated and overwhelmed with the process,² causing them to ask for legal help from a professional. These are a few ways I could determine if Judith is a SRL.

2. Do you offer limited legal services? If so, what are the reasons? If not, what are the reasons?

Yes, I would offer limited legal services because resolving family disputes in the legal system can be expensive and I believe that everyone should have access to legal education and support regardless of one's financial situation. Because family is so important (not only within the home but in the larger context of raising healthy children who will later enter society), it is very important that these individuals have the resources and opportunity to resolve their disputes in a timely and peaceful manner. Making legal resources and support available, albeit limited, can be extremely helpful for families, especially when families are capable of doing a lot of the tasks themselves. It's expensive and financially burdensome to pay a lawyer to do 100% of the work when a party only needs help with 30% of the process. Moreover, this will make my practice more marketable because SRLs will be able to afford my services and they have the power to pick and choose what they need. Some legal help is better than none!

3. Do you offer both full services and limited services? If so, how does Judith know what you offer before she calls you?

I would not offer both, but I may work at a practice that does because it is difficult to find a practice that offers limited services exclusively. However, if I had the choice, I would choose to provide limited services only. First and foremost, it's important to me to increase access to legal resources to individuals who are marginalized or unable to afford a lawyer. Additionally, being a limited scope attorney would allow me to empower my clients to participate in processes (such as mediation) that will benefit their overall life. Knowing what I know now about the adversarial approach in litigation and the harm it inflicts on families in crises, I want to be part of the solution and help them find other ways to resolve their disputes.

4. How do Judith's demographics fit in with the prototype SLR?

Judith fits into some of the demographic categories describing the typical "prototype" SLR because she is a woman (50% of SRLs are women), a teacher (50% of SLR's have a university degree), and likely makes less than \$50,000 a year (evidenced by her inability to afford housing in Los Angeles and her occupation as a teacher), which places her among 57% of all SLRs.³ She is also among 60% of SLRs who are disputing family matters.⁴ While this study was conducted in Canada, it's still an accurate reflection of how many people despite being educated and employed, cannot afford an attorney and that so many SRLs are trying to litigate personal family matters without any legal guidance or external support.

5. What would be Judith's motivations for self-representing?

It is likely that Judith's motivation for self-representation is her inability to afford an attorney because she is a teacher with no other known assets or inheritances. Moreover, financial reasons are the most consistently cited reason for self-representation.⁵

6. Does Judith have the ability and skills to successfully be a SLR?

Judith's occupation as a teacher and her education may make it easier for her to learn the law and follow directions of the court, especially because books and resources can be found online, but this is only one part of the process. It is unlikely that she will be successful without any legal help because even if she finds these resources, legal jargon, legal writing, and court procedures and protocols will be completely new and unfamiliar to her and hurt her chances of a successful outcome. Fear and feeling overwhelmed by these nuances is common for those who want to represent themselves.⁶ Moreover, Judith is in an emotional crisis right now because her mother just died and there is tension with her brother Calvin and within her

family, so these emotional obstacles may prevent her from thinking rationally and will be detrimental to her emotional and physical health.

7. What resources are there for Judith to get legal information and help to be a SLR?

Service providers have recognized the frustrations of SRLs as a source of pressure on the justice system and court personnel, so they have attempted to improve the SRL's experience by developing low cost support services⁷ for them, including non-legal services they may need. This includes education and orientation outside legal training that allows SRLs to anticipate what litigation will be like and the demands of self-representation. Other resources include educational workshops that will provide SRL's with practical tools and skills⁸ that will prepare them for going before a judge as well as one on one coaching. Other resources can be found online, including sites that feature interactive programs SRLs can learn and practice from.⁹

8. If you were just to meet with Judith once, what value could you offer Judith in deciding whether to be a SLR?

I would offer my empathy and support because she just lost a parent and is now getting ready to make decisions about her future that involves her other family members. By showing her that I care about her well-being and understand the stress she is under, I hope that she would see why consulting professionals during this process would be helpful. However, if she is set on being a SRL, I would accept her decision.

9. If Judith chooses to be SLR, what emotional and social challenges will she face?

Judith would face emotional challenges because she suffered a great loss and will be grieving at the same time she is fighting for her inheritance in court. Moreover, if she is a SLR in court, an adversarial litigation against her brother may exacerbate her suffering because she will continue to feel excluded from her family and the tension will increase. Also, litigation may take longer if she represents herself because the process is unfamiliar to her and the parties may accidentally prolong the trial because they make mistakes. This prevents everyone involved from moving forward and prolongs the time they may start to heal and eventually return to their baseline functioning.

10. What initial confidence do you believe Judith would have that she could successfully self-represent?

I think Judith's education and occupation as a teacher will give her confidence in her ability to represent herself because she has spent forty years teaching and explaining concepts that are difficult to children in a way they can understand. I would infer that she also has a strong vocabulary and good reading comprehension compared to someone who has a twelfth grade education, so this may make her confident in her ability to understand and break down legal jargon and the laws in family court.

11. What initial fears do you believe Judith would have that she could successfully self-represent and not get overwhelmed?

Judith may fear that she is not going to be treated fairly or reach the outcome she desires. If the court decides to give Calvin everything regarding the restaurant, she may feel unequal to Calvin once again. She may also be afraid of living with the judge's decision if she does not like it and losing any and all chances of having a relationship with Calvin, Jacqueline, and their children. She may fear that her chances will be ruined if she does not fill out a court form on time or correctly because they are very complex and she may not know how to answer them.¹⁰ She may also sense that the judge thinks SRL's are a "nuisance" and that this could hurt her chances.¹¹ These fears may be exacerbated if attorneys prey on vulnerable SRLs and tell them they will be "eaten alive" in court if they do not have representation.¹² This is an example of how lawyers can be intimidating.

12. Assuming that Judith has the following typical concerns of self-represented litigants, how would you address them?

a) She believes that despite paying you, you could do very little more than she can to resolve her matter;

I would explain that we could explore options like mediation so that she has more control over the outcome instead of giving that responsibility to a judge. I would also explain that I understand her trepidation of trusting an attorney with this responsibility but reassure her that I can help her throughout the process legally, but also emotionally by providing her with referrals and other informational materials.

b) She is concerned that you will not stand up for her with Calvin and his family

I would explain to Judith that I represent her and only her, and that Calvin and his family will be represented by their attorney. I will further explain that everything she tells me is confidential and that I will not disclose anything to Calvin's attorney without her permission, even if we decide to resolve her dispute in a collaborative setting. To make her feel more at ease, I will describe my role as her attorney and the ethical and professional standards that I must follow. ¹³

c) She believes that you may push the case to court and not try to settle

If Judith is concerned about my desire to settle her dispute outside of court, I would suggest that we pursue a collaborative settlement conference and agree to sign an attorney disqualification clause. This would hopefully show Judith that I am settlement oriented and reassure her that I also have incentive to settle this matter outside of court.

d) She doubts that you will really listen to her and hear her needs and concerns

I can address this concern by practicing active listening and helping her come up with solutions that will reduce her concerns. I will also make sure to follow up with her after our meetings and explain how my suggestions align with her needs and concerns.

e) She does not believe that you will be clear and relevant in your explanations of options and her rights

I will make sure that Judith receives informed consent by talking about the pros and cons of each option that is available to her and make sure that I ask her if she has any questions after each description. I will also provide her with handouts that explain these concepts in case she forgets or has questions later. In my explanations, I will make sure that I use layperson terminology and explain any legal jargon or unfamiliar terms.

f) She wonders whether you have the competence to handle her matter

I would discuss my educational and professional background to give her an idea of how long I have been practicing and I will also offer some suggestions to show her my approach to helping her resolve her dispute in hopes that she will like my ideas and feel confident working together. Moreover, I would explain that unbundled lawyers are still lawyers and will always be responsible for the quality of their work

13. Are you the appropriate lawyer to offer Judith limited scope services?

I believe that I would be an appropriate lawyer for Judith if she wants to receive limited scope services because I can appreciate her desire to be involved and believe we can work well

together. I am also empathetic to what she is experiencing and feel confident that I can help her through this process and provide her with resources that will allow her to start healing. Moreover, I want to spend more time in direct contact with my clients and am able to give up the control of doing the legal work in order to empower my client to advocate for herself.¹⁴

14. Is unbundling appropriate for Judith?

Unbundling would be appropriate for Judith because she is in a good position to understand the legal matters once they have been explained and advocate for herself after receiving some coaching. Judith's education, teaching experience, and ability to adapt in stressful situations are all traits that will help her navigate through this process. Because limited scope representation is specialized and tailored to fit the client's needs,¹⁵ Judith can be as involved as she wants to make sure that the right decisions are being made on her behalf. Moreover, Judith has been divorced several times and is familiar with court proceedings, which will hopefully incentivize her to reach an agreement with Calvin and stay out of court.

15. What benefits and risks regarding unbundling would you wish to address with Judith in your next client conference?

The benefits of unbundling is that it has been demonstrated to be safe, cost-effective to the client, profitable for the attorney, transparent to the courts, and ethical.¹⁶ Limited scope representation has also demonstrated to be an effective alternative to the unauthorized practice of law, including unlicensed predators. Moreover, many jurisdictions report that over 70% of litigants in family law court are unrepresented. Unbundling and limited scope representation is appropriate in the family law setting and can help a lot of people.

16. What additional facts do you believe Judith needs to resolve her problem?

Judith should talk to Calvin about her parents' affairs and how life has been since she left home because this information could help lead to self-reflection/understanding and possibly even a party-party resolution. She should also collect any relevant legal documents such as her parents' will, the title of the family home, a financial evaluation of the restaurant, and possibly look for other professionals such as a therapist who can help her work through her emotional turmoil.

17. How would you and Judith divide the work to gather and present those facts?

I would be flexible in changing roles with Judith and adapt to new roles that are requested by my client. For example, if Judith wants to save time and money by taking Calvin out to coffee

to talk about his positions of the case and gather facts about the family inheritance, she is in an ideal position to do so and I think that would be a good idea. Later, I could go over those facts with her and explain how to address them in mediation and how a court might rule if the matter does not settle in mediation. Moreover, I would coach Judith so that she feels comfortable presenting her positions and come up with creative ways to negotiate her interests with Calvin.

18. How would you charge for your services? Why would your services be cost effective for Judith.

I would charge \$200 per session or per hour so that Judith knows the cost of our time together. This will be a “pay as you go method, and any time not used will be refunded.”¹⁷ This way, Judith can maximize our time together by choosing what her main concerns are beforehand and have a set list of what we should discuss. If we are in a collaborative setting, I would charge a flat fee of \$2,000 per session that includes the price of all the interdisciplinary professionals. This would be more cost-effective because Judith is only paying for what she wants and needs and is in control of how my time is spent. Moreover, in the collaborative setting, Judith will be getting the advice and support of several individuals at a discounted rate.

19. Assuming that Judith wants your help in drafting a letter to Calvin, how would you and Judith divide the work?

First I would ask Judith what she wants me to say. To save money, she may write the letter herself and I can edit it or enhance it with legal writing that Calvin’s attorney can explain to him. In that instance, I would send a copy of my work product to Judith to make sure I am conveying her views and desires correctly. This would be cost-effective because I would be simply editing and enhancing the document as opposed to spending various hours writing it myself and then checking in with her. The second option would be meeting for thirty minutes to an hour to discuss what she wants me to write and what her positions are, writing it, and then sending her a copy for her review.

20. What steps would you take to draft the letter?

I would either reference the draft she provided for me or refer to my notes during our meeting that describe what she wants to communicate. Then I would do some legal research to see if

there is any legal authority supporting her statements, and I would let her read it before sending it to Calvin so that she is involved in the process.

21. Assume that after receiving the letter, Judith indicates that she wants to go to mediation.

I would encourage Judith to pursue mediation and support her decision to resolve her matter outside of court because it is less expensive, less time, and more amicable.

22. What issues would you discuss with Judith about whether or not to accept Calvin's invitation to go to mediation?

I would encourage her to consider mediation as a viable option and explain the benefits of resolving their matter outside of court because it is less expensive, less time, and more amicable. I would also explain that I could be involved in the mediation or simply act as a coach to prepare her for the mediation. I can also help her and Calvin choose a mediator and provide referrals.

23. What limited role would you play in setting up the mediation, preparing for the mediation, attending the mediation, and reviewing any agreements?

First, I would ask Judith what she feels comfortable with and if she would like me to attend the mediation. I would also explain that I could be merely present and let her do most of the talking, I could be more involved in the mediation where I help her negotiate with Calvin's lawyer, or I could not attend at all and alternatively act as a coach and prepare her for the mediation beforehand so that she feels confident going in alone. I can also help her and Calvin choose a mediator and provide referrals, and help them decide on a neutral location, discuss what type of format they think is ideal (can you resolve in one session? Two? Five?). I could also review any agreements if one is reached to make sure that it is clear and conveys what the parties agreed to. However, if I am not in the mediation, I would tell Judith to refrain from signing anything until we have a chance to go over it together. This is to avoid a malpractice suit and also to make sure Judith is actually in agreement and was not coerced or misinformed during the mediation.

Assume that the mediation does not settle the case. Calvin has hired an attorney and filed a Petition to void the will and have the assets divided pursuant to her parents' alleged oral promise. The hearing on the Petition is in 3 weeks.

24. What limited role you could play in obtaining facts from Calvin?

First, I would reach out to Calvin's attorney (hopefully we build a collaborative and respectful relationship throughout the process) and ask him if he can try to convince his client to stay in mediation. If Calvin and Judith signed an attorney disqualification clause, this may incentivize Calvin to reconsider. However, if Calvin rejects mediation, this will effectively dismiss me as Judith's lawyer and I won't be able to do anything because my hands will be tied. If there were no attorney disqualification clause, I would ask Calvin's lawyer if we could all speak and discuss everyone's positions moving forward. I think it would be best for Judith to try talking to Calvin to gather these facts first, but if that is not possible, then we should all meet to discuss the facts and try to be on the same page.

25. What limited role you could play in preparing documents and witnesses for the hearing if Judith represents herself in court?

I would talk to Judith about her positions and find expert witnesses such as CPAs and property evaluators to assess the property in dispute. I would also write out questions, practice with the witnesses, file documents with the court including legal briefs and memoranda, and make sure everything gets done on time to put Judith's mind at ease and prevent her from getting overwhelmed.

26. What limited role you could play attending the upcoming court hearing and what tasks you would do and what tasks Judith would do.

I could prepare legal documents that the judge will read (like a ghost writer), perform legal research so she knows her rights and possible outcomes, and look up the judge to determine if he or she may be inclined to rule one way or the other. I would ask Judith to visit the courthouse, prepare her for negotiations if she is instructed to do mandatory mediation, and attend the court proceeding for support and advice if she choose to represent herself or if I am barred from representing her because of a disqualification clause.

¹ Julie Macfarlane, *The National Self-Represented Litigants Project' Identifying and Meeting the Needs of Self-Represented Litigants* 109-110 (2013).

² *Id.* at 110.

³ *Id.* at 109.

⁴ Id.

⁵ Id. at 117.

⁶ Id. at 132.

⁷ Id. at 112.

⁸ Id.

⁹ Id. at 111.

¹⁰ Id. at 110.

¹¹ Id. at 130-31.

¹² Id.

¹³ M. Sue Talia, *Limited Scope Representation* 141-50 (2000).

¹⁴ Forrest Mosten, *Take the Quiz: Is Unbundling Right for You?* 149-50 (2000).

¹⁵ M. Sue Talia, *Limited Scope Representation* 137 (2015).

¹⁶ Id. at 138-39.

¹⁷ Id. at 151.