

Pieces of the Puzzle

Limited-assistance Representation Has Become Part of the Solution in the Courts

By GEORGE O'BRIEN **Michael J. Grilli weight in below**

Kathleen O'Sullivan admits to being a little skeptical — actually, more than a little — when she was first introduced to the concept of the limited-assistance representation, or LAR, nearly three years ago.

As the name suggests (sort of), the concept involves legal assistance from an attorney that is provided on a limited basis, or only when the client feels he or she needs it or is willing and able to pay for it. This practice represents a somewhat radical departure from the traditional manner in which legal counsel has historically been retained: on what amounts to an all-or-nothing basis.

And this explains the skepticism on the part of O'Sullivan, a Holyoke-based family-law specialist, and many others when a pilot program was launched in late 2006. "I said, 'how is this going to help the client?'" she told *BusinessWest*, adding that she was a firm believer in the notion of only representing a client from the beginning to the end of a legal matter, with the accent on *was*.

"I discovered quickly that there are many benefits to lawyers like myself, our clients, and the courts," said O'Sullivan, adding that LAR is doing essentially what it was designed to do — reduce the amount of pro-se activity, or people deciding to go without legal representation, by giving such individuals the option of using a lawyer for one or a few aspects of a legal action. "I don't really see a downside to this."

Neither, apparently, does the state Supreme Judicial Court. It recently expanded that aforementioned pilot program, which initially included the Hampden, Suffolk, and Norfolk divisions of the Probate and Family Court Department, to any department of the Trial Court statewide.

"The justices have concluded that limited-assistance representation can be of significant benefit in expanding access to justice in the trial courts," the SJC wrote in an order that took effect May 1.

Nancy Pelletier, a litigator with the Springfield-based firm Robinson Donovan and part of a panel that explored the matter of reducing the numbers of pro-se litigants in the courts, used different language to sum up early assessments of LAR, or 'unbundling,' as it's also called, and initiatives like it. After first calling it a "win-win," she did some quick math and proclaimed it a "win-win-win-win-win."



Mike Grilli says LAR brings benefits to lawyers, their clients, and the courts.

Elaborating, she listed all those winners:

- The individual choosing to use LAR, who gains some assistance from a legal professional but only when he or she wants or needs it;
- That individual's lawyer, who gains some work — and in some cases a lot of it — when, before LAR, he or she might not have seen any;
- The opposing party in a legal matter, which will often see the issue at hand resolved more quickly and at less expense due to LAR;
- The opposing lawyer, and for the same reasons; and
- Judges and the courts they preside over, because cases are, according to many accounts, being cleared out more expeditiously.

About the only concern at present is that some constituencies don't know about LAR, or don't know enough, said Lori Landers-Carvalho, a family-law facilitator with the Hampden County Division of the Probate and Family Court Department, who told *BusinessWest* that it's now part of her job

description to help change that equation.

"Looking ahead, I see this evolving like any new aspect of the court," she explained. "Often, it takes a while for something like this to catch on. Once it's been around for a while and everyone is familiar with it, people will be using it much more frequently."

Ghost Righting

Mike Grilli is typical of the more than 100 Springfield-area attorneys now trained and qualified to participate in the LAR program. An associate with Springfield-based Bacon Wilson, he handles a wide range of work, including divorce and other matters of family law, including custody issues, guardianship, child support, and paternity.

And he was somewhat skeptical about the concept of LAR when it was introduced. But like O'Sullivan, he became an early proponent.

"I saw early on that this would be a tremendous benefit to the courts," he said, "but especially to people who simply couldn't

afford to hire a lawyer to handle a case from beginning to end, which was the way it had to be before limited representation.”

Summing up the concept, Grilli said he believes unbundling helps level the playing field for those who would have represented themselves in a legal matter and taken on a legal professional when doing so. And while doing so, LAR is also helping to move matters through the courts more expeditiously.

This was what the SJC had in mind when it approved the pilot project in 2006, said Landers-Carvalho, adding that, by her estimates, a whopping 80% of those with matters before the Hampden County Division of the Probate & Family Court are pro-se litigants, making it a fertile testing ground for LAR.

As she explained how unbundling works, Landers-Carvalho noted that the program enables litigants to effectively limit the scope of their legal representation, thus reducing the cost, in many cases substantially.

Those using LAR can retain a lawyer for any or all of three main categories of assistance:

- Coaching the litigant outside of court on what the law is and what the rules of a procedure are without ever filing an appearance or appearing in court to represent the litigant;

- Drafting documents for the litigant to file without filing an appearance or going into court with the litigant. However, the attorney must write on the document that it was prepared with the assistance of counsel. This is a practice known as ‘ghostwriting,’ or ‘ghosting.’

- Appearing in court with the litigant for part of a case, such as the pretrial conference. In such instances, the attorney must file a notice of limited appearance in court describing the issue or event on which the attorney is representing the litigant. After the completion of that issue or event, the attorney must file a notice of withdrawal of limited appearance.

Grilli said he’s been retained for all three avenues of service since the advent of LAR, and can see the benefits of doing so — for both his clients and the court. Elaborating, he said he’s handled several divorce cases up to a certain point in the proceedings — often the pre-trial conference phase — where he has provided invaluable assistance with laying out a case before a judge, something the litigant would likely have considerable trouble doing on his or her own.

“I’ve had some cases where the individual was having a lot of difficulty negotiating with the attorney representing the other party, and with the prospect of presenting a case to a judge,” he explained. “I’ve been able to come in, help with those parts of the case, and negotiate a settlement more quickly than would have been possible otherwise.”

O’Sullivan, who said that maybe 10% of her caseload now involves LAR, reports similar success with divorce cases and other matters in family law.

“One of the biggest benefits I’ve seen is the ability to help people prepare documents such as separation agreements,” referring to the ghostwriting aspect of the program. There’s a huge need for that; people are very intimidated trying to do that by themselves.

“It’s also been extremely helpful for people who don’t need a lot of legal assistance, but could use some help in the courtroom,” she continued. “People are often intimidated by appearing in court, and they’re therefore reluctant to speak for themselves.”

Cases in Point

Pelletier said she hasn’t had any direct experience with LAR herself, but has watched as the concept has gained a measure of acceptance.

And like Grilli, she said unbundling has helped address what she called an “imbalance of power” in the courts when one party is represented by an attorney and the other would otherwise be going it alone because he or she couldn’t afford a lawyer from start to finish.

“We speak a different language,” she said of those licensed to practice law. “We know the rules and the procedures.”

This simple fact explains several of the ‘wins’ Pelletier described earlier, especially the courts themselves, which, as a result of LAR, can clear dockets more quickly and with less expense to the parties involved.

“As a person who has been on the opposite side of a lot of pro-se people, I can say that it’s much easier to have an attorney on the other side of a case than a pro-se litigant,” she explained. “We speak a different language when we speak to each other, and we know the rules and the procedures. It’s easier for someone who’s an attorney to have an attorney on the other side of the case.

“And it’s easier for a judge to have two attorneys in front of him instead of one attor-

ney and one pro-se litigant,” she continued. “It takes much more for the courts to deal with pro-se litigants, and it takes more time for opposing counsel to deal with pro-se litigants.”

As for the opposing parties in legal proceedings, they also benefit from LAR and other initiatives to reduce the numbers of pro-se litigants, said Pelletier, citing what she called “excessive down time” that comes when judges and opposing lawyers cope with individuals representing themselves.

“Sometimes, these people have to spend an entire day in court,” she said, referring to litigants, “when it could, and should, be maybe a few hours.”

But while there are many apparent benefits to LAR, the concept has not caught on to the extent that many thought it would.

There is information on the program at each court, said Landers-Carvalho, but money to advertise LAR is limited, and press accounts have been sporadic.

“I think word is getting out, slowly but surely,” she told *BusinessWest*. “We have to do more to educate people that this is available and that they can benefit from it.”

O’Sullivan believes the current economic downturn may help LAR gain in popularity, simply because more people now find themselves challenged in their ability to handle large legal bills.

“I see more interest in this now, and I think the economy has a something to do with that,” she explained. “It’s more difficult now for many people to pay for legal help.”

Final Arguments

Recalling her early skepticism about LAR and reluctance to participate, O’Sullivan said she was essentially asking herself, “are you doing the client a service if you’re not with them from beginning to end?”

She has since answered her question with a resounding ‘yes,’ and she’s certainly not alone in that assessment.

Indeed, while quantitative measures concerning the impact of LAR are hard to come by, from a qualitative standpoint, it appears to be a winner.

Or, as Pelletier said, a ‘win-win-win-win-win.’ ■

*George O’Brien can be reached at
obrien@businesswest.com*