

## Limited Scope Representation in the Courts

### What are the imperatives for bringing limited representation into Illinois courtrooms?

#### Assisting legal aid

The legal aid system in Illinois is overwhelmed by demand. The economic crisis has flooded non-profit legal aid providers with new clients just as several of the major sources of funding for legal aid – from IOLTA, state appropriations and contracts, and private donations – have decreased significantly.<sup>1</sup> These organizations engage in a daily struggle to meet the high level of demand for service from low-income people with limited attorney time and resources. They often must engage in “triage” and provide full representation in cases involving only the gravest of human needs, while offering limited advice and information to other clients. For these organizations, the ability to provide limited representation – for example by drafting a divorce complaint, or by appearing for the limited purpose of arguing a motion to dismiss in a collections lawsuit – may be the difference between providing a measure of tangible assistance to a client and turning that person away for lack of resources.

#### Addressing the affordability crisis

Limited representation provides a tool for addressing the needs of the increasing number of lower and moderate-income people who appear in court without the assistance of a lawyer because they cannot afford one. At the lower end of the economic spectrum in Illinois, many families are under severe financial strain. In 2009, over 660,000 households – approximately one in six – received food stamps at some point during the year.<sup>2</sup> One in four Illinois families does not have sufficient savings or other assets to allow it to subsist at the federal poverty level (\$22,050 for a family of four) for three months after the loss of a job or a similar event.<sup>3</sup>

Lower- and moderate-income people who earn too much to qualify for free legal aid have serious difficulties paying the retainers and hourly fees associated with full-service legal representation. At 300 percent of the federal poverty level, a 3-person household has a gross monthly income of \$4,577. Leaving aside all other expenses for such a family – housing, food, transportation, taxes, clothing, insurance and medical care – an entire month’s gross income buys only 22.2 hours of legal representation, at an average hourly rate of \$206.<sup>4</sup> Paying a retainer that amounts to 50, 75 or even 100 percent of monthly income puts hiring a lawyer

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<sup>1</sup> See, for example “Legal Aid Groups Getting Squeezed by the Bad Economy,” published April 22, 2010 in the *Chicago Daily Law Bulletin*.

<sup>2</sup> *2009 Report on Illinois Poverty*, Heartland Alliance Mid-America Institute on Poverty, available at [www.heartlandalliance.org](http://www.heartlandalliance.org).

<sup>3</sup> *Id.*

<sup>4</sup> Using the average hourly rate for a domestic relations matter cited in *Illinois State Bar Association 2004 Membership Law Firm Economic Benchmarking Survey Results*, May 2004, conducted by Altman Weil, Inc. The hourly rate from the 2004 survey (\$183) was adjusted for inflation for 2009.

even further out of reach. While the affordability crisis for legal services predates the current economic crisis, the recession has made financing payments to lawyers through credit cards or home equity loans much more problematic.

The bottom line is that hundreds of thousands of Illinois households can neither obtain legal aid, which is tightly rationed, nor afford to pay for full-service representation. But many of these households might afford fees charged for individual tasks performed by a lawyer, such as preparing or reviewing pleadings, negotiating a settlement, or appearing at a hearing. The flexibility and affordability provided by limited representation holds some promise of opening access to legal consumers currently shut out of the market for legal representation and pursuing their legal issues on a self-represented basis.

### **Responding to the *pro se* explosion**

Opening new avenues to affordable legal help may be a partial solution to the burgeoning population of *pro se* litigants in Illinois courts. Reliable statistics regarding the number of self-represented parties in Illinois courts do not exist, but there are many clues that it is large, and increasing. The 2005 Legal Needs Study published by The Chicago Bar Association, the Illinois State Bar Association and the Lawyers Trust Fund found that in 2003, low-income Illinoisans obtained legal assistance in only one of every six legal problems they encountered.<sup>5</sup> For this population, the most common response to a legal problem was to attempt to resolve it without legal assistance.<sup>6</sup> Anecdotal reports since the Legal Needs Study confirm that the number of *pro se* litigants is rising. Reports from legal aid offices, self-help centers and the news media all point toward the dramatic intensification of this trend since the economic crisis erupted in 2008.<sup>7</sup> These reports also observe that the influx of self-represented litigants is placing great strains on the courts. Courts are overburdened by self-represented litigants who are ill-prepared and uninformed about court procedures and matters of legal process. Self-represented litigants also are generally unaware of their legal rights and options. As a result, the efficiency of the courts is diminished, self-represented litigants too often are unable to obtain a meaningful hearing of their issue by the court, and the quality of justice is diminished for everyone involved. Limited scope representation offers one avenue for serving the needs of self-represented litigants.

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<sup>5</sup> See page 1, *The Legal Aid Safety Net: A Report on the Legal Needs of Low-Income Illinoisans*. The report is online at [http://www.robparal.com/downloads/legal\\_needs\\_study.pdf](http://www.robparal.com/downloads/legal_needs_study.pdf).

<sup>6</sup> *Id.* at page 2. The study found that 65.8 percent of those encountering legal problems attempted to handle them without legal assistance.

<sup>7</sup> "In a Downturn, More Act as Their Own Lawyers," published April 10, 2009 in the *New York Times*; "Big Jump in Pro Se Cases," published April 25, 2009 in the *Chicago Daily Law Bulletin*; "Recession Forces More to Act as Own Lawyer," published August 5, 2009 in the *Chicago Tribune*.