

Demystifying Limited Scope Representation in Post Judgment Family Law Matters

By TARA C. DUGO

Whether it be a large firm or solo practitioner, Limited Scope Representation (“LSR”) is an immensely valuable addition to any family law practice, especially in the context of post judgment litigation. I exclusively use LSR for all my post judgment litigation matters, but I was surprised to learn that LSR remains a largely untapped resource for many attorneys in Connecticut.

What is LSR?

Limited Scope Representation is a tool that allows attorneys to file an appearance on a discrete issue, rather than the entire litigation. This limited role may include representing a client for a certain motion or motions, appearing for a scheduled hearing, and/or representing a client at a deposition or in the preparation and exchange of discovery. Pursuant to Connecticut Practice Book § 3-8(b), LSR can be utilized to represent clients in family, family support magistrate, civil, housing, and small claims matters.

Filing an LSR appearance is a simple process. An attorney is only required to complete Form JD-CL-121 and fax file it with the court, along with the client’s general appearance, which must be on file with the LSR appearance. Once an attorney’s role in a case is completed (i.e. resolution of the pending motion, completion of discovery), counsel simply needs to fax file a one page *Certificate of Completion of Limited Appearance (Form JD-CL-122)*.

This ends counsel’s role in the court and their appearance is removed from the case’s file.

While the scope of an attorney’s representation is limited with LSR, that scope can always be expanded. This can be accomplished by a new/supplemental engagement agreement and a new LSR appearance. A well-crafted engagement agreement is incredibly important to protect both the attorney and the client in LSR cases. It not only clearly sets forth the scope of the limited representation, but also defines when the representation will end.



Why Should I Consider LSR for my Post Judgment Family Law Practice?

When speaking with colleagues about LSR, I heard comments such as: “I don’t see how this would benefit my practice,” “full representation has been working for me over the years, so there’s no reason to try LSR,” and “there isn’t enough money to be made with LSR.” These comments, however, overlook the vast benefits of LSR.

While LSR can be effectively utilized in many different types of matters, for the purposes of this article, the focus will be on the benefits of LSR in post judgment family law matters. Be it financial motions or issues relating to custody; enforcements or modifications, LSR allows attorneys to represent clients in a highly effective and financially advantageous manner. Specifically, LSR will ensure that an attorney’s role in a matter is clearly defined, while minimizing the potential “financial blackhole” that post judgment litigation can sometimes lead to, for all involved. Certainly, LSR can benefit those of modest means who otherwise

may not have access to legal representation.¹ LSR is also a great tool for meeting attorneys' Rule 6.1 ethical obligations to provide pro bono services. LSR can be used to effectively serve individuals in need on a pro bono or discounted basis. Overall, however, the utilization of LSR in post judgment family matters can be used effectively for any client, regardless of their financial circumstances or the complexity of the issues.

From a financial perspective, there is no downside to using LSR in post judgment matters. While retainers should be budgeted according to the estimated amount of work involved in the limited representation, attorneys do not need to alter or otherwise modify their hourly rate requirements. Where LSR excels in post judgment family matters is when additional, unanticipated litigation arises. If an attorney files a full representation appearance for a post judgment matter, that attorney is representing the client for all pending issues, including those outside of the initial intended representation.

For example, you agree to represent a client for a post judgment contempt motion relating to the nonpayment of alimony. You and the client sign the post judgment engagement agreement stating that you will represent the client in connection with that discrete issue. You receive the requested fee/retainer funds for that representation and file a full appearance. A few months later, the opposition files a motion to modify custody of the parties' children. Regardless of the provisions of your engagement agreement and the retainer funds you received, a full representation appearance means you are representing that client in connection with the motion to modify custody. This could leave you in the unfortunate position of potentially having insufficient funds to cover the work not previously contemplated. If a client is unwilling to pay the additional funds to cover this unanticipated work, you must now either continue to work on the matter without funds or request that the court allow you to withdraw as counsel from the matter. This request is not always granted.

There are important practical and ethical considerations to LSR in post judgment family matters as well. Colleagues have indicated that LSR is not necessary in post judgment matters, as they can limit their role via their engagement agreement. Attorneys, however, should be cautioned against relying on the terms of an engagement agreement to limit their role when filing a full representation appearance.

The court is not bound to follow or adhere to the terms of an engagement agreement. When filing a full appearance with the court, post judgment, an attorney is considered appearing for all pending issues, including those that arise after the filing of their appearance. An attorney telling a judge that they are not working on a particular matter with a full appearance in the file is unlikely to get them very far. Further, if the engagement agreement only covers a specific issue (i.e. the prosecution of a contempt motion), an attorney may have ethical issues by representing or advising

the client on other issues outside of those set forth in the engagement agreement.

LSR, however, takes those issues out of the equation. An attorney's role and the scope of their representation is clearly defined with LSR. If additional issues arise, the LSR attorney will have no role or obligation to appear in connection with those issues, unless and until the client agrees to expand the attorney's role. If not, an attorney's role remains limited and there is no requirement to handle those additional issues. With LSR in post judgment family matters, an attorney's representation is not compelled for additional issues. With a full representation appearance, it is.

LSR protects both attorneys and clients by clearly defining the attorney's role in a case, managing everyone's financial expectations and limiting the potential financial impacts of additional issues arising outside of what was anticipated. With the abundance of benefits and no real downside, all family law attorneys should consider incorporating LSR into their post judgment family law practice. ■

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NOTES

1. Between 7/1/2020 and 6/30/2021, approximately 71% of divorce litigants and 77% of custody litigants were self-represented, according to the State of Connecticut Judicial Branch's Performance Management and Judicial Branch Statistics Unit.

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