

# Unbundled Legal Services

by

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## What is Unbundling?

The term "unbundling" is just now making it into the lexicon, descriptive of any process in which something complex is broken down into smaller and simpler components. In the legal context, "unbundling" refers to the process of breaking down the multiple roles an attorney might play into smaller simpler groups of tasks.

Unbundling (also called discrete tasks representation) offers clients a middle ground between dispensing with lawyers altogether or signing on for the full service package. The client is in charge of determining which services are to be performed by the client, which services are to be performed by the lawyer, and the extent or depth to which the lawyer will perform the services.

The client could contract separately to perform other tasks or perform them without using a lawyer. One of the cardinal principles of unbundling is "Use your lawyer only for what only your lawyer can do."

### 1. *How Clients Benefit from Professional Discrete Task Services*

Let's be honest. Perhaps the biggest selling point for unbundling is that it costs less. When the parties do most of the work themselves and hire an attorney only for what they need, they save money. But that's not the only benefit from unbundling. It also allows them to stay in control. They decide what issues to negotiate. They decide when to discuss what.

Because unbundling almost inevitably results in more contact between spouses in a divorce, it also sets a pattern for both of them built around sitting down and working out the issues between them, rather than relying on someone else to do it for them. They'll need to do it soon enough, so they might as well get started now.

### 2. *Acceptance of Unbundling*

Some bar associations and some courts have tried to restrict the offering of unbundled legal services. This effort continues, but it's losing steam. In general, more courts and bar associations are beginning to recognize that unbundling is here to stay.

### 3. *Risks of Unbundling and Protections to Minimize Risk*

The primary criticisms of unbundling fall into three broad classifications – concern that courts and judges might be misled, concern that clients might be misled, and concern that clients might make mistakes.

#### 1. **Courts and judges might be misled**

Judges often state that they give the benefit of the doubt to pleadings and other submissions from

parties who are pro se (proceeding without the help of a lawyer), knowing as they do that these documents have been prepared by a lay person. According to this argument, to allow a pro se litigant to file a document prepared by an attorney without disclosing the attorney's role to the court might give that litigant an unfair advantage.

There are two responses to this concern. First, one may question whether it really happens very often. In many courts, pro se litigants actually get less help, less encouragement, and less patience than attorneys. A court official might be willing to guide an attorney patiently through the process of correcting pleadings so they will be accepted but will simply dismiss a pro se party with a curt "It's not right; you need to hire a lawyer."

Second, to the extent that the court might be misled, it is neither burdensome nor unjust to require that pleadings prepared by counsel say as much on their face. It would be a simple matter for a court to require that any pleading prepared by a lawyer and submitted pro se bear a legend "Prepared by counsel."

## 2. **Clients might be misled**

The second oft-expressed concern about unbundling is that clients will think they are getting full-service legal representation when they are actually contracting for something less. A litigant who has visited with a lawyer acting as a coach will believe that the coach is doing everything a lawyer needs to do may not monitor deadlines, or may not show up for a hearing.

This concern is often expressed by bar associations and courts but seldom if ever by the parties who have used the services. The authors between them have provided unbundled services to thousands of litigants without one incident where a client thought the role was anything greater than the service contracted for.

The solution to this concern, clearly, is clarity. Clarity in the engagement letter for the provision of services, and clarity in the communication between the attorney and the client. The attorney needs to check from time to time to ensure that the client's strategy is sound, and this should always include the client's monitoring of deadlines. It also should include the client's understanding of when it would be appropriate to ask for more help.

## 3. **Clients might make mistakes**

This is real. Persons who choose unbundled legal services take on more freedom and responsibility than persons who have traditional legal representation. The hard truth is that along with that freedom and responsibility comes the power to muck up their case. Two responses are appropriate. First, a good coach who sets out clearly with the client when it's appropriate to ask for more help can minimize the mistakes the client is likely to make.

Second, the objection assumes that the choice is between unbundled legal services and full representation. This is generally not the case. People who use unbundled legal services often do so because it's the only way they can get access to the legal system. If they didn't use unbundled services, they would have no legal services at all. Yes, from time to time, a client will make a mistake in negotiating with his or her spouse or their lawyer. Gaining access to unbundled legal services doesn't increase that risk, however. To the contrary, it reduces it.

# Successful Models of Unbundling

The models of unbundling can take countless forms, but the ones used most often appear below.

## 1. **Coaching**

When a lawyer acts as a "coach," he or she is available to give straight answers to the client for the questions the client has. The fundamental idea of coaching is that most people don't need somebody to do their negotiating for them.

1. What they need is good sound information that they can use to negotiate on their own.
2. What they need is a full exploration of the available alternatives when they're stuck on a particular point.
3. What they need is a fair appraisal of the strength of their case and the range of likely outcomes if a judge were to rule on it.
4. What they need is a good solid understanding of the advantages and disadvantages of a proposal somebody is suggesting.
5. What they need are some suggestions for how they might negotiate with their spouse or their spouse's lawyer to get what they want.

A good coach can do that, offering a leg up without charging an arm and a leg. With most coaches, the parties pay for the time you actually use -- no more, no less. They pay on the spot, meaning they don't sign a retainer agreement. When they finish with the coach, they don't owe the coach any money, and the coach doesn't owe them anything.

The next time they come back to see the coach, they'll pay again. Simple. Clean. They pay for what they need. And they stay in control. If they need their coach to go to court on their behalf later, they can always work that out with a separate agreement.

A coach can act as a negotiation tutor, helping a party realize how negotiations work and how to prepare for negotiations. A negotiation tutor can even guide the person through a series of role-plays, so they have an idea in advance of what to expect and how they might respond.

## 2. ***Ghostwriting***

Often a party whose spouse has filed for a divorce simply needs to file an Answer, the legal document that avoids default. Then the party will be able to negotiate with his or spouse or the spouse's lawyer to resolve the issues of the case. Occasionally, the party may need more complex documents filed, such as Interrogatories, Requests for the Production of Documents, Requests for Admissions, and Motions. In each case, the party may desire to maintain control of their case but need the assistance of a lawyer to file the document properly.

An attorney who offers unbundled legal services can assist with drafting these documents and the party can file them. This way, the document will meet the court's standards, the party will protect his or her rights, and the party will continue to be free to negotiate without having to speak or work through a lawyer.

## 3. ***Information On Demand***

Often what a party needs when he or she is going through divorce is straightforward information. Attorneys who provide unbundled legal services often make available to their clients complex compendia of information, either by audiotext (telephone) or on the Internet, so the client can access that information 24/7. Remember the cardinal principle, "Use your lawyer only for what only your lawyer can do." If a person going through divorce can spend three hours on a web site before visiting with a lawyer, that person may have 80% of their questions answered. This will reduce dramatically the time they spend with the lawyer and reduce dramatically the money they pay to the lawyer.

## **Description of a Typical Model**

If you have a current license to practice law and openness to unbundling, you are ready to begin. Essentially the difference between a traditional full-service attorney and an unbundling attorney is your willingness to explore the unbundling option with your client. An unbundling attorney recognizes that many clients would be more satisfied with an unbundling relationship than with a traditional full service one. You'll be more successful

offering discrete task services if you can present the unbundling concept in a cogent manner to your clients.

If you are clear and concise in the availability of unbundled services, your client will have a clear understanding of the potential roles they can serve and the roles you may serve. Using a carefully drafted engagement agreement, the client can select among 17 classes of service the lawyer can perform. These services include:

1. Legal advice: office visits, telephone calls, fax, mail, E-mail
2. Advice about availability of alternative means to resolving the dispute, including mediation and arbitration.
3. Evaluation of clients' self-diagnosis of the case and advising client about legal rights.
4. Guidance and procedural information for filing or serving documents.
5. Reviewing correspondence and court documents.
6. Preparing and/or suggesting documents to be prepared.
7. Factual investigation: contacting witnesses, public record searches, in-depth interview of client.
8. Legal research and analysis.
9. Discovery: interrogatories, depositions, requests for document production.
10. Planning for negotiations, including simulated role playing with client.
11. Planning for court appearances made by client, including simulated role playing with client.
12. Backup and trouble-shooting during the trial.
13. Referring client to other counsel and to other experts.
14. Counseling client about possible appeal.
15. Procedural assistance with appeal and assisting with substantive legal argumentation in appeal.
16. Provide preventive planning and/or schedule legal check-ups.
17. Other services as needed by the client.

The client has the responsibility to perform those services that are not checked off. The lawyer is not authorized to perform those functions and not entitled to payment for them. If the client makes ineffective or self-destructive decisions or actions in handling a task for which the lawyer is not responsible, the client cannot blame or take legal action against the lawyer.

## 1. ***Practice Tips for an Unbundled Legal Practice***

- ✍ Think about all the ways you offer limited legal services in your current practice;
- ✍ Are you clear about what unbundling is and how to explain its benefits to your clients?
- ✍ Are you alert to the risks of unbundling and how to respond to them effectively?
- ✍ Develop materials to clearly lay out the options available to the client for services you are able and willing to perform.
- ✍ Prepare your office so that before the client even calls, your set-up and your staff are centered around clients and their education and decision-making;
- ✍ If you use unbundling as a backup strategy to meet client demand, you can start offering discrete task services next week without changing anything you are currently doing;
- ✍ Proactively offering unbundling requires you to take concrete steps to orient the client about discrete task options at the earliest opportunity;
- ✍ Coaching from the sidelines still requires a game plan and involvement in the client's problem;
- ✍ The initial client intake conference is your chance to focus your lawyering efforts to honor and meet client concerns and to emphasize client comfort and empowerment;
- ✍ Before launching into a limited lawyering engagement, join with the client in assessing whether the client and the type of case are appropriate for unbundling;
- ✍ Learn the rules around limited scope engagement and use those rules and the Sample Agreement to custom draft your own Limited Scope Client Lawyer Agreement;
- ✍ Clarify and stick to your fee arrangement – in unbundling, your client should never owe you money. Such an account receivable would destroy the unbundling relationship.
- ✍ Monitor your client's actions throughout the limited scope engagement. Both you and the client should know when and how you will stay in touch;
- ✍ A limited engagement sometimes (often?) turns into a full service relationship. Remember, you probably would not have been hired originally if you had not offered the unbundled option.
- ✍ Reconverting back to limited scope from full service can be perilous—do so only after a full and frank disclosure to your client (preferably in writing) of the risks that client is re-assuming.
- ✍ Evaluate your clients' satisfaction early and often; how else will you learn what you are doing right and what changes need to be made?

## To Find Out More:

Space limits the information presented here. To learn more about unbundling, here are some references that offer additional background:

**Mosten, Forrest S., The Complete Guide to Mediation, American Bar Association, 1997.**

**Talia, Sue, A Client's Guide to Limited Legal Services, Nexus Publication, 1998.**

Sample Coaching Agreement online: <http://www.divorceinfo.com/coachingagmt.htm>

Online description of how coaching works: <http://www.divorceinfo.com/coaching.htm>

Online description of the benefits and risks of unbundling: <http://www.divorceinfo.com/unbundling.htm>

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