



DO LAWYERS UNBUNDLING IN A FRIGID ECONOMY LEAD TO EXPOSURE?

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A large number of middle class litigants find the cost of legal representation prohibitive. Clients have resorted to self-representation out of economic necessity. Many litigants opt for partial self-representation because they have no financial alternative. A litigant has decided to handle the case, but needs some guidance on procedure or an attorney to handle the specific tasks that he/she cannot handle. In this situation, how can an attorney handle some aspects of the case and protect himself/herself against exposure in this frigid economy?

One approach that has been increasingly utilized to bring down the costs of legal services is for lawyers and clients to allocate the duties and responsibilities for handling a legal matter between themselves thereby limiting the scope of the lawyer's representation to specific services or discrete tasks. Limiting the scope of legal representation is sometimes referred to as 'unbundling' a lawyer's legal services. Such unbundling of legal services can provide the layperson with much needed legal expertise and advice while keeping the cost of legal representation at an affordable level.

Many lawyers are fearful of this approach because they have not heard of it, there are too many legal and ethical issues, including malpractice concerns as to the nature and scope of continued representation. Family lawyers have been using this approach for years. Lawyers who attempt to limit the scope of their representation must be mindful of their professional obligations, and must take care to communicate fully with the client and put appropriate procedures in place to ensure that the client receives competent representation and is not prejudiced. Lawyers in unbundling legal services must ask the right questions clarify the issues, make the necessary disclosures and develop the procedures that facilitate the proper handling of the client's legal matter.

ANALYZE WHETHER UNBUNDLING OF LEGAL SERVICES IS APPROPRIATE.

Unbundling of legal services is not appropriate for all practice areas. Family lawyers have been using limited scope representation for years. This has been such a recognized practice that the Judicial Council has promulgated forms to facilitate unbundling in family law cases, e.g. see Judicial Council Form FL-950 Notice of Limited Scope of Representation and FL-955 Notice to be relieved as Counsel upon completion of Limited Scope Representation. An area where unbundling of legal services has been effective is landlord-tenant disputes, real estate and small business matters and consumer disputes. In many actions that are driven by Judicial Council forms, clients seek advice on how to complete forms and how to navigate the legal system and conform to court practice and procedures. There are internet web sites that are popping up that offer unbundled legal services for a self-represented client, for example, LegalAdviceLine.com. Many of these websites offer limited tasks based upon the type of the dispute. It is wise to avoid unbundled legal services in very sophisticated and/or complicated litigation.

Also in some practice areas, the attorney may not be allowed to limit their representation for a particular aspect of a judicial or quasi-judicial proceeding.

INFORM THE CLIENT OF THE RISKS AS WELL AS THE BENEFITS OF UNBUNDLING LEGAL SERVICES.

Lawyers should communicate to their clients the scope to the limited representation, including the matters the lawyer is not handling. Clients should be advised of the adverse consequences of the limited scope and to advise the client to consult with other counsel about legal matters the lawyer is not handling. It may also be advisable to recommend against a proposed allocation of responsibility or even to decline the representation if the attorney believes the client's proposed split of responsibility will become a disaster.

INSTITUTE PROCEDURES TO ENSURE THAT CLIENT UNDERSTANDS RAMIFICATIONS OF UNBUNDLING LEGAL SERVICES.

The most important procedure to ensure competent representation are written fee agreements and written risk management tools designed to ensure that clients understand the specific nature and ramifications of their specific arrangement. A checklist for family law attorneys can be found in FL-950. This type of checklist can be adapted by attorneys in other practice areas to ensure that all matters relating to the limited scope representation are covered and that both parties fully understand their respective assignments and responsibilities.

TAKE STEPS TO AVOID PREJUDICE TO THE CLIENT UPON COMPLETION OF THE LIMITED SCOPE OF REPRESENTATION.

The attorney and client have an understanding from the outset that the lawyer is not going to see the matter through its conclusion. However, in withdrawing from representation before the conclusion of the client's matter, an attorney must take reasonable steps to avoid foreseeable prejudice to the rights of the client. Thus, from the beginning of the representation, the attorney should pay particular attention to the need to educate and inform the client in order to avoid reasonably foreseeable prejudice to the client's rights upon completion of the attorney's services. This will include informing the client about matters pending at the time of the attorney's withdrawal, applicable deadlines, court appearances, etc.

HAS THE ATTORNEY FULFILLED THEIR ETHICAL DUTIES FOR A LIMITED SCOPE REPRESENTATION CLIENT?

Many of the steps discussed above address the California Rules of Professional Conduct. With any representation, whether limited scope or full representation an attorney must comply with the California Rules of Professional Conduct. The relevant rules that should be reviewed in limited scope representation matters are CRPC 3-110 Failing to Act Competently, 3-300 Avoiding Interest Adverse to a Client, Rule 3-310 Avoiding the Representation of Adverse Interests and Rule 3-700 avoiding prejudice to the client's interest upon withdrawal.

Unbundling legal services in this frigid economy will not lead to liability exposure. If an analysis is done as to whether it is appropriate in a practice area, procedures are put in place, discussions with a client are confirmed in writing and rules of professional conduct are followed, unbundling can be very rewarding for both the client and the attorney.

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