



Uncovering Opportunities by Unbundling Services

By whatever name you previously called it, “unbundling” of legal services has become a hot issue in the practice of law. Frequently seen in the bankruptcy and domestic relations areas, unbundling also has been called “discrete task representation,” “limited representation” or “shadow representation.” It describes an agreement between a lawyer and a client that the scope of the legal services rendered by the lawyer will be limited to specifically defined tasks upon which the client and the lawyer mutually agree. A recent article in *LAWYERS WEEKLY USA*¹ sets forth examples of unbundling and discusses some of the problems that have arisen for lawyers who do it.

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What you will determine when you read the limited literature on the subject is that there is little agreement among lawyers as to what kinds of legal tasks lend themselves to unbundling. These areas include uncontested divorces, simple bankruptcies, landlord-tenant disputes, simple estate planning, personal injury and even workers’

compensation matters and business buy-outs. As the article in *LAWYERS WEEKLY USA* points out, unbundling is taking hold in the legal profession because it provides a way for clients to reduce legal costs and allows lawyers to continue to charge full rates for the work that they handle.

Say a client wants representation in a dispute with his landlord:

- He agrees that you will prepare for a set fee the answer to the forcible entry and detainer action.
- The client agrees that he will make all court appearances and will select all the witnesses he’ll take with him to help his case.
- You will advise him what needs to be emphasized to the court to establish his defense.

The client thus enjoys savings for doing much of the work himself and you get paid your normal rate for the modest amount of work you do. This is known as the “unbundling” of legal services.

If you decide to engage in a limited representation for a client, there are several ethical rules you need to consider.

First, unbundling is not unethical and in fact is specifically provided for in our ethical rules.² ER 1.2(c) provides that a lawyer may limit the objectives of the representation if the client consents after consultation.

The word to watch out for here is “consultation.” It is a defined term under the Terminology section of the Arizona Rules of Professional Conduct. It denotes “communication of information reasonably sufficient to permit the client to appreciate the significance of the matter in question.” In the unbundling context, this means that if the lawyer is not going to provide full representation on all aspects of the client’s

Ethics Opinions are available on page 39 and at www.azbar.org/EthicsOpinions

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legal matter, the client needs to clearly understand that fact and needs to understand exactly what the lawyer is going to do and what the lawyer is not going to do.

The careful lawyer will have all of this put in writing, dated and signed by the client. Failure to do this may result in claims of malpractice in the event something the client thought the lawyer was going to do isn't done. It also may subject the lawyer to a Bar complaint for violations of ER 1.4(b), which requires a lawyer to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation, and ER 1.3, which requires a lawyer to act with reasonable diligence and promptness in representing a client.

Always remember that limited representation does not mean limited liability. A lawyer must competently handle the work undertaken and must be prepared to defend claims for damages brought when something goes wrong because of what a client didn't do or didn't think he or she was supposed to do. In view of this, the more specific you can be about what you are not going to be responsible for in a client's representation, the safer you are going to be. ▲

endnotes

1. *Unbundling Services for a Pro Se Can Be Risky Business*, LAWYERS WEEKLY USA 174 (Mar. 4, 2002).
2. ER 1.2(c), Rule 42, ARIZ.R.S.CT.