

RISKS ASSOCIATED WITH UNBUNDLING LEGAL SERVICES



By Forest Mosten

Like many opportunities, offering unbundled legal services is a business decision that has some dangers associated with it. This article provides the key practice tips to make unbundled service delivery a success for your clients and for your practice.

Most lawyers have been educated regarding deciding which legal services a client needs. The full-service package usually starts with a client paying a retainer and cost limitations are outweighed by lawyers (and clients) expecting the lawyer to do what is necessary to competently represent the client.

Many clients who cannot afford or do not wish to buy the traditional full-service package may be able to afford limited fees for limited services. This reality is resulting in the do-it-yourself movement and growth of mediation which is in turn producing a consumer population that wants more control over the cost of professional services. Many people are even prepared to do some work themselves to save money. At the same time, many people who want to take advantage of unbundling may not be capable of handling the tasks on their own. That makes the intake process an important stage in averting risk. A client's desire for unbundled legal services does not mean that they are qualified to take on all of the lawyering tasks involved in unbundling service for the case. You will need to evaluate their ability prior to agreeing to such an arrangement. Ask some tough question such as:

- Are there language or educational deficiencies?
- Are there anger management concerns?
- Are medical/mental challenges present?

Another consideration is the complexity of the case. The opposing lawyer may be so skilled or aggressive that a client trying to negotiate or handle court hearings on his own may be headed for disaster.

It is just as important to ask yourself, are you the right lawyer to handle the parts of this case that the client delegates to you? Do you have experience and knowledge in the area of law and skills to properly supervise the client? If you do refuse the case, be sure to do so in writing to document that you are not their lawyer and they should seek other counsel, especially with looming deadlines or Statutes of Limitation.

The key to meeting ethical requirements for unbundling legal services is to document client informed consent. Before taking on a limited-scope engagement, make sure that your client knows the benefits and risks of the unbundled arrangement. Before you take on a full service client, reverse the information and compare the traditional model with the advantages and downsides of unbundling the legal services. Use the variables of cost savings, control, ability to handle frustration, client skills and time available.

A key ethical requirement for the validity of any limited scope engagement is a written engagement letter. There are many template agreements available through the ABA or your state bar. Your agreement should be clear, and provide a detailed check-list of those tasks that the client will be undertaking and those tasks for which you are assuming responsibility. Your fee structure should also be outlined in detail. For example, if you are requiring a replenishable retainer, you should specify when additional fees are required. If you are working for a flat fee, be explicit when your responsibilities are fulfilled. It also is crucial that you and your client know how and when to be in contact with each other. Set expectations regarding communication at the beginning of the attorney-client relationship. After reviewing the agreement, it is a prudent practice to allow your client time to reflect upon the challenges of the unbundled option prior to signing your engagement agreement, so encourage them to take the agreement with them for at least 24 hours prior to signing.

Another issue that is cause for concern when unbundling legal services is that states have been divided in their requirements of notice. Some states protect the confidentiality of shadow lawyering so that courts, lawyers, and parties must deal directly with a self-represented party regardless of how much coaching a lawyer does from the sidelines. Other states require lawyers who ghostwrite pleadings to disclose their unbundled role. Some states have court forms available for lawyers to expressly state the issues and lawyering tasks (negotiation, drafting,

which court proceedings) for which they have been retained leaving all other issues and tasks to be handled by the client. Carefully review your own state's requirements of notice and follow them carefully.

One of the practice building benefits of offering unbundled services is that your clients may decide that they want full-service assistance. In such a situation, you will need a new attorney-client engagement with a more traditional fee arrangement outlined.

Unbundling legal services is yet another way for lawyers to address the needs of their clients and expand their client base. It is also sometimes a source of malpractice claims. Doing your homework and proactively establishing procedures to prevent issues can go a long way to avoiding malpractice claims.

Forrest S. Mosten is internationally recognized as the "Father of Unbundling" for his pioneering work in Limited Scope and Discrete Task Services to provide affordable and understandable legal services to the underserved members of our society. He is in solo private practice as a Family Lawyer and Mediator in Los Angeles in which unbundling and other non-litigation activities are the foundation of his professional work. He is the author of four books and numerous articles about unbundling and other issues of legal access and peacemaking, serves as a keynote speaker for legal conferences worldwide and is Adjunct Professor of Law at the UCLA School of Law.