We live in a do-it-yourself (DIY) society where the public is empowered in ways that it has never been before through the use of the Internet. Consumers are comfortable going online to handle business and professional transactions. They shop, conduct banking and investing, earn degrees, and communicate with family and friends over the Internet, but they also have rating and review websites, as well as online recommendations from family and friends at their fingertips before making any purchasing decision. The public has gotten used to controlling online interactions and many individuals see the benefit and convenience of handling business on their own time after having shopped around online to find what they perceive to be the best option available. Even when a consumer chooses to visit a shop or professional in person rather than online, chances are that they have used an online resource to either locate and/or review their choice ahead of time. The empowered consumer also understands that when a product or service has a DIY component, it tends to be more affordable. This is seen as an acceptable tradeoff for doing a little or a lot of the footwork. In the current economy, many average-income individuals are more than willing to do the extra work to save money on their legal needs. The legal profession is not immune from the impact of these changes in consumer behavior.

Several major disruptors have begun to take greater hold on our profession, changing not only the way we must practice law, but also the expectations and demands of the public we serve.¹ Some of these disruptors are technology-based, such as document assembly and automation, the growth of ecommerce, the spread of online legal service providers and a general digital connectivity that ignores geographic boundaries and enables perpetual sharing of information. Other disruptors are more philosophical or based on changes to the underlying business.
models in the marketplace rather than technology. These include the increasing accessibility of legal information, the growth of open sourced and multidisciplinary legal education, a sense of duty to resolve disputes while keeping legal costs minimal, outsourcing of legal work, globalization of law firms, and the collaboration of professionals within and outside of the legal profession across previously tight-knit industries.

These changes in the marketplace may not actually mean that the quality of the services generated have greatly improved. Rather, the increased convenience, accessibility, and self-help capabilities created by these disruptors have irrevocably changed consumer concepts of the value of commodities and services. This will require lawyers to rethink the value they place on the services they deliver to clients and find ways to innovate that will meet the new consumer’s concept of the value of legal services. This is leading to a renewed interest in and need for the unbundling of legal services.

Unbundling legal services, also termed limited scope services, a la carte legal services, discrete task representation, or disaggregated legal services, is a form of delivering legal services where the lawyer breaks down the tasks associated with a legal matter and only provides representation to the client pertaining to a clearly defined portion of the client’s legal needs. The client accepts the responsibility for doing the footwork for the remainder of the legal matter until reaching the desired resolution.

A few examples of unbundled legal services include:

- Ghostwriting,
- Drafting pleadings, briefs, declarations or orders,
- Document review,
- Conducting legal research,
- Negotiating,
- Making limited appearances,
- Advising on court procedures and courtroom behavior,
- Coaching on strategy or role playing,
- Preparing exhibits,
- Alternative dispute resolution,
- Online dispute resolution,
- Organizing discovery materials,
- Drafting contracts and agreements,
- Providing legal guidance or opinions,
- Providing direction to resources such as local and state rules, and
- “Collaborative lawyering.”

Most law firms may fit unbundling into the practice areas and services that they currently offers. However, certain practice areas do not lend themselves well to unbundling. These might include criminal law, tax law, complex child custody matters, or any practice where the client’s case requires continuous legal representation from start to finish in order to ensure the best outcome for the client. Transaction-based or document-heavy practice areas, such as business law, estate planning, intellectual property, immigration law, and family law, work well for a firm wanting to devote a portion of its practice to unbundling legal services. However, even firms whose practices are litigation-based may find ways to offer unbundled services to either existing, full-service clients or to a new base of pro se litigants seeking limited scope representation.

Recognizing the benefits of unbundling for both the public and the profession, the Board of Governors of the State of California on May 15, 2009 published a Limited Scope Legal Assistance (Unbundling) Resolution stating,

State Bar Section members, particularly the Family Law, Solo and Small Firm Practice, Business Law, Real Property, and Trusts & Estates Sections, should be encouraged to develop education for their membership and to expand the use of limited scope representation in their respective practice areas, and should emphasize the benefits to their members if they offer limited scope legal assistance.

Accordingly, how does a lawyer or law firm begin to integrate unbundling into its practice?

Adding Limited Scope Services into Your Law Practice

Unbundling legal services requires a different set of best practices that differ from that of a traditional, full-service case. Before integrating unbundling into a law practice, the law firm should first understand the State
Bar and its local court rules regarding limited scope representation.

Revised in 2002, the ABA Model Rule 1.2(c) titled “Scope of Representation” formally allows for the unbundling of legal services by stating “(c) [a] lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.” California was one of the first of the forty-two states that adopted or modified a version of Rule 1.2(c) after it was added to the Model Rules. California’s 2012 California Rules of Court Rule 3.35 specifically defines limited scope representation.\(^4\) Rules 3.35 -3.37 apply to unbundling in civil cases with the exception of family law cases which are covered in the Family and Juvenile Rules, Rules 5.70- 5.71. Additionally, the Los Angeles County Bar Association’s Professional Responsibility and Ethics Committee has published several ethics opinions related to limited scope representation. Specifically, Ethics opinion 483 (1995) covers procedure in limited representation of pro se litigants and Ethics opinion 502 (1999) discusses the lawyer’s duties when ghostwriting or negotiating settlement for a pro se litigant.

In 2007, the ABA published Formal Opinion 07-446, which permits ghostwriting. This opinion stated that an attorney could provide limited assistance to a pro se litigant by helping them prepare written materials without disclosing the lawyer’s involvement in the preparation to the court. State bars and local bars have addressed ghostwriting in different ways. Under California Rule 3.37, titled “Nondisclosure of attorney assistance in preparation of court documents,” attorneys’ ghostwriting or assisting in the drafting of legal documents, but who will not be making an appearance, are not required to disclose lawyer authorship of the documents. Under California State Bar Rule 3.36, lawyers may give notification of limited scope representation to the court and other parties through the filing of a specific form. There is also a separate process and required form filing to be relieved as the attorney for that limited representation. Under the Los Angeles County Bar Association’s Professional Responsibility and Ethics Committee’s Ethics opinion 502 (1999), lawyers do not have a duty to disclose the limited scope representation to the court.

Additionally, the State Bar of California Professional Rule of Conduct, Rule 1-650 covers Limited Legal Services Programs which covers short-term limited scope services, such as limited legal guidance or the completion of a legal form, which is sponsored by a court, government agency, bar association, law school, or nonprofit organization. It was created to address situations where thorough conflict of interest checking was not possible and to increase the reach of access to basic legal assistance through these programs.

Lawyers considering integrating unbundling into their firm’s practice should first review these rules and ethics opinions as they pertain to the potential form of limited scope representation. More specifically, lawyers should be aware of the two primary ethical issues that will be raised in unbundling and how to create best practices to ensure compliance.

The first rule of unbundling is found in California Rule of Professional Conduct 3-110, which states that the client shall be provided with “competent” representation. The lawyer must also ensure that the representation will be “reasonable.” A lawyer should not attempt to provide unbundled legal services in an area of the law in which the lawyer is not experienced. Although the representation may be limited to drafting a single legal document, assisting with part of the discovery process or making a limited hearing appearance, it is necessary for the attorney handling the limited scope case to understand the entire case in full. That attorney should be able to provide clients with the instruction and guidance needed to complete their legal needs following the firm’s limited representation. The attorney must be able to explain to the client any of the potential issues that may come up as the case proceeds, identify collateral issues, and...
make sure that the client understands that the firm is not going to be handling certain portions of the case.

The second rule of unbundling is that the lawyer must clearly define the scope of representation for the client. Rule 1.2(c) requires that “the client gives informed consent” to the limited scope. The client needs to understand the nature of the limited scope representation from the beginning of the attorney/client relationship. Without this clarity, the client may misunderstand the scope of services that the attorney is providing and carry false expectations. Drafting a well-crafted limited scope engagement agreement helps to ensure that the client is informed about the scope of representation and also provides a record of their consent to that representation.

Limited scope agreements should clearly define the nature of the services being provided by the firm to the client. If the firm is using technology to deliver unbundled services online, the agreement needs to explain the use of the technology and how the client can expect to receive services in digital format and communicate with the firm online. It may be possible for the attorney to draft standard limited scope agreements for each type of unbundling service that the firm provides. However, in most cases, it may be necessary for the attorney to tweak the agreement on a case-by-cases basis to ensure that the scope is appropriately limited to the client’s unique legal needs. In addition, to avoid misleading the client, the agreement should be written in plain language rather than legalese.

Another concern in defining the scope of representation is that the prospective unbundled client may not understand the difference between full-service representation and unbundled services. Most clients are focused on the end result of the legal services, the completion of their legal needs, and do not have a good understanding of the work involved in getting there. In order to ensure that the client fully grasps the limited scope of the representation, the attorney may want to consider providing the client with a handout that lists the steps typically involved in the process of the case. This handout might compare the full service representation to the limited scope services that the client will be receiving from the attorney.

In addition to ensuring competent limited representation that is clearly defined in scope, the lawyer must abide general best practices for ethical delivery of unbundled services. Some of these include the following:

1. **Client Intake:** Establishing a client intake process and procedures for working with limited scope clients is the first step to integrating unbundling into a law firm. In many cases, the law firm may use some of its existing client intake forms or worksheets to collect the information from the prospective unbundled client.

2. **Check for Conflicts:** Attorneys who provide unbundled legal services may work with a larger quantity of clients for shorter periods of time than a traditional firm. Often, in order to make the practice of unbundling profitable for a law firm, it is necessary to generate a higher quantity of prospective clients through leads from attorney referral services, directories, or other marketing strategies. Conflicts checks can be tricky with certain unbundled matters because the lawyer may not be starting at the case from the beginning of the process. The lawyer must be especially careful to inquire about all of the potential parties involved in the legal matter through the initial client intake process and before determining whether to provide limited scope services to the client.

3. **Educate clients with checklists and instructions:** Because limited scope clients will be handling a majority of their legal needs for themselves after you have provided a portion of the work, most of these individuals need guidance to complete the matter. It should be the responsibility of the attorney to explain to the client how the typical legal process works and what the client will need to follow through to the end.

4. **Keep Records of Interactions with the Client:** A law firm that is unbundling should keep good records of its interaction with limited scope clients from the beginning of their contact with the firm. Unbundling clients in particular may be more likely to contact the attorney after the services are complete to ask follow-up questions or to request additional services beyond the scope of the initial engagement agreement. To avoid malpractice claims, the attorney should record each
of these conversations for the client’s file and be careful to record when the client was provided with documents and instructions. Copies of all checklists, instructions, and detailed information given to the client should be kept in this file with the date each was provided.

5. Malpractice Insurance: Limited scope representation does not mean limited malpractice liability risk. Attorneys who unbundle legal services need to be extra careful to record each step of the delivery process. Most standard malpractice insurance policies cover unbundling. However, the carrier may wish to review the firm’s limited scope agreement and ensure that there is a solid process in place for the firm to ensure that there is informed client consent and acceptance of the limited scope of representation.

6. Termination letter and following appropriate procedures for withdrawal: After completing the limited scope of services for the client, the lawyer should send the client a termination letter or some form of written confirmation that the lawyer has fulfilled the scope of services that were originally set out in the limited scope agreement. This serves two purposes: 1) to protect the lawyer from the client’s claim that he or she believed a next step in the legal matter was up to the lawyer or firm to complete; and 2) protect the client by reminding him or her of the responsibility to complete the legal matter from that point. The lawyer should also consult with Cal. Rule of Prof. Conduct 3-700 regarding any withdrawal procedures necessary if the lawyer is on record for a litigated matter.

After carefully reviewing the relevant California rules related to limited scope representation and creating best practices and processes for unbundling, a law firm should be able to unbundled legal service delivery to its existing practice. As discussed above, there are benefits for the professional, as well as the public, in unbundling legal services. Unbundling may be seen primarily as a service to be handled pro bono or “low” bono or seen as a service primarily to aid pro se litigants navigate the justice system. However, unbundling should be looked at in a much broader sense—as the middle ground between no legal representation and full-service representation. To quote the ABA Section of Litigation: “[l]imited scope legal assistance is not a substitute for adequate funding for indigent legal services programs.” But until the day our society can afford the resources to provide full service representation to all, the reality is that the legal profession must find ways to provide as much assistance as possible.

The most successful law firms will find ways to add unbundled services to their full-service representation offerings and others will create entire practices that provide only unbundled assistance. Innovative firms will be able to quickly adapt to the changing legal marketplace and learn to collaborate as well as compete with branded networks and other companies that have the financial and brand power to directly appeal to the empowered consumer seeking DIY legal services.

Responsible adoption of unbundling by lawyers will help push our profession into the next generation of professional legal service delivery - opening up new business and practice potential for lawyers and law firms and increasing access to justice for the public we serve.

[Portions of this article were rewritten from the book, Limited Scope Legal Services: Unbundling and the Self-Help Client, ABA/LPM Publishing, March 2012 which may be purchased online here.]

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Further resources

ABA Standing Committee on the Delivery of Legal Services


Standing Committee on the Delivery of Legal...
MCLE Self-Study Article: Unbundling

Services white paper, “An Analysis of Rules that Enable Lawyers to Serve Pro Se Litigants.”


California Self-Help Resources

California Courts Self-Help Center

I-Can Legal Models

The Superior Court Family Law Facilitator Web Site

The Superior Court of California, County of Sacramento Self-Help Resources Web Site

The Superior Court of California, County of Ventura, Legal Self-Help Web Site

Examples of Unbundling in California

Legal Genie created by Legal Aid Society of Orange County

Legal Grind, founded by attorney Jeff Hughes.

Forrest “Woody” Mosten, “Father of Unbundling”, Mediator and Collaborative Attorney

Mr. Mosten wrote the book Unbundling Legal Services: A Guide to Delivering Legal Services a la Carte for ABA publishing in 2000 and is also the author of the Collaborative Divorce Handbook: Effectively Helping Divorcing Families Without Going to Court published by Jossey-Bass in 2009. He has been a mediator since 1979 and is an Advanced Practitioner Member of the Association for Conflict Resolution. He also received the Lifetime Achievement Award for Innovations in Legal Access from the ABA Section of Delivery of Legal Services. Mr. Mosten is a Certified Family Law Specialist and member of the California State Bar. His private practice focuses on divorce, pre-marital agreements, complex property issues, support, and parenting issues following divorce.

M. Sue Talia, Private Family Law Judge

M. Sue Talia is a private family law judge who has presented a number of speeches and published papers on unbundled legal services. She is a certified Family Law Specialist and member of the State Bar of California. Ms. Talia is a member of the Limited Representation Committee of the California Commission on Access to Justice. Ms. Talia chaired and presented a CLE web program for the Practicing Law Institute (PLI) entitled “Expanding Your Practice Using Limited Scope Representation” recorded on April 1, 2009. You can view it for free here: http://www.pli.edu/Content.aspx?dsNav=Rpp:1_N:4294964525-167=&ID=54234

CA Case Law Related to Unbundling

In the Matter of Valinoti (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498, 521


Streit v. Covington & Crowe, 82 Cal.App. 4th
441 (2000)

Ricotta v. California, 4 F.Supp.2d 961 (S.D. Cal. 1998)


Endnotes


2 The change in value proposition has even affected nonlawyer legal service providers. See for example, WethePeople.com, a franchise that provides unbundled document preparation services to customers through store-fronts in several states. The company filed for Chapter 11 bankruptcy in 2010 following a decrease in revenue perhaps caused by the movement towards more online DIY legal services. “We the Pauper”, May, 2, 2010, ABA Journal, at http://www.abajournal.com/magazine/article/we_the_pauper/, last accessed October 30, 2011.

3 “As more and more industries fracture, many traditional companies will find themselves cut off from their customer base. Just to reach their markets, they will have to compete or cooperate with an increasingly powerful group of infomediaries. To survive, traditional companies might have no choice but to unbundle themselves and make a definite decision about which business to focus on....” Hagel, John III and Singer, Marc, The McKinsey Quarterly, 2000 Number 3, pp. 148—161. See also, Hagel, John III and Singer, Marc, Net Worth: Shaping Markets When Customers Make the Rules (Harvard Business School Press, 1999).

4 Additional California court cases defining limited scope representation include Nichols v. Keller, 19 Cal.Rptr.2d 601 (1993), regarding defining the scope of the limited legal representation for the client; Ricotta v. California, 4 F.Supp.2d 961 (S.D. Cal. 1998), regarding assisting with pro se litigants; Streit v. Covington & Crowe, 82 Cal.App. 4th 441 (2000), regarding special appearances.


6 See generally Model Rule 1.2 “Scope of Representation”; See for example the following cases where the client was required to consent to the clearly defined limitations of the representation provided by the attorney: Indianapolis Podiatry PC v. Efroymson, 720 N.E.2d 376 (Ind. Ct. App.1999); In re Bancroft, 204 B.R. 548 (Bankr. C.D. Ill. 1997); Johnson v. Freemont County Board of Comm’rs, 85 F.3d 489 (10th Cir. 1996).