

# Unbundling of Legal Services: Selected Resources

By Ruth S. Stevens

Clients seeking representation in consumer law matters may contact an attorney for basic advice and review of documents, help with writing a demand letter, or advice and assistance in initiating or responding to litigation. In some situations, clients will not need or be able to afford beginning-to-end representation. They and their attorneys may wish to consider unbundling of legal services. Unbundled representation—also called discrete task or limited-scope representation—has been defined as representation “in which a client hires an attorney to assist with specific elements of a matter such as legal advice, document preparation or document review, and/or limited appearances. . . . Depending on the nature of the attorney’s involvement, the attorney may or may not enter an appearance with the court.”<sup>1</sup> Unbundled services can range from a simple office consultation to preparation of pleadings to be filed by a client.

At first blush, it may seem that unbundling of services would undercut the lawyer’s bottom line. However, this approach to the delivery of legal services has been hailed as an option that both serves the public by providing increased access to legal representation and increases the market for legal services among clients who can afford to pay for discrete services but not full representation. As State Bar of Michigan President Charles R. Toy noted in his May 2010 President’s Page, “[A] person who cannot afford full representation may be able to afford an attorney on a limited basis to prepare a pleading or to obtain counsel before appearing in court—a win-win for both the client, who would otherwise have no legal help, and for the lawyer, who has a paying client whom he or she can help.”<sup>2</sup> Unbundling of services is not a new concept,

but its use is now expanding into additional areas of practice.

Lawyers considering unbundling their legal services need to know the ethical and practical aspects of this type of representation. The ethical aspects of providing limited-scope representation are of immediate concern to many attorneys, and a number of the rules found within the Michigan Rules of Professional Conduct are relevant, including MRPC 1.2, which directly addresses the scope of attorney representation. The full text of MRPC 1.2 and other relevant rules of professional conduct, as well as State Bar ethics opinions interpreting the rules, can be found on the ethics section of the State Bar website.<sup>3</sup> The resources on the site include RI-347,<sup>4</sup> an ethics opinion released in April 2010 that identifies the specific Michigan Rules of Professional Conduct that come into play when an attorney undertakes discrete representation and directly addresses ethical issues connected to unbundling of services for matters that are in litigation.

The State Bar also provides resources to support attorneys in other areas that are pertinent to unbundling of legal services. *Unbundling Legal Services: A Guide to Delivering Legal Services a la Carte*, a book written by Forrest S. Mosten, a family law attorney and mediator who styles himself as the “Father of Unbundling,”<sup>5</sup> is available through the lending library of the State Bar Practice

Management Resource Center.<sup>6</sup> In addition, a workgroup of the Bar’s Access to Justice for All Task Force studied the issue of unbundling; its findings are reported in a *Michigan Bar Journal* article published in 2000.<sup>7</sup>

The American Bar Association (ABA) and the National Center for State Courts also provide resources useful for attorneys interested in offering discrete representation as an option for clients. The ABA Pro Se/Unbundling Resource Center<sup>8</sup> provides links to relevant articles in legal periodicals as well as links to current caselaw, rules, and ethics opinions. The National Center for State Courts provides resources on this topic through its Legal Aid/Pro Bono Unbundled Legal Services Resource Guide.<sup>9</sup> These materials include a survey of nationwide developments in the area of unbundling.<sup>10</sup>

Beyond the policy and ethical issues involved in unbundling, lawyers may seek answers to practical questions relating to discrete representation, such as which services are most amenable to unbundling, the impact of discrete representation on malpractice coverage, and the wording of retainer agreements to provide protection to both clients and attorneys. Several resources provided by the ABA are especially useful in addressing these questions. First, the spring 2010 ABA Practice Management newsletter, *Law Trends & News*, contains an article with basic suggestions for how to expand a law

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practice to include discrete representation.<sup>11</sup> The ABA Section of Litigation has also developed a full handbook on limited-scope representation available through its website.<sup>12</sup> This manual walks the lawyer step by step through the various aspects of discrete representation. Similarly, training materials from a 2009 session sponsored by the ABA Standing Committee on the Delivery of Legal Services provide concrete illustrations of how discrete representation can be incorporated into a law practice with sample retainer agreements and other forms.<sup>13</sup>

The above resources provide a wealth of information and practical advice for attorneys who would like to expand their practice in new or existing areas by using limited-scope representation and who want to ensure that the practice comports with ethical rules and best practices developed by other attorneys who have experience with limited-scope representation. These sources can also be used to keep abreast of changes as Michigan law relating to unbundled legal services continues to develop. ■



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## FOOTNOTES

1. ABA Standing Committee on the Delivery of Legal Services and Legal Aid Society of Orange County, *Unbundling 101: Expanding your practice using limited scope representation*, at 6, available at <[http://www.abanet.org/legalservices/delivery/downloads/101\\_orange\\_county\\_program\\_materials.pdf](http://www.abanet.org/legalservices/delivery/downloads/101_orange_county_program_materials.pdf)>. All websites cited in this article were accessed August 7, 2010.
2. Toy, *Justice for Whom?*, 89 Mich B J 19 (May 2010).
3. Michigan Court of Appeals, *Michigan Rules of Professional Conduct* <<http://coa.courts.mi.gov/rules/documents/5MichiganRulesOfProfessionalConduct.pdf>>.

4. Michigan Ethics Opinion RI-347, available at <[http://www.michbar.org/opinions/ethics/numbered\\_opinions/ri-347.htm](http://www.michbar.org/opinions/ethics/numbered_opinions/ri-347.htm)>.
5. See Forrest (Woody) Mosten, *Biography* <<http://www.mostenmediation.com/bio.html>>.
6. See Practice Management Resource Center, *Lending Library number: 98* <<http://www.michbar.org/pmrc/titles/98.cfm>>.
7. Vauter, *Access to justice—Unbundling: Filling the gap*, 79 Mich B J 1688 (December 2000).
8. ABA Standing Committee on the Delivery of Legal Services, *Pro Se/Unbundling Resource Center* <<http://www.abanet.org/legalservices/delivery/delunbund.html>>.
9. National Center for State Courts, *Legal Aid/Pro Bono: Unbundled Legal Services Resource Guide* <<http://www.ncsconline.org/wc/courttopics/ResourceGuide.asp?topic=ProBon&guide=115>>.
10. National Center for State Courts, *Pro se self-represented litigants: Trends in 2003: Limited scope legal assistance: An emerging option for pro se litigants* <[http://www.ncsconline.org/WC/Publications/KIS\\_ProSe\\_Trends03.pdf](http://www.ncsconline.org/WC/Publications/KIS_ProSe_Trends03.pdf)>.
11. Chern, *Unbundling legal services: What are they, who are they for, and how do I get started?*, 6 Law Trends and News (Spring 2010) <[http://www.abanet.org/genpractice/newsletter/lawtrends/10\\_spring/pm-feat1.html](http://www.abanet.org/genpractice/newsletter/lawtrends/10_spring/pm-feat1.html)>.
12. ABA Section of Litigation, *Handbook on limited scope legal assistance*, available at <<http://www.abanet.org/litigation/taskforces/modest/report.pdf>>.
13. See *Unbundling 101*, n 1 *supra*.