

CHAPTER 5

UNBUNDLING LEGAL SERVICES TO HELP DIVORCING FAMILIES

By Forrest S. Mosten

OVERVIEW

This chapter is designed to give the family professional a working knowledge of the importance, concepts, and fundamental skills of recommending and providing unbundled services.¹ Unbundling is as much a mindset and approach to helping clients as it is a form of practice. Therefore, in order to put unbundling into historical and sociological context, after defining the concept and setting out its benefits to divorcing family members, the judiciary, and family professionals, section one of this chapter will describe the history and development of this approach to practice. Section two of the chapter will show how unbundling is a cutting edge and creative process that clients seek and lawyers use. It will also go through the eight key steps to delivering an unbundled legal services. Finally, section three will close the chapter with some of the initiatives that will guide unbundling through the next several decades.

SECTION ONE: UNBUNDLING MODELS AND HISTORY

Unbundling is not a new concept. Essentially, unbundling is an agreement between the client and lawyer to limit the scope of services that the lawyer renders. Unbundling the full package into discrete affordable tasks is not just a theory. It has been developed and adapted over the last eighteen years and is currently used in law offices worldwide.

Part A: Vertical and Horizontal Unbundling

There are numerous replicable models of lawyers successfully unbundling their services to increase legal access. Unbundling can be either vertical or horizontal. Vertical unbundling is breaking up the lawyer role into a number of limited services, each service or a combination available for sale. Horizontal unbundling is the limitation of lawyer involvement to a single issue (spousal support) or combination of issues (child custody and property excluding retirement rights).

Examples of vertical discrete task representation include the following:

Advice: If a client wants advice only, it can be purchased at an initial consultation or throughout the case as determined by the client with input from the lawyer. The lawyer and client collaborate in helping the client decide if and when further consultations may be needed.

Research: If a client wants legal research, a personal or telephonic unbundled service provides this legal information. Research may take as little as fifteen minutes or as much as ten hours. The client is in charge of determining the scope of the job and who will do the work: the lawyer, client, or a negotiated collaborative effort between the two.

Drafting: Lawyers ghostwrite letters and court pleadings for the client to transmit, or just review and comment on what the client has prepared.

Negotiation: Lawyers teach clients how to negotiate with opposing parties, court clerks, and governmental agencies.

Court Appearances: If a client desires, an unbundled lawyer can convert to full representation for court appearances, hearings, and mediation.

Discrete tasks are agreed on between the lawyer and client.

Preventive legal wellness checkups are also a form of unbundled services. The lawyer diagnoses and counsels the client concerning a current or potential legal problem. The client determines whether to take action to prevent or cure the issue. If the client decides to pursue active treatment, a lawyer or non-legal professional (e.g., accountant, insurance broker, or therapist) may actually do the work. In short, unbundling is possible in a variety of replicable models.²

In horizontal unbundling, the lawyer may be engaged for only one issue. For example in a family case, the lawyer may handle the issue of spousal support only and the client will either represent himself and/or engage another representative for all other issues. In the same way, a lawyer might represent a client in a hearing on single temporary child custody hearing but the client will represent herself at subsequent hearings on child custody or at trial on all issues. Lawyer and client work together to determine the scope of representation and in unbundling-friendly jurisdictions, the court and other party is required to honor that lawyer-client decision.³

Limitation of legal services based on informed consent and a written agreement is permitted in every state and in many Western countries.⁴ Every consultation with a lawyer, therapist or accountant that does not result in an agreement to provide future service is an unbundled service. The professional has a multitude of services to offer and either the client chooses not to pursue or cannot afford the "full service package" offered by the professional. "Second opinions" are classic unbundled services: the professional limits his/her scope to review and comment on the work of another professional but does no more. Every time a lawyer writes a single letter instead of three possible letters or making several phone calls, the services are limited and unbundled.

Even where it hasn't been labeled as such, unbundling and limitation of scope exist because very few clients want or can afford unlimited legal service. What makes modern unbundling so unique is that clients either expect or are proactively informed and educated about the option of unbundling. Similarly, the professional proactively offers a single client or a client population an explicit choice to utilize limited services. Lawyers now have many institutional and ethical protections that allow them to offer these services without being unreasonably sued or disciplined.

Rich individuals and companies use legal unbundling every day. If a doctor has

an employment issue with a nurse, the doctor probably has a relationship with a lawyer whom she can call for advice, to review or write a letter, or to look up the law before the doctor sits down with the nurse to try and sort out the problem. Most poor spouses, working persons, and middle income individuals do not have regular relationships with family lawyers, do not believe they can afford to pay them if they did, and often are not given the resources or help to know how to handle a limited relationship with their attorney. The lawyer may also not be trained and or willing to offer limited services to new clients. Unbundling offers assistance to lawyers and clients, both of whom will benefit from its use.

Part B: History and Origins of Unbundled Legal Services

In 1978, one of the national investigations of the department of Consumer Protection for the Federal Trade Commission at its Regional Office in Los Angeles concerned unfair trade practices in the real estate industry. Specifically, innovative "maverick" real estate brokers were "unbundling" their services by discounting their prices to sellers who wanted to do most of the work themselves. These sellers would show and negotiate sales themselves and the brokers would offer kits (flags, signs, forms for agreement) and arrange for these do-it-yourselfers to advertise their homes on the local Multiple Listing Services (MLS). These discount brokers were being harassed and denied access to the MLS by their broker competitors. The investigation had some positive impact on the real estate industry as the National Association of Realtors and many state regulators affirmed the consumers' right to negotiate terms and price of services. Home sellers no longer felt it was their legal duty to agree to pay the standard 6% commission; they were able to negotiate.

In 1991, the ABA Standing Committee of Legal Services was studying the effect of the *pro se* movement on consumers, the courts, and lawyers. It became apparent to the committee reviewing the Sales⁵ study of *pro se* innovations led by Judge Rebecca Albrecht⁶ in Maricopa County, Arizona, that the downsides of self-help in divorce (poor results in child support and child custody issues, no tax advice, no mediation or counseling referrals, living without orders or not modifying outdated orders, etc.)⁷ could be ameliorated if self-help litigants could have some legal help, short of the expensive and often disempowering full service pack-

age.

Due to my experience as Assistant Director of the Consumer Protection Unit and my membership on the ABA Standing Committee, I was able to bring my experience of unbundling in the real estate industry and explain how these concepts could be applied in legal services to my colleagues on the committee⁸ and unbundling was born.

Growth of Legal Clinics

On September 14, 1972, Leonard Jacoby, Stephen Meyers, and I opened the world's first private legal clinic on Van Nuys Blvd in the San Fernando Valley in Southern California. Jacoby and Meyers and thousands of clinics that followed changed the legal landscape in many ways. One of the clinic's major contributions was a harbinger of unbundling: the set fee consultation.

Jacoby and Meyers offered a consultation to the public for a set price—it started at \$15 and then later was raised to \$25 and beyond. The importance of offering this service cannot be overstated. By paying in full, the client was entitled to the lawyer's undivided attention and paid for loyalty to give legal information, realistic options, and guidance—without any further obligation.

This is pure unbundling: the lawyer provided a discrete service—the consultation—and it was up to the client to decide if further services were needed, and whether Jacoby and Meyers would be the service provider. This bifurcation of roles between legal diagnostician and provider is the essence of unbundling.

Based on these origins, the concept and movement of unbundling have evolved and grown. The following abridged history gives a brief highlight of unbundling's development to date:

- 1992: Australia: Unbundling Keynote. Due to the pioneering efforts of Professor John Wade and many others, Australia has created a highly receptive environment for mediation and the Australian family law community was open to exploring the concept of unbundling. The key interest for Australians was to find a way to promote mediation within the law office and unbundling seems to attract mediation-friendly lawyers.
- 1993: First Journal Article on Unbundling. Professor Linda Elrod of Washburn University was the Editor of the ABA Family Law Quarterly

and had the courage to publish my first article on the subject that has led to a growing literature in this area of legal access.⁹

- 1992: ABA Needs Study and 1994 Recommendations for Legal Access. The largest legal needs study in history revealed the critical state of unmet legal needs for middle income individuals. The 1996 white paper based on the 1994 study contained recommendations for action by government, the organized bar, and by the private sector. Unbundling was hailed as one of the most important legal access initiatives for the 21st century.¹⁰
- 1994: England National Conference on Legal Access. Lord Justice Harry Woolf played a large role in Britain in his address to over 400 lawyers in London during this conference. In addition to my keynote on unbundling, Carrie Menkel Meadow and other thinkers on legal access met for a seminar and contributed articles compiled in *Shaping the Future: New Directions in Legal Services* (London Legal Action Group, 1995) that led to the Woolf Report. The report has served as a blueprint to encourage unbundling and other access reforms in Britain.
- 1996: Professor Michael Milleman's Field Study. Seeing law students as the future of the mediation and unbundling reforms, Professor Michael Milleman of the University of Maryland School of Law unleashed law students on the courts of Baltimore to help unrepresented litigants. The study documents the satisfaction and importance that law students derived from helping people help themselves by offering unbundled coaching rather than full service representation.¹¹
- 1996: ABA Louis M. Brown Legal Access Award. The ABA Standing Committee established this award to recognize innovations in legal access. Nearly all of the nominations and winners of this award reflect permutations of the unbundling concept to maximize scarce resources to offer limited help to the underserved in a variety of fields.¹²
- 1997: Wisconsin and Oregon Unbundling Statewide Conferences. As the legal landscape differs from state to state, it has been crucial for leaders in state bar associations to sponsor conferences that lead to an understanding and acceptance of unbundling as competent and protected practice of law. These early states have spawned friendly environments where unbundling

innovation has been permitted to flourish.

- 1999: Colorado Rules on Unbundling. Building on a statewide conference held in Denver in September 1997, the Colorado State Bar issued the most comprehensive state rules legitimizing unbundling as an accepted practice of law and giving protection to lawyers who ghostwrite court pleadings.¹³
- 2000: First National Conference on Unbundling: Baltimore. In addition to the keynote by the ABA President, Robert E. Hirshon, legal services innovator Richard Zorza, and this author, the conference resulted in the publication of 26 recommendations that remain the unfulfilled blueprint for unbundling today.¹⁴
- 2002: Florida Rules on Unbundling. Florida is a leader in quality certification and continuing education for mediators; therefore it is little wonder that the Florida Supreme Court approved rules that expanded on the Colorado model. Key improvements include a process for limited scope court appearances and protection and permission for lawyers to treat unbundled clients as *pro se*. This allows lawyers representing the other spouse not to fear discipline nor civil liability for communicating with a represented client even though such clients may have unbundled representation.
- 2003: California Rules and Judicial Council Forms. In its Rules of Court in effect July 1, 2003, the California Judicial Council promulgated standards that differ from Colorado and Florida in two major respects. First, lawyers making limited court appearance with proper notice can withdraw without leave of court if the proper Judicial Council issued forms are filed and served.¹⁵ Second, ghostwriting lawyers are not required to disclose their involvement in the preparation of court documents.
- 2003: *Lerner v Laufer*. The most important American case on unbundling is *Lerner v Laufer* (819 A2d, 484, New Jersey, 2003) in which the court absolved from malpractice a family lawyer who had reviewed a mediated settlement and had limited his scope to the review of the agreement, specifically excluding any investigation or discovery. When the client (the wife) discovered later that the husband's company was more valuable than she thought, she successfully vacated the decree and negotiated a better

deal. The client then sued the lawyer for \$10,000,000 contending that the stock had been more valuable at the time of the original agreement. The court held that the client's expectations were for limited representation, she received limited representation, and the lawyer had no duty to perform outside the limited scope of representation.

- 2004: ABA Section of Litigation: Modest Means Report. With its report, the ABA Section of Litigation provided unbundling with the imprimatur of mainstream trial lawyers and litigators. This professional support will pave the way for increased use and acceptance of unbundling.
- 2007: Growth and Acceptance of Collaborative Law. In addition to the formation of an international professional association, the essence of this rapidly growing method of practice is its limited scope and the limitation of service disqualifying collaborative lawyers from representing their clients in court if the matter is not settled.¹⁶

SECTION TWO: THE POTENTIAL AND THE STRUCTURE OF UNBUNDLED LEGAL SERVICES

Part A: The Potential, or How Unbundling Helps Lawyers and Clients

Unbundling meets the needs of many lawyers who went to law school to offer clients personal help through difficult situations. To quote Avenue Q,¹⁷ unbundling often gives lawyers a "sense of purpose" in their work that provides professional satisfaction. An unbundled practice also gives lawyers a sense of control over their lives free from deadlines imposed by courts and opposing counsel.

Unbundling also arose from a need for family lawyers to reduce the possibility of a malpractice claim. Family lawyers are often the targets of unhappy divorcing spouses who want someone to blame for a failed marriage and the financial and emotional trauma that often goes with it. When lawyers sue clients for past due fees, clients who are going through this tough time may start to find fault with the services rendered and file a malpractice action. High fees resulting from the need to practice defensively as a full service attorney may be beyond the ability of clients to pay. All of these issues help create the circular pattern of high insurance costs, high fees, high receivables, negative attorney-client relationships, high client

dissatisfaction and resulting malpractice claims. Since unbundled clients often pay as they go, lawyers who practice in this model often are paid in full and on time—reducing receivables and giving a sense of financial satisfaction.

In addition to being viewed as overpriced, lawyers are often victims of the perception that lawyers are somehow evil parasites feeding off of family trouble and the idea that lawyers stoke conflict for personal gain. In their 1994 ABA Study, Sales and Beck¹⁸ found that over 50% of people who self-represented could afford a lawyer but didn't want one for two main reasons. First, lawyers were seen as disempowering their clients by superimposing lawyer value and approaches rather than customizing a solution for the family. The second reason is that lawyers were seen as deal wreckers rather than problem solvers—bring in a lawyer and a bad situation would get worse.

Clients today, more than ever, are consumers. They want information, control, and options, and this is evident in how they shop for professional services. As with other professional services, clients today often comparison shop and “kick the tires” in various law offices before plunking down a retainer. They also shop around on the Internet for legal information, templates, checklists and problem-solving systems.

Clients want “client friendly” office space. They want easy to read glossy brochures describing the background of the service providers and the range of services offered by the law office. They want clear explanations about fees and available financing terms. Consumer savvy clients want to know about lawyer availability for office visits and telephone contact when it is convenient for the client, not just the lawyer. Many clients want to know how staff members are going to be involved, substituted, or delegated. Clients are seeking options for reducing their legal costs and retaining control. Many clients want to have financing options provided by the law firm, such as credit cards or lines of credit with streamlined procedures.

Lawyers compete in a marketplace with each other and with burgeoning number of non-lawyer providers. Consumers have learned (and are continuing to learn) purchasing techniques and how to improve their leverage in the lawyer-client relationship. Even more, clients expect lawyers to understand this trend and to react positively.

Litigants are also demonstrating their consumer preference for less than full service lawyering by using paralegal document services at a fraction of the cost that

an attorney would charge, or self-representing with the assistance of commercial self-help books and materials. The rate of *pro se* representation (litigants without lawyers) is at least fifty percent of all litigants in many jurisdictions. More and more litigants are choosing self-help. In progressive jurisdictions, such as Maricopa County (Phoenix), Arizona, an ABA Report (1993) found that 88% of divorce cases are filed with only one party represented by a lawyer and 62% of the cases progress through the court system with no lawyers at all.¹⁹

With the loosening of restrictions on non-authorized practice of law, the proliferation of independent paralegal and document preparation services is staggering. In 1995, the American Bar Association Commission on Non-lawyer Practice recognized this consumer preference and recommended that the legal profession take an open access approach. Many states are now recognizing legal technicians and the growth of companies such as We the People²⁰ send a message to consumers and lawyers alike.

In the past 25 years, mediation has developed from a vague, unrecognized concept to the center of the legal landscape. Mediation's contribution to unbundling is the underscoring of client empowerment of control over "how" to resolve family conflict (the process) as well as "what" will be the ultimate terms of resolution. Family law mediation got its jump start from consumers who felt that the family lawyer's main service product (husband and wife each being represented by adversarial lawyers operating in or around the courthouse) was not sensitive to their needs and the needs of their children. Mediation was seen as better meeting family member concerns of cost, privacy, client control, speed, and client-generated creative solutions. Mediation also empowered clients to decide whether to use lawyers. If lawyers were involved, the clients were still in charge as to what role the lawyers would play in the mediation process (including the review, drafting, and approval of agreements).²¹

While mediation has been well received by judges as a means to reduce court dockets and by lawyers to incorporate skills and supplement their traditional practices, mediation's major contribution to unbundling has been:

- Self-empowerment: Rather than delegating decision-making responsibility to the lawyer, the mediation participant is in charge of determining both the process and ultimate terms of the resolution.
- Direct Communication: Instead of using a lawyer to be an advocate or

buffer from the other side, mediation has taught the public to speak directly with others. It also teaches improved communication skills for resolution.

- **Negotiation Coaching:** A key element of mediation is for participants to learn negotiation planning, strategy, and techniques to effectively bridge gaps and make deals. A key unbundled role for lawyers is to serve as a negotiation coach on the sidelines and for the parties to negotiate directly at Starbucks or even at the courthouse.
- **Expanded Perspectives of Process:** Malleable in form and structure, mediation has taught participants how to think outside the box as to "how" to resolve conflict. Participants may be exposed to one or more of the following mediation pieces: joint sessions, private sessions, bringing in experts, co-mediation and other structural permutations.
- Mediation experience is helpful preparation for an unbundling relationship.

Part B: The Unbundled Delivery System in Stages²²

The Mosten System of Delivering Unbundled Legal Services has eight stages. It is important to examine each of them to demonstrate how they should be implemented into a practice and how the process is explained to clients. In essence, this will unbundle the unbundled delivery system.

The 8 Stages of Unbundling

Stage 1	Office Preparation
Stage 2	Clarify Your Approach
Stage 3	Initial Client Conference
Stage 4	Unbundling Assessment
Stage 5	Contracting for Unbundling
Stage 6	Follow-up and Monitoring
Stage 7	Conversion from Unbundled to full service representation
Stage 8	Evaluation of Client Satisfaction

Stage 1: Office Preparation

If unbundling is a new and different approach for a particular law practice, the office set-up and staff training should be made unbundling-friendly before the client ever makes initial contract. The office personnel should take the Unbundling Friendly Office Quiz²³ and take steps to redesign the office, provide consumer information and resources, and train the staff so that the entire office will be equipped to provide competent limited-scope services. It is critical that the office reflect a dedication to offering a client-centered practice. Otherwise the fact that the desire exists to offer unbundling legal services may go unnoticed by potential clients.

Stage 2: Clarify Your Approach

Clients who need unbundled services will seek help in a variety of ways. When they contact an office, they may never have heard of the concept of unbundling, but the attorney may assess that they are appropriate candidates, or they may call to inquire about an unbundled arrangement. Before that first phone call, attorneys must take the time to determine how to position their practices and their roles within that practice. Does it make sense to position the practice in its current mode and respond to client inquiries for unbundling or should the office proactively market an unbundled approach? The response to the client should flow from this self-definition.²⁴

A. Responding to requests from clients

Waiting for clients to initiate the possibility of an unbundled relationship, i.e., reacting to client inquiries for coaching or other discrete task services is the most common and often most comfortable approach for many lawyers.

This allows an attorney to continue his current practice with his current marketing efforts as a full service practitioner. Whether someone is a general practitioner or has a specialization, that attorney would continue to stress her substantive background and experience with the assumption (well-founded) that most clients want full service representation. Under this model, an attorney only serves in an unbundled capacity when the client requests that an attorney take on a more limited role or the attorney assesses that the client does not have the financial

resources for full representation or determines that the client is otherwise a good candidate to share the responsibility. (See Stage 4, Assessment, below.)

Once the client is in the office and a bond has been established, without being distracted by the novel and perhaps confusing choice of whether to go full service or limited scope, the client may naturally opt for full service, pay an up-front retainer, and rely on the attorney to handle the matter. This may be the most comfortable approach for both the attorney and the client. In short, the attorney is unbundling savvy and aware, but keeps limited scope options as a fall-back position.

On the other hand, if the client raises the possibility of an unbundled relationship, assuming the client is an appropriate candidate (see Stage 4), an attorney can positively and competently offer the limited scope approach. In choosing to take limited proactive steps to include materials or articles on unbundled services in client packets or in office displays, an attorney may encourage clients to raise the unbundling possibility.

Another way to use unbundling as a fall back is to bring up the limited scope option as a way of helping the client when it is apparent that the client cannot pay the full service fee or an attorney doesn't wish to take on full representation for other reasons. Rather than turning the client away, an attorney may help in a limited way by offering coaching and drafting with the client negotiating directly with the other party or other party's attorney. Using this fall back approach, an attorney can be paid on an hourly basis and can prevent the client from walking out the door. This preserves the full service option and ensures that the client gets needed help.

B. Proactively offering unbundling services

Waiting for the client to bring up unbundling is certainly not the sole option. Because unbundling is so new to consumers, marketing the availability of discrete task services and the broad range of services may be the key to attracting new clients. If attorneys pursue such a proactive approach, initial contact with the client will be far different than if unbundling is treated as a fall back strategy. In fact, the client may contact a particular office because an attorney has announced himself to be an unbundling provider and has taken the time and money to market his firm as such.

It may be that he had signed up to be on an unbundling referral list from the court, bar association, or mediation organization. It may be that he features unbundling on his website or in his telephone ad. It may be that she is getting the reputation as a lawyer who will offer limited scope services. It may be that she highlights unbundling in her client information packet or around the office.

Whatever the reason, the client comes ready to learn about how to utilize the attorney in a limited way. This means that from the first moment of entering the office, the client should be treated as a co-equal partner and given the information and empowerment to handle all the work that the attorney does not.

The initial contact should inform the client that the office supports and utilizes unbundling. Reflection and information are twin features of the unbundled approach. An attorney should recommend that the client learn about unbundling before the initial meeting. This can be done in two ways. The first is to send client information including an unbundling packet full of information and forms. A supplementary approach is for the firm website to incorporate unbundling services and recommend the client to visit the site before the packet arrives.²⁵

Another way for the client to learn about legal issues and the unbundling approach is to visit the client library before the actual appointment. In addition to being a free way of learning, this preparation time both makes the initial appointment more productive and accustoms clients to taking responsibility (or choosing not to) for the information and legwork necessary to do the work themselves. A side benefit of dropping by is that the client can chat with office staff or even with other clients using the client library at the same time.

In confirming the appointment for the initial client intake conference, the attorney or staff should clarify the purpose of the conference, what the client should bring, the time parameters of the conference, and terms of payment.

C. Clarifying potential unbundling roles

One of the challenges is to define the various roles in a new unbundled relationship. One way to view this concept is a spectrum ranging on one side from the Full-Service Take-Charge attorney to the Behind-the-Scenes coach on the other side. The Limited Scope Attorney Client Agreement will help clients and attorneys define their roles.

LETTER TO CLIENT CONFIRMING INITIAL CONSULTATION

Dear Client:

This will confirm our conversation today scheduling an initial consultation for [date] from 2:00 to 3:00 p.m. Our offices are located at [address], [near the corner of ____ and ____, or between ____ and ____]. Parking is available in the building (\$8.00) or on the street.

Please plan to come at least 30 minutes early if you'd like to visit our Client Library and browse through our books and videotapes on various legal topics.

Please bring the following information with you:

- Documents beginning legal proceedings, if any, such as a Summons and Complaint
- A list of the names and addresses of all the people who are involved in the dispute or who have any personal knowledge about the situation that is the subject of your dispute—both those you believe would be helpful to you and those who oppose you or whom you believe might be witnesses for the other side
- Any documents or papers containing information about the problem you wish to discuss. For example: pictures, letters, police reports, medical records, appraisals, contracts, accident reports, insurance policies, wills, deeds, etc.

If you are uncertain whether a particular document or other piece of information is important, bring it. It is better to have too much information than too little when evaluating your legal position.

The fee for this session is \$____ payable by cash, check, VISA or MasterCard. Payment is due 24 hours in advance in order to hold the appointment. As I explained, I do not charge a lump sum retainer. Payment for each service is due at the time it is rendered.

Enclosed please find a packet of information about self-representation and/or engaging a lawyer for discrete legal tasks and services. If you have any questions or need to reschedule your appointment, please contact me at (999) 999-9999.

I look forward to meeting with you.

With best regards,

Forrest S. Mosten

Enclosures

Unbundling Spectrum

Full Service	Preventive Legal Health Provider	Limited Representation	Manager of Dispute Resolution	Consultant in Mediation	Ghost-writing	Coaching	Lawyer On-call	Client Self-Representation
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The full service attorney is in charge of the case, often not even informing the client of some of the details of the process. The unbundled attorney is more of a partner and the extent of the partnership is largely determined by the client's ability to perform and desire to share responsibility. If clients are highly motivated and have the time, background and ability, they can serve as a true partner, one who shares responsibility. This utilizes legal skills in the most efficient way. However, if the client just wants a very limited role, then the attorney is the leader and the client is a contract player. The Initial Consultation will serve to help define the roles that the lawyer and client will play.

Stage 3: Initial Client Intake Conference

Since unbundling is a client-centered process, the initial conference should focus on the client from inception to conclusion. Any information or advice should be focused around client concerns.²⁶ Client comfort and empowerment can be emphasized both directly and indirectly by the way the conference is structured and the client lawyer communication is facilitated. This initial interview is crucial to the success of the unbundled relationship.²⁷

The following is an agenda that may be used when discussing unbundling with the client at the in-take conference:

- Discuss the Following Questions:
 - A. What is Unbundling?
 - B. What Unbundled Services do I offer?
 - C. What are the benefits and risks of utilizing unbundled services?
 - D. How will unbundled services compare with full service representation in your case?
 - E. Assessment (see Stage Four following this section for more detail):

Client Self-Representation

- a. Are you the type of person who will be satisfied with an unbundled arrangement?
- b. Is this the type of the problem that can be successfully unbundled?
- c. Assuming you choose to unbundle, what tasks will you do and what tasks will I do?

- Review the Limited Task Engagement Client Lawyer Agreement and discuss its provisions with the client
- Discuss Fee Arrangements
- Conclude the In-Take Conference

Alternative 1—Conclude conference so that the client can think about the choices, read the agreement more carefully, and decide whether to unbundle, and if so, with whom (building in possibility of shopping for other lawyers).

Alternative 2—Take time to read the Limited Task agreement during the meeting, sign the agreement, pay the agreed fee, and begin limited services immediately or at a later time.

Initial Conference Topic Checklist

The following are topics that will help clients make informed decisions as to whether they wish to unbundle. As in any structure, flexibility and adaptation are required. As conversations flow between attorney and client, the attorney should be prepared to go out of order, add new topics, and address client concerns and questions as they arise.

A. What is Unbundling?

Visual aids are very helpful to explain the unbundling concept. As previously indicated, a bundle of Popsicle sticks labeled with the different lawyering tasks is a great way to illustrate the concept, especially when the client manipulates them:

“I want you to take this bundle in your hand—pretend it is the full package

of services that I would perform for you if you paid me a retainer and I assumed full responsibility for your case. . . .

"Now take the yarn off the sticks and place each one on the table—don't let the service-sticks touch because they aren't necessarily linked. You can buy only one service, two, three, or all of them if you want to. I must say though, that if you are buying all seven, it may mean that you want or need my full involvement and you might consider converting to full service. Think of each stick as an a la carte offering on a menu—the full package is like ordering a fixed price seven-course meal. If you unbundle, you can buy only those services that you want to buy—don't worry I'll help you decide which of my services I think you could use—but you make the final choice.

"Let's look at one of the services. You pick. OK, you picked up the stick that says Discovery. Let's say, you need some information from the other side..."

After this the attorney should finish the explanation of discovery and how tasks could be divided and do the same with some or all of the other sticks until it becomes clear that the client understands the interplay with the coach in performing the tasks.

B. What Unbundled Services Do I Offer?

Services include:

- All purpose counselor, coach, and advisor;
- Ghostwriter for letters, contracts, and court documents
- Negotiation Planner and Simulation Role Player
- Court Coach
- Consultant During Mediations (both on the sidelines and in mediation sessions themselves)
- Dispute Resolution Manager

- Preventive Legal Health Care Advisor

C. What Are the Benefits and Risks of Utilizing Unbundled Services?

Pros and Cons of Unbundling (adapted from Lee Borden's website at www.divorceinfo.com):

Advantages

- It costs less when you do most of the work yourself and bring in an attorney only when you need one.
- It allows you to stay in control. You decide what issues to negotiate and when to discuss them.
- You have a great deal of power in negotiating with the other party. You're free to make concessions that make sense to you, not just to someone else.

Because unbundling almost inevitably results in more contact between you and the other party, you can often work out the issues between you without going to court.

- If you're dealing with a party who's hired a lawyer, unbundling can provide you a critical negotiating advantage. Every time there's a meeting involving the other party's lawyer, every time the other party's lawyer writes a letter, every time the other party's lawyer makes a phone call, the other party pays more money, and you don't. Because the process is costing them more money than it's costing you, they may eventually make concessions to end the fighting that they wouldn't make otherwise.

Risks

- With all the freedom of unbundling comes responsibility.
- Your coach can give you lots of background information and make suggestions, but it's your job to apply it to your case and carry through.
- It's up to you to make sure you file your pleadings on time.
- You are responsible for gathering all the information you need.

- If you end up going to court, it's especially important that you ask enough questions and understand your coach's advice. Judges tend to be impatient with litigants who are not represented if they talk about issues the judge doesn't need to know, ask questions the judge expects lawyers to know already, and make speeches about things that may seem important to them but will not actually affect the judge's decision.

D. How Will Unbundled Services Compare With Full Service Representation In Your Case?

The answer to this question builds on the previous discussion. Looking at the various tasks that need to be performed, will the cost savings (if any) be worth the burden on the client and the risks to the case? As experts of the Full Service Package, attorneys should do a comparative cost analysis of each task so the client can see the difference.

Stage 4: Unbundling Assessment

At this point the attorney and the client, or the client on their own, should assess their strengths, weaknesses and the issues to determine if unbundling is right for them. The following questions are a good starting point for a client considering some type of unbundled arrangement.

A. Are You the Type of Person Who Will be Satisfied with an Unbundled Arrangement?

I.	YES	NO
1. I can make good decisions under pressure	<input type="checkbox"/>	<input type="checkbox"/>
2. I keep a running balance in my check-book	<input type="checkbox"/>	<input type="checkbox"/>
3. I am good at handling details	<input type="checkbox"/>	<input type="checkbox"/>
4. I follow through on deadlines	<input type="checkbox"/>	<input type="checkbox"/>
5. I can easily ask for help when I am stuck	<input type="checkbox"/>	<input type="checkbox"/>
6. I am very patient	<input type="checkbox"/>	<input type="checkbox"/>
7. I can make decisions without being terrified of making the wrong decision.	<input type="checkbox"/>	<input type="checkbox"/>

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| 8. I shop at Home Depot, Costco or other Discount stores | <input type="checkbox"/> | <input type="checkbox"/> |
| 9. I wash my own car and/or fix minor repairs in my home | <input type="checkbox"/> | <input type="checkbox"/> |
| 10. I am computer literate and can compose letters on my computer | <input type="checkbox"/> | <input type="checkbox"/> |
| 11. I usually follow my doctor's instructions | <input type="checkbox"/> | <input type="checkbox"/> |
| 12. I am not afraid to learn new skills and formats | <input type="checkbox"/> | <input type="checkbox"/> |
| II. | YES | NO |
| 1. I am free from feelings of anger or revenge and can assume legal work in a detached way | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. I can read technical documents effectively | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. I can keep legal and technical documents organized | <input type="checkbox"/> | <input type="checkbox"/> |
| 4. I have time to spend representing myself | <input type="checkbox"/> | <input type="checkbox"/> |
| 5. I am not personally or legally dependent on family members or any third person to make legal decisions | <input type="checkbox"/> | <input type="checkbox"/> |
| 6. My eyesight, hearing and other physical conditions permit me to represent myself | <input type="checkbox"/> | <input type="checkbox"/> |
| 7. I have at least one year college education. | <input type="checkbox"/> | <input type="checkbox"/> |
| 8. I have some legal training | <input type="checkbox"/> | <input type="checkbox"/> |
| 9. I am comfortable in paying a professional to help me with some of the work | <input type="checkbox"/> | <input type="checkbox"/> |
| 10. I have transportation to get me to the lawyer's office, to the court and to the library to do legal research | <input type="checkbox"/> | <input type="checkbox"/> |
| 11. I like the idea of working with an attorney and sharing the responsibility | <input type="checkbox"/> | <input type="checkbox"/> |
| 12. I appreciate that my attorney is willing to work with me to help me save fees | <input type="checkbox"/> | <input type="checkbox"/> |

("Yes" answers are indicators that unbundling is appropriate.)

B. Is this the Type of Problem that Can be Successfully Unbundled?

Even if the client has the personal characteristics and capability to use limited legal services, it may be that the case is not suitable for unbundling. The litmus test is simple—is the expertise required so overwhelming that the client will have a difficult or impossible task of achieving a satisfying result?

C. Assuming You Choose to Unbundle, what Tasks Will You do and what Tasks Will I do?

This is the beginning of the Contracting Stage. Actually there are two major goals in this part of the consultation. First, there must be a plan for what issues and tasks are going to be handled by the client and what issues and tasks are going to be handled by the attorney. The second goal is to review the Discrete Task Client Lawyer Agreement with the client and set out the parameters of the unbundled engagement.

To properly handle this aspect of the consultation, attorneys need to have their tools ready with copies for the firm and the client. The first tool is the Limited Scope Task Agreement. The second tool is the group of detailed task and issue lists that apportion what the client will do and what the attorney will do. It is possible to have the two tools integrated into the Limited Scope Agreement or the apportionment list can be attached as an exhibit. If an attorney coaches in one area of the law (i.e., family law) the issue and task lists should be integrated into the agreement.

Stage 5: Contracting for Unbundling

The key to the contracting is the Limited Scope Client-Attorney Agreement. A sample of this agreement is located in Appendix 1.

Stage 6: Monitoring Limited Services

In every unbundled relationship, it is the attorney's professional responsibility to monitor the client's ability to handle their role both on a personal as well as a legal level. Clients may start out strong, and then fade as the responsibility becomes overwhelming to them. Attorneys must build in a system to continually assess and

be prepared to amend the discrete task agreement, the task allocation check-list, or both. A useful example is to think of a family dentist. Other than when it is time for a cleaning the dentist may not hear from a client unless she chips a tooth. But clients are sure to hear from the dentist's office. That reminder card comes every three or six months. The same may be done with unbundled clients. Part of the plan should be how the attorney and the client will stay in touch. Who will initiate contact between lawyer and client? How frequent will the contact be? Will the attorney be responsible for monitoring the plan—so a contact schedule should be set up on Outlook, Palm Pilot or another tickle system? Will the client get back to the attorney to report progress—by telephone, email, or scheduled office visits? Or will the attorney and client just part company, with or without advance payment, and leave it up to the client or regular dentist-type routine contact by the office to stay in touch. Whatever the plan, it should be clear and agreed to by the attorney and the client. Louis Brown, the father of Preventive Law, had a maxim: A client should never leave the office without knowing when and how the next contact with the lawyer will occur.

Stage 7: Converting from Unbundled to Full Service Representation

Communication during the course of the unbundled relationship is essential so that there can be a mutual ongoing assessment as to whether the limited scope arrangement is working for the client—and for the attorney. If it is not working successfully, there are several options:

- The limited scope arrangement can be terminated and the client can go it alone
- The client can find another coach and continue unbundling
- The limited scope arrangement can be converted to a full service package.

Converting to full service is one of the great surprise benefits for lawyers who unbundle. Although initially smitten by the cost savings and control over their case, many unbundling clients soon tire from the emotional and time drain inherent in running a case, especially one's own. Many litigation clients started off as unbundled situations. Once clients see that an attorney treats them competently,

SAMPLE LETTER TERMINATING THE UNBUNDLING RELATIONSHIP

Dear Client:

This will confirm my withdrawal as your legal advisor in the above matter effective immediately. I will do no further legal work, so you must do it on your own.

[ALTERNATIVE SAMPLE PARAGRAPHS]

I cannot advise you effectively if you do not keep me informed of the status of your case. I have not heard from you in more than 60 days, and I have attempted without success to contact you on several occasions. Therefore, I assume that you are in agreement that my withdrawal is appropriate.

OR

As I advised you, it is my professional opinion that certain of the claims we discussed cannot be supported by a good faith legal argument. Although it is your right to proceed with them as you have chosen to do, it is unreasonably difficult, in fact unethical, for me to continue to advise you regarding the pursuit of claims that I believe are without legal merit. Therefore, it is appropriate that I withdraw as your consultant.

OR

You will recall that I advised you to take certain steps in handling your case. Those steps are outlined in my letter to you of [DATE], summarizing our meeting of that date. You have not taken those actions, and you have indicated that you do not intend to do so. I am very concerned about the possible consequences to you of your decision not to follow my advice. Consequently, I am withdrawing as your consulting lawyer in the hope that you will obtain advice from someone whose opinion you will value more highly.

I am returning all of your documents with this letter, together with a check in the amount of \$150 in unused fees for your case. Please see the attached accounting.

I urge you to consult immediately with other counsel to obtain a second opinion regarding the merits of your claim and to be sure you do not allow any deadlines to pass, such as statutes of limitations or pleading deadlines, which might make it impossible for you to protect your rights.

It was a pleasure to work with you, and my entire staff and I wish you much success in this matter and in all aspects of your life.

Sincerely,

Forrest S. Mosten

accessibly, and as adults, the firm will often be the client's first choice for a full service lawyer.

This conversion discussion can be initiated either by the client or the attorney. Some of the warning signs that the case should be converted include: if the case is beginning to unravel, the client starts to complain about the load, and/or the scope of representation and involvement begin to escalate for the attorney.

The attorney and the client will need to meet and discuss the pros and cons of continuing unbundled, modifying the limited arrangement, or going full service. If the latter course is decided upon, have the client execute the standard full service retainer agreement, terminate the limited engagement agreement, and make new financial arrangements including an appropriate retainer. If an attorney is impressed with the client's payment history he or she might be willing to bend the rules and give the converted client a special break on the amount of required retainer or other terms in order to set up a full service engagement; however, attorneys should be mindful of the risks of taking on extra work without having some type of retainer in place.

Stage 8: Evaluation of Client Satisfaction

If unbundling is truly a client-centered process, unbundlers need to have a keen interest in their clients' satisfaction. When the "case" is over, most lawyers just move on to the next crisis. If a client who pays a bill never returns to the office or never gives a positive referral, an attorney won't have a clue that there is a problem.

It does not take much effort to demonstrate to clients that an attorney cares enough to ask them what they think. Start with the limited service clients. After the initial consultation, attorneys should ask clients to fill out a sample evaluation form. An attorney may also want to follow up with post case evaluation forms to see what the client thinks about the representation and the scope of service after the case is over.

SECTION 3: THE FUTURE OF UNBUNDLING

Unbundling in family law has five major and distinct constituencies:

1. Current and future traditional family lawyers seeking new methods to obtain new clients
2. Mediators and other family peacemakers who see unbundling lawyers as the key to increased use of empowering conflict resolution tools
3. Proponents of increased legal access for the underserved
4. Collaborative lawyers who depend on limited scope of non-court representation as the essence of their service
5. Judges and other policy makers who see unbundled representation as key to limiting court congestion and increasing satisfaction of families with the legal system

The scope of this chapter is too limited to explore the future of unbundling in respect to each of these constituencies. However, the following are some initiatives that may help expand unbundling in the years to come.²⁹

- A. Unbundling Training and Education for Lawyers and Law Students
- B. Legal educators and Continuing Education Officials³⁰ need to identify the concepts and skills that will help prepare current and future practitioners to competently deliver unbundled services. The Family Legal Education Reform Project (FLER) has included unbundled services as a foundation of future law school curriculum.³¹
- B. Training for courts including judicial officers, administrators, court clerks, and neutral family law facilitators³²
- C. Increased Consumer Awareness and Education. Public and private funding is needed to finance Public Service Announcements, Publicity, Advertising, and Mass Media coverage of unbundling success stories.³³ Incentives can be developed to encourage professionals and non-profit organizations to maintain and/or develop unbundling educational materials on site.³⁴ Such incentives could include discounts on CLE courses or credits for maintaining a client library, State Tax Credits, Discounts and Subsidies when purchasing books and other materials on unbundling, or discounted bar dues for lawyers who practice unbundling and/or provide unbundling educational materials.

- D. Reforms in Courts to Increase Client Education on Unbundled Legal Options. In the Los Angeles Superior Court, Judge Aviva Bobb, former Presiding Judge of the Family Law Department, initiated a letter to all self-represented litigants to inform them of mediation and collaborative law.³⁵ Similar letters could be developed to include other lawyering developed by unbundling.
- E. An Ethical Duty or Aspirational Pledge for Lawyers to Discuss Unbundling as a viable option to Full Service Representation. Similar duties have been promulgated to increase the use of mediation.³⁶ In my own teaching, I have found that most lawyers and law students appreciate unbundling more if they can help clients compare it to full service lawyering using the criteria of overall result, improvement of relationships, client control over their process and result, reduced cost, and speed of resolution.³⁷
- F. State Legislature and Bar Association Endorsement of Unbundling. As indicated earlier in this article, the California Judicial Council's endorsement and development of court forms have been instrumental in the growth and use of unbundling in that state. In 2005, the Family Law Sections of the local bar associations and courts of Santa Clara and Los Angeles formally endorsed unbundling.³⁸ In 2007, similar endorsements have occurred for Collaborative Law and Australia.³⁹ The American Bar Association Standing Committee on Delivery of Legal Services (William Hornsby, Staff Counsel) has played a similar supportive role in promoting unbundling for the past 15 years.
- G. Development of a Legal Specialization in Unbundling and Middle Income Representation. Throughout the United States, legal specialization has been a vehicle to instill public confidence in lawyers' competence and increase business to those lawyers who have met the standards for specialization. Such specialization can be expanded to recognize those lawyers with the training and experience to effectively practice in this model.⁴⁰ This certification could be an incentive for many public interest and legal aid attorneys to obtain this recognition for coaching poor and middle income clients (sometimes referred to an "involuntary unbundling") that could be transferred to the private sector. Such recognition might provide increased incentive for quality lawyers to choose this important area of

legal services.⁴¹

- H. Adoption of a Statutory Model Unbundling Client-Lawyer Contract. As has occurred in Massachusetts⁴² and other states, approval of a limited scope contract can provide comfort and a safe harbor for lawyers who wish to offer unbundled legal services. By having a model contract, practitioners can have a readymade agreement available for clients. While lawyers still have liability for any professional negligence committed for issues undertaken, a model contract can begin an increased awareness that lawyers cannot and should not be held liable for acts outside the scope of representation.⁴³ Perhaps such a model agreement will be a baby step toward immunity for such activity that falls outside the agreed upon scope of representation (as occurs in many states in mediation).⁴⁴

CONCLUSION

Although many developments have incurred in unbundled legal services since its inception in 1972, more research, study, and adoption/modification of workable and replicable models need to occur in future so that families can receive the benefits of unbundling in both the public and private sectors.

APPENDICES

To access this chapter's appendices, go to:

http://www.afccnet.org/resources/resources_professionals.asp

- Appendix 1: Limited Scope Agreement
- Appendix 2: State by State Unbundling Rules Presented by the National Center for State Courts
- Appendix 3: California Unbundling Rules and Approved Court Forms for Limited Scope Representation
- Appendix 4: Legal Check-up Questions

NOTES

1. Also known as limited scope representation, discrete task representation, and legal coaching. Since I started writing about the concept utilizing the term "unbundling," I'll stick with it for this chapter.
2. See the Legal Check Up Form in Appendix 4.
3. See Appendix 2 developed by the National Center for State Courts (www.ncsconline.org) describing the unbundling laws and rules state by state. See also Appendix 3, sample court forms for limited representation developed by the California Judicial Council.
4. See Model Rule of Professional Responsibility 1.2 (c): "A lawyer may limit the scope and objectives of the representation if the limitation is reasonable under the circumstances and the client gives informed consent."
5. Bruce Sales, Connie Beck, and Richard K. Hahn, *Self Representation in Divorce Cases* (ABA Standing Committee on Legal Services, 1993).
6. One of the themes of the unbundling movement is the impact that a few courageous pioneers can make in developing replicable models on the local level. With her inspirational leadership, Judge Albrecht and Court Administrator Gordon Grillo and their staffs transformed the Maricopa Superior Court into the Mecca of the *pro se* movement where litigants were treated as valued customers and the entire fourth floor of the courthouse was remodeled into a Self-Help Center.
7. Sales Report, note 5.
8. The ABA Standing Committee on Delivery of Legal Services has been a think tank on unbundling and expansion of legal access for the past two decades. See www.abanet.org/legal_services/delivery.html. Led by its Staff Counsel, William Hornsby, the committee has been a treasure trove of ideas and initiatives in this field. One of the committee's most long-lasting achievements may be the establishment and annual selection of the ABA Louis M. Brown Award for Legal Access. The winners of this prestigious award are virtually all innovators of unbundled legal services.
9. Forrest S. Mosten, Unbundling Legal Services and the Family Lawyer, *Family Law Quarterly*, Volume 28, Fall 1994.
10. American Bar Association Comprehensive Legal Needs Study (1994) and Recommendations from the ABA Comprehensive Legal Needs Study (1996). The findings and recommendations of this study have been replicated by many states and other research. See www.unbundledlaw.org developed by the State of Maryland.
11. Michael Milleman, Natalie Gilfrich, and Richard Granat: Limited Scope Representation and Access to Justice: An Experiment. *American Journal of Family Law*, Volume 11, (1997), pp1-11.

12. See www.abamet.org/legalservices/delivery/brown.html.
13. The Colorado Comment to Rule 1.2c of the its Model Rules is most instructive:

“The scope or objectives or both, of the lawyer’s representation of the client may be limited if the client consents after consultation with the lawyer.

In litigation matters on behalf of a *pro se* party, limitation of the scope or objectives of the representation is subject to CRCP 11b, or 311(b) and CRCP 121 Section 1-1 and therefore, involves not only the client and lawyer but also the court. When a lawyer is providing limited representation to a *pro se* party as permitted by CRCP 11b or 311b, the consultation of the client shall include an explanation of the risks and benefits of such limited representation. A lawyer must provide meaningful legal advice consistent with the limited scope of the lawyer’s representation, but a lawyer’s advice may be based upon the *pro se* party’s representation of the facts and the scope of representation agreed upon by the lawyer and the *pro se* party.

A lawyer remains liable for the consequences of any negligent legal advice. Nothing in this rule is intended to expand or restrict in any manner, the laws governing civil liabilities of lawyers.”
14. See Special Issue on Unbundling, Forrest S. Mosten, Editor. 40 *Family Court Review*, January 2002. Information can be found at www.unbundledlaw.org.
15. The mere issuance of approved (required or encouraged) court forms for unbundling makes unbundling practice safer for lawyers and appear more legitimate to clients. See sample Judicial Council Forms in Appendix 3.
16. International Association of Collaborative Professionals, www.iacp.org. See Pauline Tesler and Peggy Thompson, *Collaborative Divorce: The Revolutionary New Way to Restructure Your Family, Resolve Legal Issues, and Move On with Your Life*, Harper-Collins (2006). But, see, David Hoffman’s chapter in this book on Cooperative Negotiation Agreements, which may extend the collaborative process to the courtroom.
17. Broadway musical.
18. See *supra*, Note 5.
19. Bruce D. Sales, Connie J Beck, and Richard K. Haan, *Self-Representation in Divorce Cases* (American Bar Association Standing Committee on Delivery of Legal Services, January 1993).
20. <http://www.wethepeopleusa.com>.
21. See Forrest S. Mosten, Complete Guide to Mediation (ABA, 1997), Chapters 15-18, Harold Abramson, *Problem-Solving Advocacy in Mediations: A Model of Client Representation*, 10 Harv. Negot. L. Rev. 103 (Spring 2005); Harold Abramson, *Mining Mediation: Rules for Representation Opportunities and Obstacles*, 15 Am. Rev. Int’l Arb. (2004).
22. This section is an abridged version of Chapter 3 of my book, *Unbundling Legal Services* (ABA 2000).

23. Unbundling-friendly Office Quiz:

Yes No

Does my waiting room have client educational materials? ☐ ☐Do I have a dedicated space for a client library? ☐ ☐Have I prepared written instructions and checklists for clients to help them? ☐ ☐Do my clients self-represent effectively with my help as coach? ☐ ☐Do I have a staff training program geared to the unbundled client? ☐ ☐If I were a client would I feel welcomed and made to feel that my comfort and my empowerment was the #1 priority of the law firm? ☐ ☐

24. Unbundling Mindset Quiz:

I want to spend more time in direct contact with clients and less time interacting with lawyers on the opposing side or the court system. ☐ ☐I am able to give up control of doing the legal work myself and am comfortable in helping clients who do most of the work on their own. ☐ ☐I am flexible with changing roles with clients and even adapting to new roles requested by the client (that do not conflict with my own professional or personal ethical boundaries). ☐ ☐I am willing to accept payment for current work only and begin an engagement without an advance retainer or deposit. ☐ ☐I like helping people make better decisions. ☐ ☐I like having people get help they can less "unafford." ☐ ☐I am able to handle watching clients take my sound advice and make poor or self-destructive decisions and am still willing to help them pick up the pieces and try to make lemonade out of lemons. ☐ ☐I like to teach clients skills and concepts that will make their case go better—and maybe even improve their lives. ☐ ☐I like to prevent problems from ever ripening into conflict. ☐ ☐I like to reduce my billing load and work on more of a cash and carry basis. ☐ ☐I like to have more control over my life by not being subject to canceling vacations or working nights and weekends. ☐ ☐I am willing to try new approaches that are different from the way I currently practice or even different from the way I was trained. ☐ ☐I like working with people who like to shop for bargains. ☐ ☐

I am willing to work with people who may have a high mistrust or disregard for lawyers.

I am willing to work with people who have mucked up their legal rights and/or case strategy when the best that can happen is cutting a loss rather than gaining a win.

I want to provide clients with space in my office so they can do their own background reading, watch helpful videos, do their own legal research, prepare their own work, or just relax and calm down.

I want to help people maximize their lives and reduce their legal risks in areas far removed from the presenting problem that brought them into the office.

I want to meet and learn from other innovative and caring lawyers who share a common set of goals and professional commitments that I do.

25. See www.divorceinfo.com (Lee Borden, Birmingham, Alabama) and www.divorcelawinfo.com (Richard Granat, Baltimore, Maryland) for two examples of consumer-friendly unbundling-coaching websites.
26. For an excellent primer on client-centered lawyering, see David Binder, Paul Bergman, Susan Price, and Paul Tremblay, *Lawyers as Counselors: A Client Centered Approach, 2nd Edition*, (Thompson-West, 2004). Also useful are the standards for the Louis M. Brown International Client Counseling Competition <http://www.usyd.edu.au/lec/ICCC2007>; www.law-competitions.com.
27. Chapter 4 of *Unbundling Legal Services* presents an in-depth look at how to handle this meeting.
28. To review the 26 recommendations of the First National Unbundling Conference in Baltimore in 2000, see www.UnbundledLaw.com.
29. As a potential benefit to both family lawyers and legal malpractice insurance carriers, the insurance industry is beginning training for its policy holders. For example, Lawyers Mutual has conducted five seminars around California on "The Nuts and Bolts of Limited Scope Representation. A statewide unbundling CLE program in Indiana in 2006 featured a legal malpractice insurance broker on its prestigious panel of experts. A DVD and written materials of this program can be purchased from James Whitesell, ICLEF Senior Program Director, 230 East Ohio Street, Indianapolis, Indiana 46204.
30. See Mary O'Connell and J. Herbie DiFonzo (Reporters), FLER Final Report, Family Court Review, Fall 2006; Forrest S. Mosten, "The Potential for Family Lawyers of FLER", Family Court Review, Winter 2006.
31. Under the leadership of Judge Rebecca Albrect and Court Administrator Gordon Grillo, the Maricopa County Superior Court has developed training for court personnel throughout the

country. This training stems in part from the unbundling training program from attorneys in the Maricopa Bar Association and the unbundling referral list that includes lawyers (at their own market rates) who have completed this training.

32. Under the leadership of Judge Bell, Maryland has set the standard for statewide promotion of mediation. Similar public campaigns can replicate the Maryland experience in this important area of improving legal access.
33. In November, 2006 at its Annual Conference, The Southern California Mediation Association initiated the SCMA/Forrest S. Mosten Conflict Resolution Library Fund to provide financial assistance to libraries, law schools, limited scope non-profit organizations, and other institutions to increase consumer awareness of mediation. Similar projects could be initiated for unbundling. See http://scmediation.org/western_justice_center_library.asp.

34. Dear Court Litigant:

You have a case in our court. During this time in your life, you have a number of decisions to make about your future. I would like you to know that our court would like to help make this process as easy as possible for you.

However, going to court is not the only way to resolve disputes. Some other ways include having attorneys negotiate directly, having a neutral third party help both sides negotiate a solution (mediation) or using a problem-solving method such as collaborative law. These other ways help people find solutions that are mutually acceptable. You can speak with your attorney, if you have one, about these options so the two of you can decide whether any of these are right for you.

You may want to consider these other ways of resolving your dispute for several reasons:

1. You will directly participate in finding solutions
2. You probably will be able to resolve your dispute sooner
3. It may be much less expensive
4. You will end the process with better relationships and less conflict, and
5. You will likely find it less stressful than court hearings

Your agreement does not need to be perfect. It does need to be acceptable to both of you. You can speak with your attorney, if you have one, about all of these methods of resolving your case.

It is to your benefit to consider opportunities to reduce conflict and reduce expenses incurred in the court process. Many people spend time, effort, and money attempting to obtain satisfaction by prolonging the dispute with the other party, but this does not guarantee either party will be fully satisfied with the outcome.

Sincerely, Supervising Judge, Los Angeles Superior Court

35. See Frank Sander and Michael Prigoff, "Should There Be a Duty to Advise About ADR Options," 76 *American Bar Association Journal*, 50; Robert Cochran Jr., "Legal Representation and the Next Steps Toward Client Control: Attorney Malpractice for the Failure to Allow the Client to Control Negotiation and Pursue Alternatives to Litigation," 47 *Washington and Lee Law Review*, 819 (1990).
36. The Dispute Resolution Section of the Beverly Hills Bar Association, CPR in New York, and the Better Business Bureau have all used aspirational pledges to encourage their members to use mediation. This model can be used to encourage unbundling as well.
37. JOINT RESOLUTION OF THE LOS ANGELES COUNTY SUPERIOR COURT JUDICIARY, THE LOS ANGELES COUNTY BAR ASSOCIATION, AND THE FAMILY LAW SECTION OF THE COUNTY BAR ASSOCIATION REGARDING LIMITED SCOPE REPRESENTATION, COMMONLY KNOWN AS "UNBUNDLING"
(Passed April 19, 2005)

WHEREAS, the judges of LOS ANGELES County Superior Court and the attorneys appearing in those courts continue to work together on ways to improve equal access to the courts for all people, and

WHEREAS, judges and attorneys recognize the growing problem of members of our community unable to afford legal representation in the civil courts, especially in the area of family law, and

WHEREAS, there is a high number of self-represented persons in Family Court who face complex and varied custody and financial issues, and

WHEREAS, limited scope representation permits a person to hire an attorney to assist with specific tasks on one or more issues in a case, while the client continues to represent him/herself in all other aspects of the case, thereby limiting the cost of legal assistance, and

WHEREAS, recent developments, including the enactment of new California Rules of Court provide guidance for attorneys offering limited scope representation in Family Court, have made the concept of limited scope representation readily available for attorneys to offer, and

WHEREAS, limited scope representation presents a way for the courts and attorneys to work together toward assisting parties with limited financial means in handling their legal matters,

THEREFORE BE IT RESOLVED THAT,

- The LOS ANGELES County Superior Court supports limited scope representation in family law cases, and will honor agreements made by attorneys to provide limited scope representation, and will not expect an attorney to go beyond the limits set by the attorney's contract with his or her client.

- The LOS ANGELES Bar Association supports limited scope representation, and will assist attorneys through training, and will establish a limited scope representation panel for the Bar Association Lawyer Referral Service.
- The Bench and Bar will work together to inform the public of the availability of limited scope representation.

38. Effective January 1, 2007, California Family Code Section 2013 recognizes collaborative law process as an alternative dispute resolution process. The code is currently being expanded, and it is expected that more detailed legislation will be chaptered this year. Since 2004, Los Angeles County Rule 14.26 endorses collaborative law. On March 3, 2007, the following news story in Australia announced the endorsement of Collaborative Law by the Australian Family Court's Chief Justice, Diana Bryant.
<http://www.abc.net.au/pm/content/2007/s1861944.htm>.

39. When I served on the California State Bar ADR Task Force in 2004, I made the following recommendation for a new area of specialization: ADR Lawyering. While the proposal was not accepted, perhaps some of the concepts can be studied and incorporated into existing and future family law certification programs and be part of curriculum planning for law school and certification preparatory courses:

TASK REQUIREMENTS FOR CERTIFICATION

An Applicant must demonstrate that within the five (5) years immediately preceding the initial application, he or she has been substantially involved in ADR Legal Practice, which shall include actual experience in the following areas:

- Representing Clients in Court Mandated Mediation
- Representing Clients in non Court Mandated Mediation, Arbitration, Collaborative Law Sessions, or other ADR Processes
- Negotiating, reviewing and drafting ADR arrangements including setting up mediation, arbitration, collaborative law, and other ADR processes
- Negotiating, reviewing, and drafting terms of settlement within mediation, collaborative law, and other ADR processes; and/or
- Negotiating, reviewing and drafting future dispute resolution clauses for contracts and settlement agreements

A *prima facie* showing of substantial involvement in the area of ADR Legal Practice is made by completion of at least two (2) of the following categories:

- Principal counsel in twenty-five (25) Court Mandated Mediations involving at least one (1) session with parties and counsel for minimum of at least three (3) hours in duration
- Principal counsel in twelve (12) Mediations (not mandated by a court) resulting in a

written Memorandum of Understanding or Settlement Agreement involving at least one (1) session with parties and counsel for a minimum of at least three (3) hours in duration

- Principal counsel in twelve (12) Collaborative Law Proceedings resulting in a written settlement agreement involving at least two (2) sessions with parties and counsel for a minimum of at least three (3) hours in duration per session
- Principal counsel in twenty-five (25) Court Mandated Arbitrations involving at least one (1) session with parties and counsel for a minimum of at least three (3) hours in duration
- Principal counsel in twelve (12) Arbitrations not mandated by a court resulting in a written decision involving at least one (1) session with parties and counsel for a minimum of at least three (3) hours in duration
- Principal counsel in twelve (12) Other ADR Process matters resulting in a written agreement or decision involving at least three (3) hours per matter
- Principal Counsel in fifty (50) matters of Unbundled Representation of *Pro Se* parties participating in mediation involving at least two (2) hours per matter
- Principal Counsel in fifty (50) matters involving Conflict Prevention Legal Services involving at least two (2) hours per matter

Principal counsel is the attorney who spends a majority of the time on a case in the activities of preparation, review, and providing ADR Legal Services to a client. There can be only one principal counsel per case.

EDUCATIONAL REQUIREMENT FOR CERTIFICATION

An applicant must show that, within the three (3) years immediately preceding the application for certification, he or she has completed not less than forty-five (45) hours of activities specifically approved for ADR Legal Practice as follows in addition to completion of a minimum of fifty (50) hours of mediation training as a neutral *or* twenty-five (25) hours of mediation training *and* twenty-five (25) hours in collaborative law training, *or* twenty-five (25) hours of mediation training *and* twenty-five (25) hours of arbitration law training:

- Not less than four (4) hours in interviewing and advising clients on alternatives to litigation
- Not less than ten (10) hours in negotiation planning and strategic interventions
- Not less than twenty (20) hours in mediation advocacy and/or advanced collaborative law training, and/or advanced arbitration training, and/or advanced training in other ADR processes
- Not less than three (3) hours in unbundled legal services and/or other legal services for unrepresented persons

- Not less than four (4) hours in ethical issues involved in ADR Legal Practice
- Not less than four (4) hours in law office management supporting ADR Legal Practice

40. This recommendation is not without significant challenges. When I served as a member of the ABA IOLTA Commission, I found major resistance among many legal services attorneys to significantly increase unbundling and coaching to provide some help to those citizens who are being turned away due to budget cuts for full service representation. This could be the subject of a chapter (or book) in and of itself.

41. Massachusetts Bar Association Committee on Professional Ethics Opinion 82-8 (1997).

42. See *Lerner v Laufer*, 819 A2d, 484, New Jersey, 2003.

43. See *Howard v Drapkin*, (1990) 222 Cal.App.3d 843, 271 Cal.Rptr. 893.