

Unbundling! What It Is and Why It Works for Clients and Lawyers

1

“Unbundling is just a way to be honest and get out on the table what lawyers do in a limited sense now and do it in a more organized way.”

—William Howe III, Private Practitioner, Portland, Oregon; Chair, Oregon Task Force on Family Law Reform

WHAT IS UNBUNDLING?

Unbundling, also known as “limited scope” representation, is defined as an attorney-client relationship in which the client is in charge of selecting one or several discrete lawyering tasks contained within the traditional, full service legal services package. The limited scope services can be broken down into seven primary categories of tasks:

1. Advising the client
2. Legal research
3. Gathering of facts from client
4. Discovery of facts of the other party
5. Negotiation
6. Drafting of documents
7. Court representation

THE FULL SERVICE PACKAGE

In the traditional full service package, the lawyer is engaged to perform any and all of the tasks listed above, meeting the demands of the particular case. With unbundling, the lawyer and client work together to allocate the division

of tasks. This allocation depends both on the demands of the particular case as well as the needs and capability of the client. The unbundled client specifically contracts for:

1. Extent of services provided by the lawyer;
2. Depth of services provided by the lawyer; and
3. Communication and decision-making control between lawyer and client during the unbundled engagement.

You might be surprised to learn that you already unbundle in your law practice. There are very few lawyers who provide the complete package of services to all clients. Most of us sell discrete services on a fee for service basis or routinely choose to give away discrete services for free. For example:

- Initial consultation: Do you ever see new clients or an existing client on a new matter for a consultation and it never goes any further? You provide advice, and either the client decides to go no further or ends up hiring another lawyer (or non-lawyer) to do the work?
- Drafting documents: Do you ever prepare a real estate deed, a power of attorney, or just write a letter—and do nothing else?
- Second opinions: Do people who have retained other lawyers ever come in to see you just to get your views on how their case is being handled? After having the conference, do you find that the person stayed with their existing lawyer, changed lawyers (maybe to you, and maybe not), or decided to go it alone without a lawyer?
- Advice: Do strangers ever call or e-mail you with an isolated legal question? Did you answer the question and never hear again from that person?

All of these common law practice activities are examples of limited scope services that you already perform. So what's the big deal about unbundling?

The concept of limited scope representation is not new to clients either. Corporations hire in-house counsel to handle part of the job and to manage which services will be purchased from other lawyers and on what terms. Higher-income people know that it makes sense to use different lawyers for different tasks and to manage those lawyers' time effectively by having non-lawyers (e.g. accountants, bookkeepers, business managers, personal assistants) do a good deal of the leg work. Lower-income people unbundle involuntarily when they pick up a form from a community legal services office, given that budget cuts have limited many agencies' ability to provide full service representation. So unbundling is not new. However, both lawyers and consumers are unaware of its potential to both increase legal access and improve lawyer profitability for middle-income people.

Clients Choose to Self-Represent Because . . .

Self-represented litigants in family court largely desire legal assistance, advice, and representation, but it is not an option for them due to the cost and competing financial priorities. Attorney services are out of reach, while free and reduced-cost services are not readily available to many who need assistance.

- While cost is the predominant factor, there are other considerations.
- There is a certain level of concern about how the involvement of an attorney will affect the ongoing relationship of the parties, whether based on perception or prior experience.
- There is some desire to have a voice in the process (i.e. to tell their story to the court in their own words).

Natalie Knowlton, *Cases Without Counsel: Research on Experiences of Self-Representation in U.S. Family Court* (May 2016), http://iaals.du.edu/sites/default/files/documents/publications/cases_without_counsel_research_report.pdf.

THE CLIENT IS IN CHARGE

In the legal profession's many efforts to improve legal access, the focus is often on what improvements will best suit the needs and interests of lawyers, judges, and politicians. The missing element in the debate has historically been what clients actually want and can afford.

We can recall sitting around in court chatting with other lawyers and hearing them lament, "Practicing law would be great if I didn't have to deal with clients." It is no wonder that lawyers, young and old, join in this anti-client refrain. Law school focuses on appellate cases that result only when one party appeals after losing a trial. Using the confrontational Socratic method, discussion of the personal needs and concerns of the individual parties involved is often subjugated to discussion of broader legal principles and reasoning. Until clinical education became a part of legal education in the 1970s, the word "client" was rarely uttered within the law school classroom, the expectation being that young lawyers would learn all they needed to know about clients as apprentices in the workplace after graduation.

In big firms, young associates may not talk directly with a client for years. In smaller firms and solo practices, their models for client interaction are senior attorneys who were either trained in big firms and/or who started their careers in a different era: an era when clients were less consumer-trained

and the profession was steeped in lawyer-centered traditions that generally valued legal access as a pro bono activity rather than a way to make a living.

Thomas Shaffer, former dean at Notre Dame Law School and noted authority on the lawyer-client relationship, has written about the power imbalance between lawyer and client. In his book *Legal Interviewing and Counseling in a Nutshell*, he describes how lawyers usually sit behind imposing desks with light shining over their shoulders to naturally illuminate the lawyer's reading material. On the other hand, clients sit in a smaller chair across the desk with the light in their eyes! The lawyer decides whether to start with an informal chat or get right down to business. The lawyer decides what subjects will be covered, when to change topics, how many questions are enough, and how long the meeting will be. Professor Shaffer concludes that clients, already vulnerable seeking help from a licensed professional, feel intimidated and cowed by these interactions.

There is generally some imbalance of expertise between service provider and customer. Electricians know more than homeowners about how to install wires. Physical trainers know more about exercise than the amateur athletes who sweat and grunt to the trainers' instructions. The legal profession, however, is unparalleled in its success at perpetuating a power structure which amplifies and institutionalizes the inherent power imbalance that expertise creates. Avrom Sherr describes the working model as that of a "High Priest" of law handing down pronouncements to grateful recipients.

Many clients are no longer willing to be treated like children. Today, clients are more active, more educated in the art of clienthood, more questioning, and more demanding in their quest to control the purchase and supervision of legal services. Unbundling meets the needs of this new breed of client. In contrast to the traditional attitude that client anxiety is somehow reduced by lack of information and attention, unbundling empowers the client. The client is the co-architect of the scope and tenor of the relationship. The unbundled client and lawyer together as partners decide how the case is to be managed and what role, if any, the lawyer will play. Even more novel: the lawyer not only agrees to this shift of power but invites the public to enter the modern law office on that basis.

DISCRETE LAWYERING TASKS

Unbundling is the transition from the traditional full service package to limited scope services. Until recently, clients needing professional help in resolving a dispute were rarely offered an alternative to the full service model. Legal education, ethical codes, and rules of court have traditionally been based on the assumption that full service is quality service and unbundled service is inferior.

In an unbundled case, the parties to the lawyer-client relationship mutually agree to limit the scope of the services provided. Suzanne Burns lists the following steps as typical of an unbundled attorney-client relationship:

- Attorney offers a menu of services.
- Client sets budget and selects which services the attorney will perform.
- Client negotiates terms of payment—per task or set fee.
- Client and lawyer agree as to which of them will be responsible for overall strategy and case management.
- Client and lawyer work together, sharing in decision making, toward resolution of the dispute.

Think of it as the difference between a prix fixe meal and an a la carte buffet. As you can see from the metaphorical menu, the full service package includes the soup to nuts inventory of legal services. Once retained, the full service lawyer is responsible for using good faith professional judgment on behalf of the client to strategize what services are necessary to accomplish the client’s goals.

Menu of Legal Services

Traditional Legal Services	Unbundled Buffet of Legal Services
Full service package—prix fixe menu (all services included)	Select any/all services you wish from the choices below and attach to your menu
Advice	Advice
Gathering facts	Gathering facts
Discovery	Discovery
Legal research	Legal research
Negotiation	Negotiation
Drafting	Drafting
Court representation	Court representation
All services performed by your lawyer	Services performed either by you or your lawyer as collaboratively agreed
Advance retainer required plus additional time billed on a monthly basis	Pay as you go for those services you need, want, and choose in consultation with your lawyer

As set out in Chapter 12, the entire ethical and legal malpractice schema is built on the full service package. In return for the discretion to be in charge of case strategy, in the traditional model, there is an implicit expectation that a lawyer will do everything necessary to accomplish client goals regardless of the financial limitations of the client (or so the malpractice laws imply).

Every lawyer is expected to manage the perfect case plan. Corners are not to be cut unless they do not affect the presentation of the client's rights at trial. It is in this framework of mythical perfection that the official autopsy called malpractice litigation exhumes the cadaver and cynically searches out roads not taken as well as those stumbled upon.

In real-world law practice, few if any clients can afford perfect representation. Lawyers cut corners unilaterally and still more are cut with the agreement (hopefully in writing) of the client. The full service package in theory is, in reality, the amended service package. Yet these shortcuts do not stop both client and lawyer from signing on to the full service package. Most clients don't really care what the lawyer does (until the bills start coming). The bottom line is whether the lawyer gets the job done. A main client motivation can be to pass the buck to the lawyer. Pass the work—pass the worry!

Think about when you go to the doctor with your throbbing knee. You probably don't want surgery, but you'll likely follow your doctor's advice or seek a second opinion. Alternative medicine and homeopathic drugs are newly available. The doctor diagnoses your knee tear. You do most of the work in the gym, take your medicine, and monitor any side effects. You may see the doctor again for surgery, or you may never need to see the doctor again. Even if the doctor makes more money with surgery and might be more comfortable with the clarity of roles once you are out cold with a general anesthetic, unbundling of tasks and responsibility has been the fare de jour for most doctors for decades. Maybe unbundling will produce a similar sea change in our profession.

IS UNBUNDLING RIGHT FOR YOU?

The first step is to give yourself an unbundling mindset quiz to see if unbundling is right for you:

- I want to spend more time in direct contact with clients and less time interacting with lawyers on the opposing side or with 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 obligations imposed by my profession or personal ethical boundaries). ____
- I am willing to accept payment for work performed on a "cash and carry" basis only and begin working for a client without an advance retainer or deposit. ____
- I really like helping people make better decisions. ____

- It is satisfying to me to have people get legal help they can better afford. ____
- I am able to handle watching clients take my sound advice and make poor or self-destructive decisions—and still be 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 have less of a billing and collection job at the end of the month. ____
- I like to have more control over my life by not being forced to cancel vacations or work nights and weekends. ____
- I am willing (even eager) to try new approaches that are different from the way I currently practice or even different from the way I was trained. ____
- I don't mind working with people who like to shop for bargains and want to negotiate my fee. ____
- I am willing to work with people who may have a high mistrust or disregard for lawyers—I welcome the challenge to show them a different mode of lawyer-client service. ____
- I am willing to work with people who have already 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 redesign my office to provide clients with space so they can do their own background reading, watch helpful videos or websites, do their own legal research, prepare their own work, or just relax and calm down. ____
- I want to preventively help people maximize their success and reduce their legal risks in areas far removed from the presenting problem that brought them into my office. ____
- I want to meet and learn from other innovative and caring consumer-oriented lawyers who share a common view of lawyering. ____

It is not necessary for you to check off all or even most of these statements. There is no unbundling mindset entrance exam. If you are drawn to the message conveyed by the mindset quiz, with a little preparation, you can start unbundling this week. If you can legally practice law, you can unbundle your services—if you want to. Unbundling is the practice of law with a fresh, consumer-oriented approach. The only requirements to unbundle are a valid license to practice in the jurisdiction in which you provide legal services, a willingness to modify your existing approach to delivering legal services effectively and competently, and a commitment to avoiding some of the dangers of making this modification. While there are numerous tips, warnings, and practice forms to help you, the key to unbundling is truly your

mindset. Just like financial success in most businesses, belief in yourself and your product (in that order)—coupled with financial, time, and emotional commitment—is a recipe for success.

However, since unbundling is more an approach and mindset than a toolbox of techniques and tips, you first should lay a solid foundation to unbundle by becoming thoroughly conversant with the underpinnings of unbundling. As with any model of legal service delivery, to perform unbundling competently and cost-effectively, a lawyer must develop strategies and skills. This skill set will be explored step by step, including assessing whether a particular case or client is appropriate for unbundling, how to set up an unbundling contract that will be fair to both you and your client, how to shift between limited scope and full service representation, and how to set up an unbundling-friendly office and marketing program to support your unbundling practice.

If you found it difficult to check off several items on the unbundling mindset quiz, you probably won't enjoy unbundling. That's OK. We do not ever envision the day where unbundling will be mandatory. There will always be some clients who want or need full service representation. If you choose and can afford to operate your practice without unbundling, you probably will be able to do so for at least the next decade. However, just like many doctors in the 1930s opposed health insurance, today few doctors can practice without seeing patients covered by some form of health plan. It's in the tea leaves.

BENEFITS TO CLIENTS

Regardless of your initial skepticism or concerns about the challenges that will be explored throughout this book, you need to understand the benefits of unbundling in order to advise clients competently about their options, whether or not they choose to unbundle or whether you choose to provide limited scope representation.

Saving Money

While cost savings is only one factor leading to unbundling, it is probably the driving force. Could you afford to hire yourself at your current hourly rate if you had legal trouble? The marketplace does provide a rough calibration between competence and cost. It's probably true that the more clients pay, the better the legal work they get. However, this is a luxury that very few people can afford. And as both the American Bar Association (ABA) and corporate in-house programs are reporting, consumers of legal services do not want to pay any more than they have to.

For companies, this means shopping for lawyers that will be more flexible in their delivery structure. Few large law firms still provide full service for all

of their business clients' legal needs. In fact, most cases end up with outside counsel after thorough evaluation by the in-house legal department. Even then, case responsibility is often divided between the company and the law firm—maybe among several law firms.

Bargain hunting is even more prevalent among middle-income individuals and small business owners. The replicable findings of nearly every legal needs study report how heavily people rely on self-help, use non-lawyer service providers, or just live with the pain of their legal problems without any help. Lawyers handle fewer than one-third of identified legal problems.

In one research project in which authors gathered detailed narratives directly from family court self-represented litigants, cost was the most consistently referenced motivation for proceeding without an attorney. With just over 90 percent of all participants indicating that financial issues were influential—if not determinative—in this decision, concern over finances came through clearly in the interviews: “The retainer fee was kind of steep for a single mother.” “Cost was the number one driver in my decision.” “It’s too expensive.” “It was a financial thing.” “It was more of a financial issue—most things are today.” “Cost was the largest factor.” “The money was definitely the biggest part of it.”

Natalie Knowlton, *Cases Without Counsel: Research on Experiences of Self-Representation in U.S. Family Court* (May 2016), http://iaals.du.edu/sites/default/files/documents/publications/cases_without_counsel_research_report.pdf.

Unbundling addresses the cost barrier of high lawyer fees in a number of ways:

- No high retainers: Since clients are in charge of the amount of legal work, they pay as they go. Many unbundling lawyers do not require a deposit with the understanding that the biggest risk will be losing a few hours' work. When deposits or retainers are requested, they are generally only for the limited work requested.
- Unbundling lawyers are coaches: Unbundling lawyers are not full counsel of record, and rules permit easier lawyer withdrawal. A retainer is not needed to protect the lawyer against a runaway case, where the lawyer must keep working even if the client owes money or is uncooperative until the client consents or the judge grants a motion to withdraw. In unbundling, no payment = no more work.
- Total bills are more affordable: Less work results in lower fees. The lawyer's hourly rate may not differ in limited scope representation, but the total cost to the client will be more controlled and generally far less. Since clients are bearing more of the total load, the lawyer will be doing less work. This means that in addition to clients not being scared off by high deposits at the outset, lower overall fees increase lawyer use in two ways.

First, clients will be willing to stick a toe in the water and start using your services without the overwhelming fear of being stuck with an unpayable bill at the end. Even though many clients don't pay full service lawyers (see "Benefits to Lawyers," p. 13), the vast majority of people want to pay their bills. They often hate you when they don't pay and hate you even more when they are pressured or sued to pay.

"People don't have ready cash for the retainer," said a judge, "so even if they could potentially afford it over time, they don't have the money that a lawyer wants to get into a case." Another judge remembered practicing law before joining the family court bench: "I practiced and I was amazed at how much I was needing to charge people to have a law practice . . . It's so expensive. I don't think I could afford a lawyer."

Natalie Knowlton, *Cases Without Counsel: Research on Experiences of Self-Representation in U.S. Family Court* (May 2016), http://iaals.du.edu/sites/default/files/documents/publications/cases_without_counsel_research_report.pdf.

- Lawyers can focus on top priority tasks: By limiting your scope, you can concentrate on the client's most pressing needs. This should increase your efficiency for the tasks undertaken and hopefully reduce overall client costs.
- Clients have more control: Probably the most fascinating finding of legal needs studies conducted by the ABA, state bars, private organizations such as the Institute for the Advancement of the American Legal System (IAALS), and in Canada, is that over 50 percent of the self-representers could afford at least some form of legal representation, yet still chose to go it alone, facing all of the challenges and downsides. More than half of the self-representers had the money and had some college education. So they should know better—all studies show that litigants with lawyers get better results. So why are so many litigants self-representing? It's a story about control, as the song goes.

People want to use their limited resources to support their children rather than spend the money on lawyers.

- "As I was having conversations with the attorneys, it became clear to me that representation was not an efficient use of resources that were very, very limited that I could actually be using toward my children."
- "I'd much rather put that money toward supporting children than trying to fight to get them."

- “We have kids in college, and there just wasn’t any reason to spend money on something—we just didn’t need it.”

Natalie Knowlton, *Cases Without Counsel: Research on Experiences of Self-Representation in U.S. Family Court* (May 2016), http://iaals.du.edu/sites/default/files/documents/publications/cases_without_counsel_research_report.pdf.

Typical Unbundling Client

M. Sue Talia describes the unbundled “poster child” as having the following personality traits:

- Resourceful
- Self-help oriented
- Technical background
- Able to gather and organize information
- Able to do research in books or on the Internet

Education and professional experience also came into play during several participants’ comments on their confidence in their ability to self-represent. The majority (78 percent) of self-represented litigant study participants had at least some college study, with 41 percent holding a degree (29 percent undergraduate and 12 percent graduate).

Natalie Knowlton, *Cases Without Counsel: Research on Experiences of Self-Representation in U.S. Family Court* (May 2016), http://iaals.du.edu/sites/default/files/documents/publications/cases_without_counsel_research_report.pdf.

While more research is necessary to define unbundlers’ personality and character, one unifying common characteristic seems to be the need and desire for control over their own lives. They want control in a number of areas, outlined in the next section.

Control over the Process

The nature of unbundling is such that both lawyer and client say the words: “The client is in charge of the process.” This explicit agreement of the nature of the lawyer-client relationship balances power and sets the parameters as to who is in charge and whose needs are paramount. One of mediation’s contributions to unbundling is that it gives clients with legal problems a taste for

controlling their own resolution process. We all bridle at feeling dependent or powerless, and unbundling supports clients' desire to be treated like adults by the attorneys they choose to work with. This process control is seen in a number of different ways as the client works with the lawyer in a partnership to decide:

- What needs to be done to solve the presenting problem
- Whether the lawyer will be involved at all
- The allocation of work between client and lawyer
- Whether the lawyer will actively monitor the situation or wait for the client to reinitiate contact

After the dust settles, in hindsight, clients too often downplay what lawyers did for them, feel they could have done it themselves, believe the lawyer got a lucky break, or are unappreciative for a thousand and one other reasons. When clients are actively involved and in the direct line of fire themselves, they better understand the pressures and problems of the case—it remains their case and they are not permitted the luxury of dumping it solely onto you and then abrogating responsibility for the work, pressure, or cost. Unbundling clients actually sign up for this responsibility and are generally more appreciative of lawyer partners who understand what they are going through, demonstrate that understanding with empathy and availability, and are flexible enough to share control and work with the client.

Control over Choices

By remaining on the firing line, unbundling clients are faced with the same types of challenging decisions that you are faced with when providing full service representation. Should I write a letter or have a personal meeting? Should I serve the summons or request the other side to pick it up? Should I give in on five smaller issues in order to get a bit more on the big issue or just to close the deal? These strategic choices constitute the art of lawyering.

Unbundling offers clients the opportunity to face these strategic decisions firsthand. The essence of limited scope coaching is for you to help your client surface and explore alternatives on the spectrum of decision-making. For example, one of our clients recently booked a session just to talk about when to put the family home on the market. Does she wait six months until the home selling market improves? Should she invest \$25,000 in improvements in order to maximize the selling price? Should she work with the spouse she is divorcing to make repairs or hire out the job? You have probably had many such client consultations throughout your career. You have the tools to translate such advice to the unbundling context. However, what makes it different in unbundling is that the client might initiate the conversation due to

challenges that arise in the client handling of the case. Once the conversation is concluded and decisions made, it is the client who implements the plan. Such control over getting the options and fully exploring them drives many clients to unbundling.

Control Is a Motivator for Self-Representation

“I didn’t want my case kind of being taken over by somebody who maybe didn’t quite understand where I wanted to be and where I wanted to go with it.” “I felt like I wanted the control.” “It felt really important to me,” said yet another, “so I don’t know that I would have felt comfortable just handing it over and expecting someone to know exactly what I wanted in every nuance of it.” “You’ve got to have the power over your own case. You’ve got to be the person telling the story, because an attorney won’t—and, in all fairness, can’t—represent you entirely the way you would like to be represented.” “[E]ven if you have an attorney that’s really trying to do their best for you,” he said, “they can’t know every detail of your situation. Family matters are years in the building . . . How can any attorney be expected to know and understand so many years of interaction?”

Natalie Knowlton, *Cases Without Counsel: Research on Experiences of Self-Representation in U.S. Family Court* (May 2016), http://iaals.du.edu/sites/default/files/documents/publications/cases_without_counsel_research_report.pdf.

Keeping Lawyers Out of the Way

Many unbundlers are motivated not only by cost and control but also by the deep and abiding sense that lawyer involvement does more harm than good. Whether stemming from a distasteful experience or the anti-lawyer atmosphere reflected in lawyer jokes, large segments of society believe that lawyers just make a bad situation worse by inflaming emotions, churning conflict, or being insensitive to the relationship and business-driven nuances that are the root causes and often the bases for solving human disputes. By serving as unbundled managers of dispute resolution (see Chapter 5), limited scope lawyers can both inform clients about options and serve as buffers to the court resolution process that the public universally decries as not meeting their needs.

BENEFITS TO LAWYERS

The legal profession can certainly benefit from increasing its customer-centered orientation. The profession has begun to recognize its vulnerability in the marketplace as clients are increasingly self-representing, turning to non-lawyer

providers, or just living with a recognized legal need. Marketing courses for lawyers are the current rage, primarily because legal consumers (clients) are learning from their experience as consumers of other products and services to expect disclosure of relevant “sales information” and friendly service oriented toward them. Tools such as easy-to-read websites, responsive customer hot lines, and marketing training help meet this growing consumer demand.

Increase Your Market Share

The resulting benefit of no or low deposits is that the public is more willing to utilize lawyers. Many people who are doing without lawyers can afford, and are willing to pay limited fees for, reduced service. Most people know that it is in their self-interest to use lawyers; they just can't afford to come up with the necessary starting fee. Many people will choose not to pay a few hundred dollars and will always try to do it themselves or just endure. But many more will at least give lawyers a limited try—and if satisfied with the result, they will use lawyers again and again on the same case, to solve other problems, and will recommend that lawyer to others.

Learn from this consumer trend. Some innovative middle-income providers have developed thriving practices using client-oriented advertising, office availability in shopping malls, information and service hot lines paid immediately by credit card or by phone bill, and other experiments in service delivery (see Chapter 16 to learn about successful unbundling models now operating throughout the country).

Not all lawyers welcome unbundling! Has all this progress (and more) convinced most lawyers to expand their opportunities and provide needed services by unbundling? Read on . . .

In 2015, the Law Society of England and Wales issued guidance to its lawyers to effectively unbundle their practices to bridge a needs gap for the middle class caused by drastic cuts in their previous Medicare-type voucher form of legal aid.

On March 20, 2015, the *Law Society Gazette* published the following comments by British lawyers reacting to support for unbundling by the Law Society of England and Wales:

- We all know our barrister chums on the bench will absolutely ignore all efforts to limit liability when unbundling, and make us responsible for anything that went wrong during the case . . . Anyone who therefore offers “unbundled” advice has to be totally bonkers.
- Only a lunatic would agree to work on such terms. You either act for a client or you don't. It's black and white in my view. You would end up doing stacks of work pro bono because clients would not understand the terms of the retainer and would expect to have their hands held from the cradle to grave.

It is risible that the Law Society is endorsing this type of thing, and is a quite shocking indictment of the state of civil litigation at present.

- I got the e-mail (on Guidance from the Law Society) last night and almost exploded! It basically says—work for less, don't do as good a job, and don't get paid a proper fee, but take on all the liability.
- Indeed, it makes clear that if you do this, you will be found liable for not having investigated the rest of the client's circumstances.
- I would go so far as to argue that it does the profession a disservice, because it suggests solicitors are liable to an extent that I think even the Court of Appeal has never suggested. It won't take a long time for our bewigged learned friends to dig this practice note up in the future and use it in submission to His Honour that our PII [professional indemnity insurance] policy should be paying compensation to an unbundled client because we never asked her the circumstances of how much debt she was actually in (or whatever).
- Good god! We are dismantling our own jobs! And our own "non" representative body is advocating it! Seriously there has to be a break away from this whole ethos. I cannot imagine any other profession voting, like a turkey, for Christmas.
- Why are the Law Society steering their members down this sort of path? The civil litigation system is broke I'm afraid. Suggesting we can all survive by undertaking this type of work is moronic.
- To unbundle is to undermine. Clients rightly expect nothing but the highest professional standards from solicitors. Journeymen doing half a job in the eyes of the client, irrespective of the weasel words in the retainer, will devalue the profession as a whole.
- Leave the unbundled to the unadmitted.
- I shall bundle until I can bundle no more.
- Just who are these people at the Law Society? Do they know anything at all about anything? They really must be absolutely crackers to promote this nonsense. It just makes you scream.

You Don't Need to Reduce Your Hourly Rate

Unbundling need not be confused with a reduced hourly rate. The fee arrangement may be "win-win" for both you and your client. The client pays significantly lower overall fees; however, you can charge (and clients generally expect to pay) your customary hourly rate for the limited services provided. Actually, some lawyers providing unbundled services may choose to offer such services at a higher than normal hourly rate based on a value billing concept.

Your Bills Get Paid

Another advantage of unbundling is that studies show that satisfied clients pay their bills. Satisfied clients generally pay faster, so you need to write off fewer fees. Also, because bills do not skyrocket as fast and your work is better understood and appreciated by clients (who are actually making informed decisions about which tasks you will perform and how much time will be billed), accounts receivable do not become so out of control.

Increase Your Personal Satisfaction

Attorneys who sign on for the limited scope model may also find greater personal satisfaction and congruence with their personal values than in the bloodletting of a courtroom. Your belief in the creative opportunities, efficiency, and cost benefits of unbundling can often inspire and steady a client to persevere through a bumpy and painful process. That inspiration and belief alone may help clients achieve satisfactory resolution.

PRACTICE TIPS

1. Take the Unbundling Mindset Quiz earlier in this chapter to see if unbundling is right for you.
2. Break up your full service package and sell your services one at a time.
3. Work as a co-equal partner with your clients to increase satisfaction and productivity.
4. By involving clients in their own legal work, you can prevent them from passing the buck to you in case something goes wrong.
5. Learn the client benefits of unbundling to use in initial client meetings, phone calls, conferences, and in your marketing material.
6. Give clients more control and empowerment in their cases to reduce their resentment about the ups and downs inherent in their legal problem.
7. Don't lower your hourly rate to unbundle—many consumers understand what a great deal they are getting.