Amendments to Rules Facilitate Unbundling of Legal Services

by Dennis Carlson

"An ignorant person is one who doesn’t know what you have just found out."
—Will Rogers

Years ago I had a discussion with a lawyer about what was then a new concept—unbundled legal services. Unfortunately, there was a communication gap and the lawyer thought I said "unbundled". The conversation that followed was somewhat confusing, but I think the lawyer eventually concluded that it was a good idea for legal services to be both unbundled and unbungled. On that we agreed.

Unbundled legal services is an idea that has floated around the legal profession for at least the past decade. In short, it refers to a situation in which a client and an attorney agree to limit the scope of the attorney's representation. That is, the attorney is retained to handle only a specific portion of a case rather than the entire matter. For example, in a dissolution of marriage, an attorney may be hired to represent the client only on the property division aspects of the case. The attorney would not give advice or be involved in any other part of the divorce.

There are probably a host of reasons why clients would want to retain counsel on a limited basis. Some clients may be unable to pay for an attorney's services on an entire matter. Others may have confidence in their ability to negotiate a settlement on some, but not all, segments of the case. No matter what the motivation of the client, the unbundling of legal services is generally considered to be an avenue for legal services to be provided to those who otherwise would proceed without counsel.

When the Nebraska Supreme Court adopted the Rules of Professional Conduct in 2005, Rule 1.2(b) specifically permitted attorneys to limit the scope of representation of a client as long as the limitation was reasonable and the client gave informed consent. On August 27, 2008, the Nebraska Supreme Court adopted amendments to the Nebraska Court Rules of Professional Conduct §§ 3-501.2 and 3-504.2. The Rules applicable to unbundled legal services now state:

§ 3-501.2. Scope of representation and allocation of authority between client and lawyer.
(a) (Not applicable)
(b) A lawyer may limit the scope of his or her representation of a client if the limitation is reasonable in the lawyer’s judgment under the circumstances and the client gives informed consent to such limited representation.

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PROFESSIONAL RESPONSIBILITY

(c) A lawyer may prepare pleadings, briefs, and other documents to be filed with the court so long as such filings clearly indicate thereon that said filings are "Prepared By" and the name, business address, and bar number of the lawyer preparing the same. Such actions by the lawyer shall not be deemed an appearance by the lawyer in the case. Any filing prepared under this rule shall be signed by the litigant designated as "pro se," but shall not be signed by the lawyer preparing the file.

(d) If, after consultation, the client consents in writing, a lawyer may enter a "Limited Appearance" on behalf of an otherwise unrepresented party involved in a court proceeding, and such appearance shall clearly define the scope of the lawyer’s limited representation.

(e) Upon completion of the "Limited Representation," the lawyer shall within 10 days file a "Certificate of Completion of Limited Representation" with the court. Copies shall be provided to the client and opposing counsel or opposing party if unrepresented. After such filing, the lawyer shall not have any continuing obligation to represent the client. The filing of such certificate shall be deemed to be the lawyer’s withdrawal of appearance which shall not require court approval.

(f) (Not applicable)

§ 3-504.2. Communication with person represented by counsel.

In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.

COMMENT

[10] In the event an "Entry of Limited Appearance" is filed, opposing counsel may communicate with such lawyer’s client on matters outside the scope of limited representation, and by filing such limited appearance, the lawyer and the client shall be deemed to have consented to such communication.

As noted above, before the scope of a representation can be limited, the attorney must first conclude that the limitation is reasonable. A primary consideration in making this determination is the type of legal matter presented by the client. Some cases simply do not lend themselves to easy division. In the majority of cases clients are better served if the representation is from start to finish rather than being divided into represent-