Top Malpractice & Ethics Concerns

Unbundled Legal Services

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ABA
Defending Liberty Pursuing Justice
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Topics:

- What is Unbundled Legal Services?
- Ethics and problematic issues
- Practical considerations
- Resources for assistance
Think You Can't Afford an Attorney?

You Might Find You Can't Not Afford an Attorney!

Call Bellenot & Bouford for Limited Scope Representation
What is “unbundled legal services”?

• Also known as **limited-scope** representation, **discrete-task** representation and **limited-assistance** representation, is the process of taking a client’s legal matter and breaking it down into separate tasks. The attorney then provides representation to the client that is only related to one or more of those tasks but does not provide full legal representation. The client is also responsible for completing tasks necessary for his or her legal matter.
What is “unbundled legal services”?

**Preparation & Advice:**
- Consultations
- Legal advice
- Legal research
- Investigation
- Negotiation

**Document Drafting & Review:**
- Service of process
- Pre-trial motions
- Motions
- Discovery
- Discovery Responses
- Financial affidavit

**One-Time Representation in Court or for Discovery:**
- Court hearing
- Status conference
- Deposition
- Mediation
- Settlement conference
- Motion hearing

**Examples**
Why unbundle services?

Benefits to clients:

• Greater access to justice for the general public, especially pro se litigants, and lower to moderate income members.
• Guidance provided by limited scope representation to those who may otherwise try to represent themselves entirely.
• Reduced cost. Services are often provided for a fixed fee which may be easier for a client to budget.
Why unbundle services?

Benefits to attorneys:

• New source of revenue.
• Procedures and tasks can be streamlined into existing workflow.
• Decrease the existing burden on our court systems overwhelmed with increasing numbers of pro se individuals.
Why unbundle services?

- Increasing demand for cost-effective legal services
- Underemployed attorneys
- Client involvement and control
- Increasing number of self-represented litigants
- Jurisdictional issues involving out-of-state defendants leads to miscommunication with local counsel and missed deadlines.
- Increased efficiency of pro se litigants who receive some legal counsel benefits the court
Attorneys recommend unbundled legal services because it is cost-effective for clients, keeps attorneys out of court, and reduces instances of irreversible client mistakes based on ignorance of the law. (Joyce B. Davidson, Unbundling Legal Services: A Guide for Lawyers, October 2015)
Benefits of unbundling services

Unbundling allows him to rely on mediation strategies, principles of collaborative law, and preventive wellness focused on client-centered decision making and representation. (Forrest M. Mosten, www.mostenmediation.com)
How unbundling works in practice

Consult client. Discuss limited scope options.

Client selects limited scope

Discuss issues tasks to be apportioned

Obtain written fee agreement

Go of record for limited scope

Client selects full service

Render limited services without going of record
How unbundling works in practice

1. Render limited services without going of record
2. Obtain written fee agreement
3. Go of record for limited scope
4. Perform agreed tasks
5. Client needs additional services outside initial scope
6. Perform agreed tasks
7. Return to top and start again
8. File notice of withdrawal
9. Send client withdrawal letter
Is it right for your firm?

- Are the current legal services provided by your firm appropriate for unbundling?
- Are there reasonable limitations on the scope of representation?
- Would clients be able to follow the guidance necessary to complete their legal needs?
- Some instances when an attorney should not offer unbundled services include:
  - Complex issues, complex strategies, unstable clients, time constraints, other practical constraints.
Common mistakes

• Failed to obtain informed consent in writing.
• Failed to file the appropriate entry of appearance form.
• Not precisely defining the scope of the engagement.
• Not specifying who will be responsible for communicating with the other side.
• Scope creep: not keeping services in line with the limited scope of engagement.
• Failing to detect a conflict of interest.
• Document changes to the engagement.
• Improperly terminating the engagement or withdrawing.
Ethics of unbundling services

Q. Can I offer unbundled legal services in my jurisdiction?

A. Most likely. But the rules differ between states.
Ethics of unbundling services

Q. What guidance is provided by the Rules of Professional Conduct?

A. Generally, Rule 1.2 Scope of Representation And Allocation of Authority Between Client And Lawyer will identify whether it is permitted in your jurisdiction and any limitations on its use.
ABA Model Rule 1.2 Scope of Representation And Allocation of Authority Between Client And Lawyer

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

Comment:

[6] The scope of services to be provided by a lawyer may be limited by agreement with the client or by the terms under which the lawyer's services are made available to the client.

[7] Although this Rule affords the lawyer and client substantial latitude to limit the representation, the limitation must be reasonable under the circumstances.
Q. What ethical issues are of particular concern?

A. Conflicts of interest:
   • Can the client suitably represent himself or herself in the matter?
   • What is client’s motivation? Are clients seeking unbundled services to avoid compliance with other obligations?
   • Is the case too complex strategically and/or tactically for unbundling to work?
Forms for doing it right: Engagement

The Engagement Letter, Fee and Document Preparation Agreement and Attorney and Client Task Assignment Checklist are designed to help attorneys develop engagement agreements that properly define the limited scope of the representation and outline who is responsible for each associated task. The two documents are intended to be used together.
SAMPLE LETTER: Engagement

[Client Name]
[Client Address 1]
[Client Address 2]

Date:

Re: Limited Scope Representation

Dear

As discussed, I am pleased to accept this opportunity to provide you limited scope representation. Our role as limited scope attorneys is to provide legal representation on a limited basis. Limited scope means that I am not representing you in each and every aspect of the case you are asking me to handle. We have entered into a specific fee agreement based on the limited scope of my representation and have discussed what tasks I will be handling. These tasks are specifically limited to:

[Explain limited scope of representation—remember, informed consent]

You cannot assume that I will be handling anything outside the specific tasks which are explained above. You will remain responsible for all other aspects of your legal matter. This may include, but is not
Forms for doing it right: Scope changes

SAMPLE LETTER: Change in Scope

[Client Name]
[Client Address 1]
[Client Address 2]

Date:

Re: Limited Scope Representation

Dear [Client Name],

Per our conversation of ________, 20___, you have asked me to perform additional tasks for you that are not included in our original Agreement for Limited Scope Representation dated _______ [and modified _______] (copies enclosed).

You have requested and I have agreed to do the following:

[Enumerate the specific tasks/issues that you have agreed to undertake for the client]
(e.g. to prepare _________________ in response to the motion recently filed)

I have agreed to handle the task listed above. You will continue handling all other matters yourself as set forth in our original Agreement.
SAMPLE LETTER: Closing

[Client Name]  
[Client Address 1]  
[Client Address 2]  

Date:  

Re: Limited Scope Representation  

Dear

I have now completed all of the tasks which we agreed I would do in our Agreement dated ______ [and modified on ___________]. I know of no other matters on which you have requested my assistance. If you believe that I am incorrect, and you are relying on my assistance for some additional task, please contact me immediately.

[Use only if attorney has appeared of record with the court]. I will file the enclosed Notice of Completion with the court notifying the court that my representation for you is concluded.

As a courtesy, I have listed below some of the upcoming tasks in your case which I am aware of at this time. However, these tasks are outside the scope of my representation so they must be independently verified by you and you should not rely on the list below as legal advice from me. You are ultimately responsible for the remainder of your case including completing all tasks, and meeting all deadlines.
Forms for doing it right: Fee Agreement

The Fee Agreement in limited scope engagement matters is typically much more detailed than an ordinary client engagement document. As a best practice, both the attorney and the client should sign and date each document which the attorney uses to memorialize their understanding of the division of tasks associated with the representation.
Forms for doing it right: Fee Agreement

SAMPLE: Fee and Document Preparation Agreement

Identification of Parties: This agreement, executed in duplicate with each party receiving an executed original. 

Nature of Case: 

1. Client Responsibilities: Client is responsible for his/her own case, issues, defenses, settlement or resolution options and their potential consequences. In addition, Client agrees to: 
   a. Cooperate with Attorney or his/her office be complying with all reasonable requests for information in connection with the matter for which the Client is requesting services. 
   b. Inform Attorney of the specific parts of the case that Client requests Attorney assistance with. 
   c. Review and evaluate all information provided by Attorney

   ___Drafting of Complaint, Confidential documents & communication with client necessary to perform specific legal service: $ _____.00 (to be filed with court by client and at client’s cost).

   ___Drafting of Praecipe for Summons communication with client that is necessary and reasonable in the lawyer’s opinion to enable performance of the specific legal service $ _____.00 (client to file with the court and to arrange and pay for personal service by sheriff).

   ___Drafting Voluntary Appearance and letter to opposing party, mail same to opposing party, & communication with client that is necessary and reasonable in the lawyer’s opinion to enable the performance of the specific service: $ _____.00.
Forms for doing it right: checklists

A checklist is designed for an attorney to use during an initial limited scope representation consultation to explain to clients the various tasks that their case will entail and to visually outline how responsibility for those tasks will be allocated between the attorney and the client. Attorneys may choose to incorporate the Attorney and Client Task Assignment Checklist or similar document into the Engagement Letter.
Forms for doing it right: checklists

<table>
<thead>
<tr>
<th>SERVICES TO BE PERFORMED (TASKS)</th>
<th>ATTORNEY TO DO</th>
<th>CLIENT TO DO</th>
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<tbody>
<tr>
<td>Legal Advice</td>
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<tr>
<td>Provide advice about legal rights, responsibilities, procedures, and/or strategy on a one-time basis. Describe:</td>
<td></td>
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</tr>
<tr>
<td>Provide advice about legal rights, responsibilities, procedures, and/or strategy on an ongoing basis.</td>
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<tr>
<td>Describe:</td>
<td></td>
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<tr>
<td>Document Preparation</td>
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<tr>
<td>Drafting of Complaint, Confidential documents.</td>
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<td>Describe:</td>
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<tr>
<td>Drafting of Praecipe for voluntary applications</td>
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<td>Describe:</td>
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<tr>
<td>Drafting Voluntary Application</td>
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<td>Describe:</td>
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<tr>
<td>Drafting Motion for Alternative</td>
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<td>unable to be achieved.</td>
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<td>Describe:</td>
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<tr>
<td>Drafting of Answer &amp; Counter Motion for Alternatives</td>
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<td>Describe:</td>
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Any other task not set out in this Checklist is the responsibility of Client.

Client Initials ___________ Attorney Initials ___________

Date ________________________
Forms for doing it right: Notice

The Court Forms that have been approved by a jurisdiction should be used when an attorney makes a limited scope appearance, and the rules of the local jurisdiction requires it. Typically, the attorney must complete and file a Notice of Limited Scope Appearance when making such an appearance.
Forms for doing it right: Notice

**NOTICE OF LIMITED APPEARANCE**

IN THE COURT OF COUNTY, NEBRASKA

IN THE COURT OF

Plaintiff,

Case No. _______________

VS.

Defendant,

I, _____________________________, attorney, enter a limited appearance on behalf of _____________________________, who has given informed written consent to such limited representation. This representation is limited to:

I consent to the limited representation described in this notice.

Signature of Plaintiff/Defendant

Date _____________________________
Forms for doing it right: Completion

Your jurisdiction may also require a Notice of Completion be filed with the court. For example, Nebraska requires attorneys within 10 days after the completion of the limited representation, a Notice of Withdrawal of Limited Scope Appearance must be filed with the court and served on the client and all other parties of record.
Forms for doing it right: Completion

Nebraska State Court Form

CERTIFICATE OF COMPLETION OF LIMITED REPRESENTATION

IN THE COURT OF COUNTY, NEBRASKA

Choose the court Choose the county

IN THE COURT OF Plaintiff,

Plaintiff,

VS.

Defendant,

CERTIFICATE OF COMPLETION OF LIMITED REPRESENTATION

<table>
<thead>
<tr>
<th>Bar number and firm name</th>
<th>City/State/ZIP Code</th>
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<table>
<thead>
<tr>
<th>Phone</th>
<th>E-mail Address</th>
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I, ____________________________________________,

Signature of Plaintiff / Defendant

Date ____________________________
Advice for doing it right

• Determine feasibility on a case-by-case basis.
• Make sure client provides informed written consent.
• Carefully document everything.
• Establish clear procedures.
• Thoroughly review entire case before unbundling.
• Do not provide services in an inexperienced area of law.
• Stick to the scope of representation.
Got questions?
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