

UNBUNDLING LEGAL SERVICES:

Options for
CLIENTS, COURTS & COUNSEL



A GUIDE FOR LAWYERS



UNBUNDLING LEGAL SERVICES:

A GUIDE FOR LAWYERS

JANICE B. DAVIDSON
Senior Advisor, *Honoring Families Initiative*

October 2015

For reprint permission, please contact IAALS.
Copyright © 2015 IAALS, the Institute for the Advancement of the American Legal System
All rights reserved.



INSTITUTE *for the* ADVANCEMENT
of the AMERICAN LEGAL SYSTEM



IAALS—Institute for the Advancement of the American Legal System
John Moye Hall, 2060 South Gaylord Way, Denver, CO 80208
Phone: 303-871-6600
<http://iaals.du.edu>

IAALS, the Institute for the Advancement of the American Legal System, is a national, independent research center at the University of Denver dedicated to facilitating continuous improvement and advancing excellence in the American legal system. We are a “think tank” that goes one step further—we are practical and solution-oriented. Our mission is to forge innovative solutions to problems in our system in collaboration with the best minds in the country. By leveraging a unique blend of empirical and legal research, innovative solutions, broad-based collaboration, communications, and ongoing measurement in strategically selected, high-impact areas, IAALS is empowering others with the knowledge, models, and will to advance a more accessible, efficient, and accountable American legal system.

Rebecca Love Kourlis Executive Director

Natalie Anne Knowlton Director, *Honoring Families Initiative*

Janice B. Davidson Senior Advisor, *Honoring Families Initiative*

Janet L. Drobinske Legal Assistant, *Honoring Families Initiative*



Honoring Families is an initiative of IAALS dedicated to developing and promulgating evidence-informed processes and options for families involved in divorce, separation, or parental responsibility cases that enable better outcomes for children and that provide greater accessibility, efficiency, and fairness for all parties, including those without counsel.

ACKNOWLEDGEMENTS

The *Honoring Families Initiative* and IAALS would like to extend sincere thanks to Hon. Daniel M. Taubman for his expertise and thoughtful input on this project. IAALS also wishes to acknowledge the invaluable contributions of Hon. Gale T. Miller, Danaé Woody, Laura Monty, and Forrest S. Mosten, whose time and attention to this project are deeply appreciated. This project would not be possible without their invaluable contributions.

IAALS would also like to thank the Association of Family and Conciliation Courts for collaborating on this project, and the *Honoring Families Initiative* Advisory Committee for its ongoing and thoughtful advice.

Table of Contents

Introduction	1
What is it?	2
• What is “unbundled legal services”?.....	2
• What are different types of unbundled legal services?.....	3
• Is it permissible to ghostwrite pleadings for my client?.....	3
Why offer it?	5
• Why is there increased interest in providing unbundled legal services?	5
• How will unbundling help to increase access to legal services for litigants who choose to represent themselves?	5
• Does providing unbundled legal services benefit my family law practice?	6
• Is there support for unbundled legal services among bar associations?.....	8
Can I offer it?	10
• Does my state allow for the practice of unbundled legal services?.....	10
• Should I worry about the ethics of providing limited scope representation?	10
• What do the ABA Model Rules mean by “reasonable under the circumstances”?.....	11
• What do the ABA Model Rules mean by “informed consent”?.....	12
• I am concerned that I will have more malpractice exposure. Will my risk for malpractice increase?	12
• Family law cases require adjudication. How do I respond to those who maintain that such matters cannot be handled in a “piecemeal” fashion?	13
How do I implement it into my practice?	15
• What should I consider before I take on a limited representation case? Is every case suitable for unbundled legal services? If not, how do I tell which cases are or are not? ...	15
• Do I need to screen potential clients?.....	16
• Must the agreement I have reached with my client regarding the scope of representation be in writing?.....	17
• Am I obligated to do anything outside of the agreed upon limited scope?	18
• As a limited scope attorney, can I represent both husband and wife in preparing settlements for other agreements necessary for them to get a divorce? Can I provide limited representation to a couple who have agreed on the essential terms of their marital settlement agreement but need a lawyer to put the agreement in proper legal form?	18

- Can the other side’s attorney communicate with my client if I am providing unbundled services?19
- What do I need to do to properly limit the scope of my services with my client if I am making an appearance with the court?..... 20
- How do I properly terminate my representation with my client if I have made an appearance with the court?.....21
- What are common but avoidable missteps relating to limited scope representation?21
- Where can I find training on providing unbundled legal services?..... 23
- Where can I find guidance on the nuts and bolts of building an unbundled practice?.... 24

Introduction

The use of unbundled legal services is growing rapidly. An increasing number of jurisdictions explicitly allow unbundling and a growing number of attorneys are offering the service. Yet many attorneys remain unaware of its availability. As this method of legal services delivery expands, courts, commentators, and bar associations have created numerous excellent resources on the topic, including readily available websites, webinars, training manuals, power points, and articles.

This guide amasses helpful resources into an easily accessible Frequently Asked Questions format, centered on the fundamentals of unbundled legal services:



Through this format, the guide can respond to issues of concern from lawyers with varying levels of sophistication on the subject, as well as provide more in-depth information on issues that remain more contentious and unsettled. The purpose of this guide is to provide information and suggestions that encourage attorneys to offer unbundled legal services.

What is it?

What is “unbundled legal services”?

“Unbundled legal services” is also known as limited scope representation or discrete task representation. It refers to a method of legal services delivery whereby a client hires an attorney to assist with specific elements or tasks, for example, legal advice, document review or document preparation, coaching negotiations, and/or limited appearances in court. The client and attorney agree on the specific discrete tasks to be performed by each. Depending on the nature of the involvement, the attorney may or may not enter an appearance with the court. The client represents himself/herself in all other aspects of the case.

❖ Resources:

- Forrest S. Mosten, *Unbundling of Legal Services and the Family Lawyer*, 28 FAM. L.Q. 421 (1994).

http://www.mostenmediation.com/books/articles/Unbundling_of_Legal_Services_and_the_Family_Lawyer.pdf

This seminal article on unbundled legal services encourages family lawyers to rethink the lawyer-client relationship as it relates to the traditional legal services delivery model. To facilitate new ways of thinking about the practice, Mosten sets forth three unbundled legal services delivery models: 1) legal counselor; 2) consulting lawyer for clients participating in mediation; and 3) preventative legal health care.

- Stephanie Kimbro, *Unbundling: What is It?*, 35 FAM. ADVOCATE 8 (2012).

http://www.americanbar.org/tools/digitalassetabstract.html/content/dam/aba/publications/family_advocate/vol35/2fall12_kimbrow.pdf

Kimbro discusses the background of unbundled legal services and recent developments. This article also explores best practices and procedures that a lawyer must follow in order to responsibly unbundle work for a client, including a discussion of substantive legal matters in which unbundling may not be appropriate.

What are different types of unbundled legal services?

<ul style="list-style-type: none">✓ Providing legal guidance or opinions✓ Directing clients to resources and rules✓ Drafting pleadings, briefs, declarations, or proposed orders✓ Conducting document review✓ Legal research✓ Organizing discovery materials✓ Drafting contracts and agreements	<ul style="list-style-type: none">✓ Coaching on strategy✓ Role playing✓ Negotiating✓ Online and alternative dispute resolution✓ Advising on courtroom procedures or behavior✓ Preparing exhibits✓ Making a limited appearance(s)✓ Collaborative lawyering
---	--

❖ Resources:

- Forrest S. Mosten, *Unbundled Services to Enhance Peacemaking for Divorcing Families*, 53 FAM. CT. REV. (July 2015).

http://www.americanbar.org/content/dam/aba/administrative/delivery_legal_services/ls_del_unbundled_services_to_enhance_peacemaking_for_divorcing_families.authcheckdam.pdf

This article discusses how unbundled legal services can enable professionals to help divorcing families reduce conflict. Mosten sets forth examples of unbundled legal services and explores four unbundled peace-making roles that lawyers can play.

Is it permissible to ghostwrite pleadings for my client?

—State—

Ghostwriting is a term generally used to describe the drafting of documents by attorneys for clients without filing a notice of appearance. The rules on ghostwriting pleadings vary from state to state. Some require disclosure of attorney involvement (for example, Florida and Nebraska); others do not (for example, California). Some states require disclosure for attorney drafting of pleadings and papers but not for assistance with pre-printed judicial forms (for example, Colorado).

❖ Resources:

- ABA Unbundling Resource Center, Document Preparation.

http://www.americanbar.org/groups/delivery_legal_services/resources/prose_unbundling_resource_center/document_preparation.html

This American Bar Association compilation of state ethics opinions pertaining to document preparation and ghostwriting details those states in which attorneys are not required by state rules to disclose drafting assistance to the court, and those in which attorneys and legal service providers are under an obligation to disclose this assistance to the court.

- Paula Frederick, *The Ethics of Ghostwriting Pleadings*, 13 GA. B. J. 46 (2007).

In this short bar journal article, Frederick explores Rule 1.2(c) of the Georgia Rules of Professional Conduct permitting limited scope representation. Frederick cautions that while the ABA accepts and Georgia allows the provision of legal assistance without requiring an attorney to disclose the nature and extent of such assistance to the court, not all jurisdictions agree.

—*Federal*—

With the exception of prisoner cases, most federal courts do not allow ghostwritten pleadings. However, there may be some softening of that position.

❖ Resources:

- *See and compare Duran v. Carris*, 238 F.3d 1268 (10th Cir. 2001) (the Court in *Duran* held that ghostwritten briefs and anonymous testimony were not allowed) and *A Judge Comments*, 39 LITIGATION 37 (2013).

Providing a judicial perspective, Colorado District Court Judge John L. Kane criticizes unbundled legal services and the ghostwriting function that can accompany this kind of service delivery. Kane warns of the pervasive impact on equal justice and accountability if unbundled legal services and ghostwriting become widely accepted practices.

- *with In re Liu*, 664 F.3d 367 (2d Cir. 2011).

The Court in *In re Liu* found that the attorney's undisclosed ghostwriting of petitions for review did not constitute sanctionable misconduct.

Why offer it?

Why is there increased interest in providing unbundled legal services?

Interest in unbundling legal services is growing primarily due to increasing public demand for cost-effective legal services, an expanding pool of underemployed attorneys, an increasing client desire for greater involvement in and control over their legal matters, and an increasing number of self-represented litigants in family law matters.

❖ Resources:

- John T. Broderick, Jr. & Ronald M. George, *A Nation of Do-It-Yourself Lawyers*, NEW YORK TIMES, Jan. 1, 2010.

<http://www.nytimes.com/2010/01/02/opinion/02broderick.html>

In this article, Broderick and George argue that efforts must be made to close the justice gap. Unbundled legal services is one promising solution. The chief justices argue that limited scope representation will allow attorneys to service people who may otherwise have never sought out legal assistance.

- J. Timothy Eaton & David Holtermann, *Expanding Access to Justice: Limited Scope Representation is Here*, 24 CBA REC. 36 (April 2010).

http://apps.americanbar.org/legalservices/delivery/downloads/feature_eaton.pdf

Eaton and Holtermann explore limited scope representation and the extent to which states have begun accepting this innovation. They also explore the revision to the Illinois Rules of Professional Conduct that clarifies the Illinois attorney's ability to provide limited representation, noting a shortcoming to the revision in that it does not define how lawyers should provide such representation in the context of litigation.

How will unbundling help to increase access to legal services for litigants who choose to represent themselves?

Unbundling will help increase access to justice for self-represented litigants by providing legal services to those who may not otherwise have access to them. Most self-represented litigants have low to moderate income and either do not qualify for legal aid or live in areas where legal aid resources are very limited and cannot meet their needs. They may have concerns that once they engage an attorney, legal fees will become prohibitive or they could lose control over their case. Some self-represented litigants

may want an attorney, but only to provide advice, to coach them, or to assist them with their paperwork. Limited scope representation helps clients prepare documents legibly, completely, and accurately and helps them prepare their cases with a better understanding of the law and court procedures. It also gives them representation for portions of their cases, such as a court hearing.

❖ Resources:

- ABA STANDING COMM. ON THE DELIVERY OF LEGAL SERV., AN ANALYSIS OF RULES THAT ENABLE LAWYERS TO SERVE SELF-REPRESENTED LITIGANTS (2014).

http://www.americanbar.org/content/dam/aba/administrative/delivery_legal_services/ls_del_unbundling_white_paper_2014.authcheckdam.pdf

This White Paper by the ABA Standing Committee on the Delivery of Legal Services details the shifting paradigm—where litigants in today’s courts are more often without representation—that is giving rise to alternative legal service delivery models.

- Kristin M. Blankley, *Adding by Subtracting: How Limited Scope Agreements for Dispute Resolution Representation Can Increase Access to Attorney Services*, 28 OHIO ST. J. ON DISP. RESOL. (2013).

<http://digitalcommons.unl.edu/lawfacpub/175/>

Blankley argues that by broadening the types of services lawyers provide to emphasize interviewing, case valuation, counseling, and settlement options, rather than litigation-related services, lawyers can better help clients attain their real goals and interests.

Does providing unbundled legal services benefit my family law practice?

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.

Anecdotal information from lawyers who have extensively practiced limited scope representation suggests that it gives them a significant increase in job satisfaction by helping to reduce conflict for clients and allowing customization of their practice to meet each client’s specific needs. Attorneys report gaining a better sense of control over their lives and freeing themselves from unnecessary trials and deadlines imposed by courts and opposing counsel. Clients express appreciation and gratitude for the delivery of cost-effective legal assistance, inspiring attorneys to continue offering these types of services. The limited representation model appears to have opened up an untapped

market of clients, as well as offering increased financial satisfaction to attorneys practicing limited scope representation resulting from a clientele that, by paying up front, pays in full and on time.

❖ Resources:

- Forrest S. Mosten, *Unbundled Legal Services Today—and Predictions for the Future*, 35 FAM. ADVOCATE 14 (2012).

http://www.mostenmediation.com/books/articles/Unbundled_Legal_Services_Today_and_Predictions.pdf

Mosten explores the various ways in which unbundling meets the needs of family lawyers, including reducing the risks of malpractice claims and bar complaints. This article also includes predictions on the expansive landscape of unbundled legal services in the future.

- FORREST S. MOSTEN, UNBUNDLING LEGAL SERVICES: A GUIDE TO DELIVERING LEGAL SERVICES A LA CARTE (2000).

<http://www.mostenmediation.com/books/unbundlinglegal.html>

Mosten's article describes the benefits attorneys can obtain from offering limited scope representation, including the surprising number of clients who initially seek only coaching services but later convert to full representation.

- Alejandra Navarro, *Law à la carte: Unbundled services increase access to justice and courtroom efficiency*, 18 QUINNIPIAC LAW 12 (2012).

http://www.quinnipiac.edu/prebuilt/pdf/magazines/law_spring2012/law_spring12.pdf

This article details some of the common concerns that have been voiced about unbundled legal services and the extent to which these concerns have played out in jurisdictions experimenting with this service delivery model.

- Ipsos MORI, *Qualitative research exploring experiences and perceptions of unbundled legal services* (2015).

https://research.legalservicesboard.org.uk/wp-content/media/14-086345-01-Unbundling-Report-FINAL_060815.pdf

This report, prepared for the England and Wales Legal Services Board and Legal Services Consumer Panel, explores consumer and provider experiences where legal services delivery had been formally organized as unbundled legal services.

Is there support for unbundled legal services among bar associations?

The organized bar has become increasingly supportive of unbundled legal services, as members have come to realize that it simply is good business for everyone: clients get at least some legal services, lawyers get more business, and courts get assistance in moving their cases forward.

Increasing assistance from courts in several jurisdictions also has supported the use of limited scope representation. Formal recognition by many jurisdictions—in the form of court-imposed notice to the client of the attorney and the client’s obligations in the case, court rules specifying limited scope attorney withdrawal and/or completion of the attorney’s professional obligations, and approval of court forms designed to facilitate limited scope representation—have given limited scope representation a much higher profile.

❖ Resources:

- ABA Resolution 108, February 11, 2013, American Bar Association – House of Delegates, 2013 Midyear Meeting, Dallas, Texas.

http://www.americanbar.org/content/dam/aba/administrative/house_of_delegates/2013_hod_midyear_meeting_daily_journal.authcheckdam.pdf

ABA Resolution 108 encourages practitioners to consider limiting the scope of representation when appropriate. The Resolution supports national and state efforts to develop rules and regulations clarifying attorneys’ responsibilities and obligations as they relate to providing these services.

- STEPHANIE I. KIMBRO, LAWYERS MUT. LIAB. INS. CO. OF N.C., UNBUNDLED LEGAL SERVICES: RISK MANAGEMENT HANDOUTS OF LAWYERS MUTUAL (2010).

http://files.lawyersmutualnc.com/risk-management-resources/risk-management-handouts/avoiding-malpractice-traps/Unbundling_Legal_Services.pdf

In this handout, Kimbro discusses the benefits of and best practices for integrating unbundled legal services into a legal practice. Resources in the handout include a flow chart for attorneys and sample engagement letters.

- Andrea R. Barter, *Limited assistance representation pilot program receives high marks, expands*, 15 LAW. J. 16 (2008).

<http://www.massbar.org/publications/lawyers-journal/2008/january/limited-assistance-representation-pilot-program-receives-high-marks,-expands>

This article reports on the success of the Hampden and Suffolk Probate and Family Courts limited assistance representation pilot program.

- Connecticut Bar Task Force on Limited Scope Representation, *Report of the CBA Task Force on Limited Scope Representation* (rev. Oct. 8, 2012).

http://c.ymcdn.com/sites/www.ctbar.org/resource/group/641186f5-de53-4d42-87c6-bf25a3280c29/Litigation_Section/Report-of-Task-Force-on-Limi.pdf?hhSearchTerms=%22limited+and+scope+and+representation%22

This Report sets forth the findings of the Connecticut Bar Association Task Force, in favor of limited scope representation. The CBA Task Force details the challenges giving rise to this innovative service delivery model and explores how acceptance of this practice would benefit the courts, legal consumers, and the bar.

Can I offer it?

Does my state allow for the practice of unbundled legal services?

Most states provide for some form of limited scope representation. However, the rules vary.

❖ Resources:

- ABA Unbundling Resource Center, Court Rules.

http://www.americanbar.org/groups/delivery_legal_services/resources/prose_unbundling_resource_center/court_rules.html

This American Bar Association compilation of state court rules pertaining to limited scope representation details relevant professional conduct, ethics, and civil procedure rules across the country.

- National Center for State Courts, *Self-Representation State Links: Unbundling Rules*.

<http://www.ncsc.org/Topics/Access-and-Fairness/Self-Representation/State-Links.aspx?cat=Unbundling%20Rules>

This National Center for State Courts resource page contains links to state unbundling rules.

- ABA STANDING COMM. ON THE DELIVERY OF LEGAL SERV., AN ANALYSIS OF RULES THAT ENABLE LAWYERS TO SERVE SELF-REPRESENTED LITIGANTS (2014).

http://www.americanbar.org/content/dam/aba/administrative/delivery_legal_services/l_s_del_unbundling_white_paper_2014.authcheckdam.pdf

This ABA Standing Committee on the Delivery of Legal Services White Paper provides a detailed look at the ways in which states around the country are drafting or amending rules of conduct and procedure that allow attorneys to provide limited scope representation.

Should I worry about the ethics of providing limited scope representation?

An attorney must follow all ethical rules and standards of professional responsibility whether providing full or partial representation. Earlier concerns arising from the provision of representation for only a portion of a case have for the most part been

resolved. According to Rule 1.2 of the ABA Rules of Professional Conduct, a lawyer may limit the scope of representation as long as 1) the limitation is reasonable under the circumstances and 2) the client gives informed consent. The model rules or substantially similar rules have been adopted in most states. *E.g.*, see ABA Center for Professional Responsibility, State Adoption of the ABA Model Rules of Professional Conduct at:

http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/alpha_list_state_adopting_model_rules.html.

❖ Resources:

- Stephanie L. Kimbro, *The Ethics of Unbundling*, 33 FAM. ADVOCATE 27 (2010).

http://www.americanbar.org/publications/gpsolo_ereport/2011/october_20_11/ethics_unbundling.html

This article explores how attorneys and firms can ethically provide limited scope representation. Kimbro provides guidance on determining whether limited scope representation is appropriate for a particular attorney and/or firm, and includes practical steps that members of the profession can take to ensure that clients and cases are appropriate for limited scope representation.

What do the ABA Model Rules mean by “reasonable under the circumstances”?

Generally, this refers to competent and diligent representation. (ABA Model Rules Comment [7] to MRPC 1.2.) Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation. An attorney must be competent in the area of law in which she or he is offering unbundled legal services, and must make sufficient inquiry of the client and obtain all the facts necessary to give good legal advice. Diligent representation means that a lawyer must not neglect a legal matter entrusted to the lawyer. (MRPC 1.1 and 1.3.)

An unreasonable limitation is that which interferes with the knowledge, skill, thoroughness, or preparation required to competently represent the client.

For example, if a client wants general information concerning an uncomplicated legal problem, the lawyer and client can agree that the lawyer’s services would be limited to a brief telephone consultation. However, to be reasonable under those circumstances, the amount of time allocated must be sufficient to yield advice on which the client could rely. Similarly, a lawyer may represent a client for only the temporary orders hearing in a divorce case because it is a discrete event, but, because the various financial issues are

intertwined, may not represent a client for a division of marital property permanent orders hearing without including the issues of maintenance and attorney fees.

What do the ABA Model Rules mean by “informed consent”?

“Agreement by a person to a proposed course of conduct after a lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct.” (MRPC 1.0(g).)

A lawyer should include in his or her retainer agreement an explanation about the advantages of full representation, along with the disadvantages of additional costs, as well as the less costly, but perhaps more difficult, alternative of proceeding *pro se*.

I am concerned that I will have more malpractice exposure. Will my risk for malpractice increase?

Data thus far seems to indicate that it should not. Attorneys currently practicing unbundled representation have not seen distinction in coverage or higher rates for malpractice insurance.

❖ Resources:

- STEPHANIE I. KIMBRO, LAWYERS MUT. LIAB. INS. CO. OF N.C., UNBUNDLED LEGAL SERVICES: RISK MANAGEMENT HANDOUTS OF LAWYERS MUTUAL (2010).

http://files.lawyersmutualnc.com/risk-management-resources/risk-management-handouts/avoiding-malpractice-traps/Unbundling_Legal_Services.pdf

In this handout, Kimbro discusses best practices for lessening malpractice risk when integrating unbundled legal services into a legal practice.

- Colorado Bar Association, *Practical and Ethical Considerations to Integrated Unbundled Legal Services* (2015).

https://www.cobar.org/repository/ModestMeans/Practical_and_Ethical_ModerateIncome.pdf

According to the information provided in this comprehensive Handbook, malpractice carriers have not reported additional claims related to unbundled legal services and attorneys providing unbundled services have not seen a distinction in terms of coverage or costs when disclosing to insurers that they are handling cases on a limited scope basis.

Family law cases require adjudication. How do I respond to those who maintain that such matters cannot be handled in a “piecemeal” fashion?

Discrete task representation has been standard practice outside of the arena of adjudicatory matters, but because attorneys traditionally are taught to approach litigation cases strategically and systematically, they have been slower to accept unbundling for matters requiring adjudication. This is changing because of: 1) increased availability of education and training to help attorneys recognize cases and clients suitable for discrete task representation; 2) clarification of professional ethical concerns; 3) increased number of jurisdictions providing rules and forms governing entry and withdrawal of limited service appearances; and 4) marketplace pressures caused by increased need for legal services by people of low and modest income and lack of available work for new attorneys.

❖ Resources:

- STEPHANIE KIMBRO, *SERVING THE DIY CLIENT: A GUIDE TO UNBUNDLING LEGAL SERVICES FOR THE PRIVATE PRACTITIONER* (2012).

<http://virtuallawpractice.org/wp-content/uploads/2012/03/Serving-the-DIY-Client-Ebook-4.7.12.pdf>

Agreeing that unbundling is not appropriate for every case or every client, Kimbro enumerates factors that an attorney should consider in determining whether a case may be unbundled.

- Forrest S. Mosten, *Unbundled Legal Services Today—and Predictions for the Future*, 35 FAM. ADVOCATE 14 (2012).

http://www.mostenmediation.com/books/articles/Unbundled_Legal_Services_Today_and_Predictions.pdf

Mosten argues that the unbundled legal services delivery model is beneficial to family law attorneys and clients. Predictions for unbundling in the future include an increased demand by clients for these services.

- Michele N. Struffolino, *Taking Limited Representation to the Limits: The Efficacy of Using Unbundled Legal Services in Domestic-Relationship Matters Involving Litigation*, 2 ST. MARY’S J. LEG. MAL. & ETHICS 166 (2012).

http://www.stmaryslawjournal.org/pdfs/struffolino_final.pdf

This article details the difficulties created by providing unbundled legal services in domestic relations cases. In arguing that full service representation is critical in domestic relations cases, Struffolino compares limited scope representation services to full service representation models.

- Kristin M. Blankley, *Adding by Subtracting: How Limited Scope Agreements for Dispute Resolution Representation Can Increase Access to Attorney Services*, 28 OHIO ST. J. ON DISP. RESOL. (2013).

<http://digitalcommons.unl.edu/lawfacpub/175/>

Blankley urges that limited scope representation be used more often in providing representation in dispute settling procedures and less often in conducting traditional court-required tasks, such as pleading, drafting, and court appearances.

How do I implement it into my practice?

What should I consider before I take on a limited representation case? Is every case suitable for unbundled legal services? If not, how do I tell which cases are or are not?

Before agreeing to provide limited scope services, an attorney must evaluate whether the matter is appropriate for limited scope representation. Some family law cases are too complex strategically and tactically to allow for a workable allocation of responsibilities between the attorney and the client. Also, cases involving issues relating to alleged violent behavior usually are not suitable for partial representation. You should consider whether:

- The case can be broken down into concrete steps that can be easily divided between client and lawyer;
- There are complex issues;
- All of the parties have been identified;
- The other side will be difficult to locate and/or serve;
- There is a critical deadline looming, and if the client is responsible for meeting that deadline, whether he/she is capable of doing so;
- You are able to verify the client's material facts and, if not, whether the client understands the consequences of proceeding without your verification;
- Making a limited court appearance is permitted in your jurisdiction, if you will need to do so

❖ Resources:

- Trial Court of Massachusetts, Limited Assistance Representation Training Manual.

<http://www.mass.gov/courts/docs/lar-training-manual.pdf>

This Massachusetts Trial Court Training Manual includes information, training curriculum, recommendations, and sample forms that can be used to implement limited assistance representation in practice.

- Colorado Bar Association, *Practical and Ethical Considerations to Integrated Unbundled Legal Services* (2015).

https://www.cobar.org/repository/ModestMeans/Practical_and_Ethical_ModerateIncome.pdf

This Colorado Bar Association Handbook compiles detailed background information and instructions on the practice of unbundling.

Do I need to screen potential clients?

Yes. Some clients may not be suitable for limited scope representation. In most situations, limited representation should be used when an attorney reasonably believes that the client can adequately represent himself or herself in the balance of the matter. Cases involving alleged violent behavior, however, are usually not suitable for partial representation.

You should evaluate whether the potential client has the mental, emotional, and physical capacity to carry out his/her portion of the legal work; has funds to proceed; has reasonable expectations given the facts and circumstances of the case; and is capable of appearing in court on his/her own. You should also determine the relative distribution of power between the parties and whether you think you can work with the client.

Attorneys caution that some potential clients seek unbundled services to avoid compliance with their obligations, e.g., full disclosure, and that evaluating client motivation for seeking limited representation is a necessary screening component.

❖ Resources:

- Beverly Michaelis, *Unbundling in the 21st Century: How to Reduce Malpractice Exposure While Meeting Client Needs*, OR. ST. BAR BULLETIN (August/September 2010).

<https://www.osbar.org/publications/bulletin/10augsep/practice.html>

This article details how screening is the key to minimizing malpractice exposure in a limited scope representation practice. Michaelis provides a comprehensive list of considerations pertaining to the client and the case, and explores how virtual or online practices can implement unbundled legal services.

- STEPHANIE KIMBRO, *LIMITED SCOPE LEGAL SERVICES: UNBUNDLING AND THE SELF-HELP CLIENT* (2012).

This book provides lawyers from diverse practice backgrounds with practical and tested solutions for incorporating unbundled legal services into their practices. Kimbro includes a checklist for implementation and tips by practice area.

- M. SUE TALIA & MARY LAVERY FLYNN, LTD. REPRESENTATION COMM., CAL. COMM'N ON ACCESS TO JUSTICE, FAMILY LAW LIMITED SCOPE REPRESENTATION RISK MANAGEMENT MATERIALS.

<http://www.unbundledlaw.org/downloads/2013%20FL%20Risk%20Management%20Materials.pdf>

Talia and Flynn provide a comprehensive guide addressing risk management for attorneys engaging in limited scope representation. The guide includes best practices, flow charts, check lists, and samples of fee agreements and client communication letters.

Must the agreement I have reached with my client regarding the scope of representation be in writing?

Although rules of professional conduct do not require it, to minimize future disputes regarding the scope of limited representation, it is essential that your retainer agreement concerning unbundling be in writing and clearly reflect that you will handle certain parts of the matter and that your client will be responsible for the other parts.

❖ Resources:

- Nicole Black, *Unbundled legal services: Steph Kimbro tells you everything you need to know*, MYCASE, Feb. 26, 2013.

<http://www.mycase.com/blog/2013/02/unbundled-legal-services-steph-kimbrow-tells-you-everything-you-need-to-know>

In this interview, well-known author Stephanie Kimbro discusses the fundamentals of unbundled legal services, including the benefits and drawbacks, relevant ethical issues, and foreseeable trends in unbundled legal services. Kimbro also covers the suitability of the virtual law firm to the delivery of unbundled legal services and advises attorneys on how best to implement this model into their practices.

- STEPHANIE KIMBRO, *LIMITED SCOPE LEGAL SERVICES: UNBUNDLING AND THE SELF-HELP CLIENT* (2012).

This book provides lawyers from diverse practice backgrounds with practical and tested solutions for incorporating unbundled legal services into their practices. Kimbro includes a checklist for implementation and tips by practice area.

Am I obligated to do anything outside of the agreed upon limited scope?

The duty to communicate requires that the attorney make adequate disclosure to ensure the client understands the limited scope of the representation, as well as the risks and available alternatives to the limited representation.

❖ Resources:

- RONALD E. MALLIN & ALLISON MARTIN RHODES, LEGAL MALPRACTICE (2015) (see sec. 8:6 pertaining to Express Limitations on Duty).

A retainer or engagement letter not only can define the duties undertaken but also can delimit those duties not to be performed.

- *Lerner v. Laufer*, 819 A.2d 471, 482 (N.J. Super. App. Div. 2003).

In *Lerner*, the Court immunized the attorney for work outside the written scope agreement in a family law action.

As a limited scope attorney, can I represent both husband and wife in preparing settlements for other agreements necessary for them to get a divorce?
Can I provide limited representation to a couple who have agreed on the essential terms of their marital settlement agreement but need a lawyer to put the agreement in proper legal form?

No. The duty to avoid conflicts of interest prevents an attorney from providing unbundled representation to an SRL while simultaneously representing the opposing party, or while owing obligations to another client, former client, or the lawyer's own interests.

❖ Resources:

- MODEL RULES OF PROF'L CONDUCT § 1.7.

http://www.americanbar.org/groups/professional_responsibility/publication/s/model_rules_of_professional_conduct/rule_1_7_conflict_of_interest_current_clients.html

- Utah Ethics Advisory Opinion Committee, Advisory Op. No. 05-03, 2005 WL 4748681.

<https://www.utahbar.org/ethics-advisory-opinions/eaoc-05-03/>

In Ethics Advisory Opinion No. 05-03, the Utah Ethics Advisory Board determined that a lawyer may not represent both parties following mediation to obtain a divorce for the parties. Citing Utah Rule of Professional Conduct 1.7(a) and 1.7(b), the Committee decided that a lawyer owes a client a duty of undivided loyalty of counsel. The Committee recognized that there was never a circumstance in which an attorney might ethically represent both parties in a divorce.

- Rebecca Aviel, *Counsel for the Divorce*, 55 B.C. L. Rev. 1099 (2014).

<http://lawdigitalcommons.bc.edu/cgi/viewcontent.cgi?article=3395&context=bclr>

While the adversarial system is premised on the foundational assumption that each client must have an attorney advocating on behalf of his or her individualized interests, Aviel argues that in family law cases, partisan advocacy can—and should be—unbundled from legal representation. Couples wishing to retain joint counsel, whether in the name of conflict avoidance or expeditious resolution, should be able to avail themselves of the joint representation alternative.

Can the other side's attorney communicate with my client if I am providing unbundled services?

Yes, but only concerning matters that have not been assigned to you in your limited scope agreement with your client.

Many jurisdictions have specific rules that allow opposing counsel to assume a person is unrepresented unless the limited scope attorney for the otherwise self-represented party informs him/her otherwise. Similarly, when service is required or permitted on a party represented by a limited appearance attorney, for all matters within the scope of the limited appearance, the service is to be made on the attorney and the party for whom the limited appearance was filed. Service on an attorney with a limited appearance is not required for matters outside the scope of the limited appearance.

If a limited scope attorney (although properly) has not entered an appearance, an opposing attorney/party may fail to communicate directly with the attorney about the discrete issue for which he/she has been retained. Clients must be informed of this risk, fee agreements should carefully outline who will be responsible for communicating with the opposing attorney/party, and arrangements should be made to ensure that the limited scope attorney receives all necessary communication from the client.

❖ Resources:

- ABA STANDING COMM. ON THE DELIVERY OF LEGAL SERV., AN ANALYSIS OF RULES THAT ENABLE LAWYERS TO SERVE SELF-REPRESENTED LITIGANTS (2014).

http://www.americanbar.org/content/dam/aba/administrative/delivery_legal_services/ls_del_unbundling_white_paper_2014.authcheckdam.pdf

This ABA White Paper details the ways in which states around the country are drafting or amending rules of conduct and procedure that allow attorneys to provide limited scope representation, including provisions pertaining to communication with persons represented by counsel.

- Adam J. Espinosa & Daniel M. Taubman, *Limited Scope Representation Under the Proposed Amendment to C.R.C.P. 121 § 1-1*, 40 COLO. LAW. 89 (Nov. 2011).

http://www.cobar.org/tcl/tcl_articles.cfm?articleid=7300

In this article, Espinosa and Taubman comment favorably on a proposed rules amendment (later adopted as recommended) that would allow for automatic withdrawal for attorneys providing limited scope representation to clients. Among the issues presented by this amendment is communication with an attorney or *pro se* party in a limited scope representation situation.

- IOWA RULES OF PROF'L CONDUCT (2012).

<https://www.legis.iowa.gov/docs/ACO/CourtRulesChapter/12-31-2012.32.pdf>

Rule 32:4.2 governs communication with persons represented by counsel and sets forth the circumstances under which an opposing lawyer must communicate with the limited representation lawyer.

What do I need to do to properly limit the scope of my services with my client if I am making an appearance with the court?

With some procedural differences, numerous states have court rules/forms for Limited Entry of Appearance.

Examples of these types of forms are linked here and housed on the respective state's website:

- California:

<http://www.courts.ca.gov/documents/fl950.pdf>

- Colorado:

<https://www.courts.state.co.us/Forms/PDF/JDF%201334T%20Domestic%20Notice%20of%20Limited%20Appearance%20-%20R7%2013.pdf%20>

How do I properly terminate my representation with my client if I have made an appearance with the court?

With some procedural differences, numerous states have court rules/forms for Notice of Termination of Appearance in Limited Scope services cases.

Examples of these types of forms are linked here and housed on the respective state's website:

- California:

<http://www.courts.ca.gov/documents/fl958.pdf>

- Colorado:

<https://www.courts.state.co.us/Forms/PDF/JDF%201336T%20Domestic%20Notice%20of%20Completion%20-%20R7%2013.pdf>

What are common but avoidable missteps relating to limited scope representation?

Some of the more common but avoidable traps relating to limited scope representation include:

- Failing to obtain informed written consent from the client;
- Failing to file the appropriate entry of appearance form, if necessary;
- Failing to precisely define or document the scope of engagement, spelling out what you will and will not do for the client;

- Failing to properly outline in the fee agreement whether you or your client will be responsible for communicating with the other side;
- Failing to properly ascertain if your limited representation is reasonable under the circumstances;
- Failing to achieve competence in the area of law in which you are offering unbundled legal representation;
- Failing to keep your services within the scope of your agreement;
- Failing to communicate with the client to assure understanding of your partial involvement and the tasks for which the client remains responsible;
- Failing to properly manage the client's expectations, including what to expect if the limited representation does not extend to court appearances;
- Failing to advise your client on related matters, even if not asked;
- Failing to provide proper documentation, such as memos to the file and confirming emails;
- Failing to document agreed changes to the representation agreement;
- Failing to detect conflicts of interest;
- Failing to ask the right questions or verify the client's material facts;
- Failing to effectively/properly disengage and withdraw as attorney of record;
- Failing to read the rules and sign the proper forms;
- Failing to obtain initial and ongoing training about unbundling rules, ethics opinions, laws, and best practices.

While common, these missteps are avoidable with appropriate practices and procedures.

❖ Resources:

- Beverly Michaelis, *Unbundling in the 21st Century: How to Reduce Malpractice Exposure While Meeting Client Needs*, OR. ST. BAR BULLETIN (August/September 2010).

<https://www.osbar.org/publications/bulletin/10augsep/practice.html>

This article details how screening is the key to minimizing malpractice exposure in a limited scope representation practice. Michaelis provides a comprehensive list of considerations pertaining to the client and the case, and details the frequent causes of legal malpractice claims of which the limited scope representation attorney should be aware.

- Limited Representation Committee California Commission on Access to Justice, *General Civil Limited Scope Representation: Risk Management Materials*.

http://www.courts.ca.gov/partners/documents/Risk_Management_Materials_Civil.pdf

This Manual explores issues of liability and good practice in providing unbundled legal services. Sample checklists and agreements are included and can be tailored to the specific needs and circumstances of one's limited scope representation legal practice.

Where can I find training on providing unbundled legal services?

❖ Resources:

- Trial Court of Massachusetts, *Limited Assistance Representation Training Manual*.

<http://www.mass.gov/courts/docs/lar-training-manual.pdf>

This Massachusetts Trial Court Training Manual includes information, training curriculum, recommendations, and sample forms that can be used to implement limited assistance representation in practice.

- Limited Representation Committee California Commission on Access to Justice, *General Civil Limited Scope Representation: Risk Management Materials*.

http://www.courts.ca.gov/partners/documents/Risk_Management_Materials_Civil.pdf

This Manual provides information, forms, and checklists that can be tailored to an attorney's individual limited scope representation practice.

- Minnesota Family Law Limited Scope Representation: Risk Management Materials, Minnesota State Bar Association, Pro Se Implementation Committee (2009).

<http://www.mnbar.org/docs/default-source/default-document-library/risk-management-materials-for-unbundled-services.pdf>

This Manual adapts the work undertaken by the California Commission on Access to Justice, offering a similar resource for Minnesota practitioners.

Where can I find guidance on the nuts and bolts of building an unbundled practice?

There are numerous easily accessible resources which provide comprehensive instruction and information.

❖ Resources:

- ABA Section of Litigation, *Handbook on Limited Scope Legal Assistance: A Report of the Modest Means Task Force*.

<https://apps.americanbar.org/litigation/taskforces/modest/report.pdf>

This Handbook details common steps that experienced limited service lawyers recommend and follow in their practices, pertaining to conflicts, client interviews, problem identification, task identification and allocation, informed consent, and other issues.

- Forrest S. Mosten, *Ask the Experts: Tips for Unbundling Your Family Law Practice*, 10 AFCC eNEWS (2015).

https://afcc.networkats.com/uploads/ES/2015/03%20March/2015_03_Mar_Tips_for_Unbundling_Your_Family_Practice_2015.pdf

In this article, Mosten provides 35 updated practice tips for starting an unbundled practice.

- STEPHANIE KIMBRO, *SERVING THE DIY CLIENT: A GUIDE TO UNBUNDLING LEGAL SERVICES FOR THE PRIVATE PRACTITIONER* (2012).

<http://virtuallawpractice.org/wp-content/uploads/2012/03/Serving-the-DIY-Client-Ebook-4.7.12.pdf>

This electronic resource contains an extensive discussion on best practices for unbundling, including checking for conflicts, educating clients, fee structure considerations, malpractice insurance, and using technology.

- ABA STANDING COMM. ON THE DELIVERY OF LEGAL SERV., *HANDBOOK ON LIMITED SCOPE LEGAL ASSISTANCE* (2003).

<http://www.americanbar.org/content/dam/aba/migrated/litigation/taskforces/modest/report.authcheckdam.pdf>

This handbook, developed by the ABA Modest Means Task Force, discusses all aspects of limited scope representation to aid practitioners in providing this type of legal services. Anecdotes from limited scope representation practitioners are included in the Handbook, and an extensive Appendix contains proposed court rules, sample forms, and pleading templates.

- Montana Judicial Branch, Court Administrator’s Office, Attorney LSR Resources.

http://courts.mt.gov/cao/ct_services/probono/lrforattorneys.mcp

This Montana Judicial Branch website contains extensive resources on limited scope representation, including guides and manuals, training materials, and sample retainer agreements.

- Colorado Bar Association, *Practical and Ethical Considerations to Integrated Unbundled Legal Services* (2015).

https://www.cobar.org/repository/ModestMeans/Practical_and_Ethical_ModerateIncome.pdf

This Colorado Bar Association Handbook compiles detailed background information and instructions on the practice of unbundling.

- Trial Court of Massachusetts, *Limited Assistance Representation Training Manual*.

<http://www.mass.gov/courts/docs/lar-training-manual.pdf>

This Massachusetts Trial Court Training Manual has sample forms and checklists for navigating an unbundled legal services practice and creating an appropriate client file.

- Limited Representation Committee California Commission on Access to Justice, *General Civil Limited Scope Representation: Risk Management Materials*.

http://www.courts.ca.gov/partners/documents/Risk_Management_Materials_Civil.pdf

This Manual provides information, forms, and checklists that can be tailored to an attorney’s individual limited scope representation practice.

- Minnesota Family Law Limited Scope Representation: Risk Management Materials, Minnesota State Bar Association, Pro Se Implementation Committee (2009).

<http://www.mnbar.org/docs/default-source/default-document-library/risk-management-materials-for-unbundled-services.pdf>

This Manual adapts the work undertaken by the California Commission on Access to Justice, offering a similar resource for Minnesota practitioners.