

Model Document: Encouraging Civil Rules Committee/Ethics Committee to Develop Rules on Unbundled Legal Services

Low-income individuals and increasing numbers of the middle class cannot afford the costs of full-service legal representation. As a result, the percentage of cases in which one or both parties are without legal representation is increasing, with very real impact on case outcomes, as well as public trust and confidence in our legal system.

For the vast majority of [*INSERT local population*], contact with our general jurisdiction courts is through family law cases. And, while significant issues are decided in family cases that have long-term implications for the families involved, in more than [*INSERT jurisdiction-specific statistics on rates of self-representation*] of cases involving divorce, legal separation, or allocation of parenting responsibilities, at least one side does not have an attorney.

Although self-represented litigants may be armed with online court forms and self-help materials, without advice and counsel from an attorney, many can come to our family courts uninformed, unprepared, or simply overwhelmed. The task of assisting them has fallen to our court staff, which is unable to provide much of the information and advice for which litigants are looking and is increasingly ill-equipped to handle the growing number of litigants seeking help. Our family court judges often find themselves precariously navigating a balance between enforcing applicable procedures, and ensuring access to justice for self-represented litigants, an especially tricky task when one party is represented and the other is not.

Discrete task representation, or unbundled legal services, describes a legal service delivery model whereby an attorney assists a client with specific elements of the matter, as opposed to handling the case from beginning to end. As [*INSERT author title*], I am convinced that this service model is an important part of a solution to address the growing numbers of family court litigants whose legal needs are unmet.

Although the self-help coordinators and in-court facilitators we provide are useful, they are not a substitute for lawyers. Only lawyers can provide legal advice, guidance, and analysis specific to the facts of the case, or give strategic direction in completing forms, preparing documents, or presenting a case in an adjudicatory forum. And, while unbundled legal services certainly is not appropriate for every situation, it nonetheless enables attorneys to respond to market demands and expand—potentially significantly—their client pool to include those who otherwise could not or would not have sought the help of legal counsel.

Most importantly, providing unbundled legal services results in more prepared self-represented litigants, better-informed settlements, and ensures that docket, court staff, and judge time are focused on resolving disputes in a timely and efficient manner.

Despite these obvious benefits, however, limited scope representation remains an underutilized service delivery model. This is due, in part, to existing rules of procedure and professional conduct in our jurisdiction, which can be confusing and suggest that our courts are unfriendly to an unbundled legal practice. For example, some judges within our jurisdiction do not allow an attorney to withdraw until the end of a case regardless of the fact that the written entry of appearance by the attorney is specifically limited.

In order to help to remedy this, on behalf of [*INSERT court*], I am requesting that the [*INSERT applicable committee(s), e.g., civil rules committee, ethics committee, judicial council, family law task force, etc.*] develop rules of professional conduct and rules of civil procedure designed to facilitate and guide limited representation of clients in family law cases. These rules should define the parameters of unbundled legal services and give guidance on ethical and procedural issues.

I want to assure you that you will not be writing on a blank slate. Most states now have some rules on unbundled legal services, which can be used as examples. You can find detailed information on the existing rules across the country through the ABA Standing Committee on the Delivery of Legal Services' Pro Se/Unbundling Resource Center, available at: http://www.americanbar.org/groups/delivery_legal_services/resources/pro_se_unbundling_resource_center/court_rules.html.