

UNBUNDLING LEGAL SERVICES:

Options for
CLIENTS, COURTS & COUNSEL



A GUIDE FOR NON-LEGAL PROFESSIONALS



**UNBUNDLING LEGAL SERVICES:
A GUIDE FOR NON-LEGAL PROFESSIONALS**

STACEY PLATT

Clinical Professor of Law, Loyola University Chicago School of Law

&

PETER SALEM

Executive Director, Association of Family and Conciliation Courts

October 2015

Copyright © 2015 Association of Family and Conciliation Courts. All rights reserved.
This publication may be reproduced and disseminated in its entirety, without modification,
for educational purposes.



AFCC is the **Association of Family and Conciliation Courts** – the premier interdisciplinary and international association of professionals dedicated to the resolution of family conflict. AFCC members are the leading practitioners, researchers, teachers and policymakers in the family court arena.

AFCC convenes members of multiple disciplines in the public, private and nonprofit sectors, from all over the world. AFCC is unique as a professional association because members do not all share a common profession. Rather, AFCC members share a strong commitment to education, innovation and collaboration in order to benefit communities, empower families and promote a healthy future for children.



Mission

AFCC is an interdisciplinary, international association of professionals dedicated to improving the lives of children and families through the resolution of family conflict. AFCC promotes a collaborative approach to serving the needs of children among those who work in and with family law systems, encouraging education, research and innovation and identifying best practices.

Vision

A justice system in which all professionals work collaboratively through education, support, and access to services to achieve the best possible outcome for children and families.

Values

- Collaboration and respect among professions and disciplines
- Learning through inquiry, discussion and debate
- Innovation in addressing the needs of families and children in conflict
- Diversity in family structures and cultures
- Empowering families to resolve conflict and make decisions about their future

Association of Family and Conciliation Courts
6525 Grand Teton Plaza • Madison, WI 53719
608-664-3750
www.afccnet.org

ACKNOWLEDGEMENTS

The Association of Family and Conciliation Courts (AFCC) would like to extend sincere thanks to Stacey Platt, for her leadership on this project, and to David Levin, Peter Salem, and Emily Forestieri for their contributions. This project would not be possible without their invaluable expertise and contribution.

AFCC would also like to thank IAALS—the Institute for the Advancement of the American Legal System at the University of Denver—for collaborating on this project.

Introduction

Today's family law system requires its participants to navigate a variety of court and dispute resolution processes and to understand complex legal issues. Yet, due to a number of economic and social forces, there are an increasing number of self-represented litigants who lack the legal training of attorneys, including the knowledge and information necessary to effectively navigate legal processes related to separation and divorce. Self-represented litigants attempt to exercise their rights within the system, but often have little to no idea of how to go about it. Because they are not educated about the substance and process of the legal system, their expectations of what will happen and how are often not met. They may feel discounted and trapped in an environment which is not designed for their use. Moreover, the process can become significantly more mired in error in self-representation cases, turning the courts' attention from critical substantive matters presented by all litigants.

Unbundled Legal Services

Unbundled legal services can help address the challenges faced by self-represented litigants and the family law system. Sometimes called "discrete task" or "limited scope" representation, unbundled legal services are offered on a project-by-project basis, rather than a start-to-finish or case-by-case basis. While complete-case representation remains the most commonly used model, it is no longer a realistic economic option for many separating and divorcing parents. The provision of unbundled legal services allows self-represented litigants to obtain professional assistance at crucial junctures in their progress through the legal system without having to pay a lawyer for the entire case. Despite the often high cost of legal representation, many self-represented litigants can afford and do choose to pay lawyers for some level of representation, related to specific tasks. Unbundled legal services can be offered at key stages where access to legal expertise is pivotal to making an informed decision. It can also help move cases through the court system to completion, by way of legally adequate pleadings filed at appropriate times with proper notice.

With procedural and substantive assistance and expertise at key points, self-represented litigants may experience fewer frustrations with the system and an increased sense of justice. Moreover, court systems will be more efficient.

Unbundled legal services become even more cost-effective when provided online, eliminating the need for travel and in-person meetings. While first meetings and client counseling sessions are often best done in person, much ongoing work can be done via emails, document exchange, and face time meetings as necessary. Online legal services are particularly helpful for litigants residing in remote areas.

To learn more about how technology-based unbundled legal services work, see <http://jolt.law.harvard.edu/symposium/articles/Kimbro-UsingTechnologytoUnbundleLegalServices.pdf>, which describes forms of unbundling and the types of existing and emerging technology used to deliver unbundled legal services, and provides examples demonstrating technological legal service delivery, such as document banks, video tutorials, and online case-specific advice and referral.

Unbundled Legal Services and Family Court Cases

Family court cases present sometimes insurmountable emotional, substantive, and procedural challenges for litigants, many of whom rely heavily upon their legal counsel to get them through the process. But for those who cannot or choose not to have attorneys throughout the litigation process, limited scope representation provided by experienced counsel can be invaluable to improving process and outcome and providing guidance at particularly difficult stages. An attorney providing unbundled legal services in a family court case might, for example:

- Draft pleadings and other legal documents, to be filed by the self-represented litigant;
- Review settlement and other documents presented by the opposing party;
- Conduct supporting legal research;
- Advise about potential custodial and financial options;
- Assist in filling out complex financial documents;
- Draft proposed custody and dissolution orders;
- Prepare the self-represented litigant for court appearances, coaching on courtroom procedure and decorum;
- Help the self-represented litigant strategize and carry out case negotiation;
- Organize case materials and prepare hearing exhibits;
- Represent a litigant at a discrete hearing, such as an order of protection.

For more information about unbundling in family law cases, see http://www.mostenmediation.com/books/articles/Unbundled_Legal_Services_Today_and_Predictions.pdf, which describes types of unbundling, expands upon the role of unbundling in mediation and collaborative law, and provides predictions about the future growth and advancement of unbundled legal services.

Unbundled Legal Services and Alternative Dispute Resolution

Unbundled legal services can be enormously valuable to mediation, settlement facilitation, and other alternative dispute resolution processes in family court matters. Self-represented litigants naturally ask a neutral, “What are my rights? How should I protect them? What should I do in court? How will my rights be enforced in the future?” These questions and more call for legal advice that neutrals may not ethically provide, even if they are attorneys.

An alternative approach for ensuring that parties understand alternative processes and their implications without pressing neutrals to provide such advice is for attorneys to offer unbundled legal services that *complement* dispute resolution processes. These services can include:

- Pre- and Mid-ADR consultation can help self-represented litigants understand:
 - How the ADR process works;
 - What the mediator or facilitator’s role is at ADR;
 - What the mediator or facilitator’s relationship is to the parties and the case itself;
 - What confidentiality rules governing the process;
 - How an agreement at ADR is translated into a court settlement;
 - What happens if an agreement is not reached;
 - How to prepare for ADR; and
 - How to present oneself at ADR.

- Post-ADR Document consultation can help self-represented litigants understand:
 - What legal documents and provisions are required to make their agreement legally effective and durable;
 - Details and issues may have been missed;
 - Options available for self-drafting, such as self-help centers and resources; and
 - Options exist for hiring counsel to prepare the final documents.

Unbundled legal advice and assistance, provided in the spirit of respect for ADR processes and litigant self-determination, can enhance the ADR process by preparing litigants to participate in a cooperative, informed, calm, and prepared manner, and assisting litigants in finalizing their agreements post-ADR. To learn more about unbundling and ADR from a mediator’s perspective, see <http://courtadr.org/files/ADRandUnbundledLegalServices.pdf>, which describes the

need for unbundled services, delves into the role of lawyers assisting self-represented litigants in ADR processes, and considers some of the benefits of unbundled legal services for mediators and other providers.

Learn More About Ethical Unbundling in Your Jurisdiction

The ABA Model Rules of Professional Conduct for lawyers provides for the unbundling of legal services.

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

Model Rules of Professional Conduct, Rule 1.2 Scope of Representation and Allocation of Authority Between Client and Lawyer, paragraph (C).

Many states follow the Model Rules. Nonetheless, it is essential that you consult your state law, as well as the local rules and practices of your jurisdiction, to gain a working understanding of how unbundling works in your locality. Specific rules, for example, may mandate attorney-client contract language in limited scope representation, whether formal attorney appearances must be filed, and when court-allied and other professionals can work with and share information with attorneys providing unbundled services.

For specific information on the rules of unbundling in your jurisdiction, see http://www.americanbar.org/groups/delivery_legal_services/resources/pro_se_unbundling_resource_center/court_rules.html, and check your local rules and statutes for updates.

While there is broad agreement that self-represented parents benefit from unbundled legal services, certainly there can be drawbacks. In highly complex divorce and parentage cases, unbundling might not suffice, as the separate parts of a case might critically impact one another. Custody determinations often impact child support outcomes, and court findings regarding family violence may well impact custody rulings, for example. Lawyers providing unbundled legal services must therefore be trained not only in family law, but also must be able to foresee and advise clients about the implications of managing one separate part of a family dispute on other aspects of the dispute, or even on other tandem cases, such as immigration and bankruptcy matters. Thus, unbundled legal services are best provided by counsel who understand and appreciate the complexities of family law cases and the intersection of family law with other areas of the law.

To learn more about determining whether unbundled legal services are appropriate, see chapter 5 of the American Bar Association's Handbook on Limited Scope Legal Assistance: <https://apps.americanbar.org/litigation/taskforces/modest/report.pdf>.