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'Unbundling' legal services assists clients in a tough economy

by Michelle Lore Staff Writer



Duluth family law attorney Jessica Sterle has seen an uptick in the number of clients who retain her to fill out the paperwork for their divorce rather than provide full-blown legal representation.

It takes Duluth family law attorney Jessica Sterle about an hour to determine if a potential new client's divorce will be contested or uncontested. If it's uncontested, she offers to provide limited rather than full-blown legal representation to the person.

If the client agrees, Sterle's work on the case is restricted to filling out the paperwork illustrating the parties' agreement, having the client and the soon-to-be ex-spouse approve and sign it and then filing it with the court. "I have seen an uptick in the number of people who contact me to do this," Sterle told Minnesota Lawyer last week. "It's a really good portion of what I do."

Attorneys who provide unbundled legal services — or limited representation — are hired to take on only an aspect of a case, such as reviewing documents or pleadings, providing limited advice, responding to discovery requests, negotiating a settlement or even making a limited court appearance.

Sara Sommarstrom, chair of the Pro Se Implementation Subcommittee of the state bar association's Legal Assistance for the Disadvantaged Committee,

encourages the use of unbundled legal services, particularly in a down economy where so many people need assistance but can't afford full-blown representation. She also encourages lawyers who offer unbundled services to do a better job of notifying the public of its availability by advertising it on their Web sites and in newspapers.

"There's an untapped population of potential clients who may be able to afford a couple hundred or a couple thousand dollars in services but [don't know] that's something an attorney would be able to offer," she said.

Widening the scope



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Proponents of unbundling legal services say it's good for clients and good for lawyers, particularly in a struggling economy.

"In a time of recession, you need to really widen your scope of services to get the broadest number of clients through your door as possible," said Sommarstrom.

She explained that many people who don't qualify for legal aid still can't afford an attorney. Providing limited representation is one way these individuals can obtain at least some assistance rather than going it alone, she said.

Eden Prairie family law attorney Kevin Fitzgerald said he provides unbundled legal services on a "pay-as-you-go" approach to clients who request it.

"I still charge the same hourly rate, but the client is getting control over how much to spend and when to spend it," he said. "There's a growing demand of people looking for alternative ways to get from where they are to where they want to be without having to spend any more on it than necessary."

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Minneapolis consumer lawyer Todd Murray said that while he occasionally helps clients with just one aspect of a case, such as writing a letter on their behalf, it's more common for him to do a consultation where he explains what the person needs to know in order to proceed with a claim.

"Be clear you've limited the scope of the representation," he warned, adding that he makes sure people know they are no longer a client when they walk out the door. In fact, before the meeting, Murray has the person read and sign a one-page "consultation agreement" that lays out the parameters of the representation.

Murray noted that while the practice doesn't generate a lot of income, it has other advantages.

"The way I look at it is as a free marketing meeting with somebody," he said. "It's a way to generate good will."

Murray added that limited representation can sometimes turn into full-fledged representation if the client feels overwhelmed by the judicial process and decides not to go it alone after all.

Attorneys say the practice of providing unbundled legal services also assists the judicial system by arming pro se litigants with at least some information before they head in to court.

Fitzgerald said he provides clients with a framework of the judicial process, as well as guidance on how to organize pleadings and obtain certain relief, assistance on making appropriate arguments and explanations on when items must be filed.

"If what I do makes them somewhat better prepared, there is less waste of scarce judicial resources," he said.

Reasonable and consensual

Unbundling is permissible under Rule 1.2(c) of the Minnesota Rules of Professional Conduct, which says that a lawyer "may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent."

Lawyers must evaluate what's reasonable on a case-by-case basis, said Office of Lawyers Professional Responsibility First Assistant Director Patrick Burns. They also need to remember they can't so limit their representation that in essence they are providing incompetent service, he said.

With respect to consent, Burns advised lawyers to tell the client exactly what they'll do in terms of representation, as well as what they are not going to do, and spell out what the client needs to do once the lawyer's part is done. He also strongly advised putting the agreement in writing, although it's not required.

Last year, the MSBA's Pro Se Implementation Committee created a standard "Limited Scope Legal Services Agreement" attorneys can tailor to their own practice when providing unbundled legal services to clients.

"It's important to craft a smart representation agreement," said Sommarstrom. "We thought we'd make it easier for attorneys."

The subcommittee has also put together extensive "risk management materials" for attorneys who provide unbundled legal services, particularly family law practitioners. The package includes, among other things, a client handout, best practices, sample fee agreements, checklists and a sample closing letter.

Ghostwriting

A gray area in the unbundled legal services arena is ghostwriting — the practice of drafting an answer to a complaint or responding to other pleadings without disclosing the attorney's input.

Burns called ghostwriting a "mixed bag." He explained that an American Bar Association opinion permits the practice as long as it's not dishonest and doesn't leave the court with a misimpression. Nonetheless, some court opinions condemn the practice, he added.

"Our office's position would be that unless there is some evidence of intentional fraud or intentional deception, we would probably not discipline someone for straight-up ghostwriting a pleading," said Burns. "But it really very much does depend up the factual circumstances," he added.

While the practice may not be per se unethical, some attorneys who provide limited representation simply refuse to draft documents for someone else's signature.

"My liability insurance carrier frowns on what they call ghostwriting," said Fitzgerald.

Sterle avoids the practice as well. "I think ethically it opens up a can of worms that I'd rather not open."

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