

CBA Unbundled Legal Services Study Committee

Preliminary Report to the House of Delegates

June 7, 2004

Introduction

The Unbundled Legal Services Study Committee is charged with conducting a wide-ranging study of the practice of unbundled, or discrete task, legal services and making a report to the House of Delegates, including any recommendations for changes in the Rules of Professional Conduct. The Committee has met throughout this Bar year and has reached some preliminary conclusions and, based on those conclusions, has prepared the recommendations described below.

In its recent article in the *Connecticut Lawyer* the Committee has defined *unbundled* or *discrete task* legal services as follows:

Although not tightly defined, unbundled legal services refers to agreements, rules, or protocols that modify the traditional attorney-client relationship in which the attorney takes exclusive responsibility to represent the client from beginning to end of a litigated matter. A wide range of formal court rules and informal protocols have been evolving in many jurisdictions that permit or encourage the attorney and client to negotiate a relationship in which the attorney provides only a specific set of agreed upon services to further the client's case, leaving the remainder of the responsibility for the case for the client acting pro se.

We recommend this article for a more complete discussion of unbundling and some of the issues we believe need attention by the bar.

Conclusions

-It is common for lawyers and their clients to agree that the lawyer will provide less than a full panoply of services to a client, so the concept of 'unbundling' legal services for clients is not new in Connecticut.

-There are, however, a number of potential ethical issues that are raised by the practice. Modification of the Rules of Professional Conduct could clarify the responsibilities of lawyers and clients to one another, other lawyers, and the Courts. We have identified a number of those issues and reached tentative conclusions about how they might be best resolved (see Recommendations, below).

-A number of other jurisdictions have already modified their ethical rules to both encourage the practice and resolve some of the ethical questions that arise.

-Encouraging unbundled services will help alleviate the increasing burden placed

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on the Connecticut Courts by pro se litigants.

-Although we know of no empirical study, anecdotal evidence and common sense suggest that encouraging unbundled services increases, rather than decreases, business for lawyers. More clients are likely to choose between limited legal services and no legal service at all, than between limited services and full service.

-The Committee also believes that resolving some of the questions about unbundling legal services will encourage more attorneys to provide limited scope pro bono services, thus increasing access to the legal system for the State's poor.

#### Recommendations:

1. The Committee should continue in existence.
2. The Committee should engage the bar, judiciary and other interested parties in further discussion on the advisability and feasibility of a Practice Rule permitting lawyers to enter a limited appearance for a particular proceeding in litigation and make a recommendation to the House of Delegates on this question. (Note: we have begun this process by doing a poll of a limited number of Judges, seeking their guidance on this particular issue.)
3. The Committee should do further research and draft proposed language to amend the Rules of Professional Conduct and Practice Book to implement the provisional recommendations listed below. (Note: the Committee on Professional Ethics has created a subcommittee to work with the Unbundled Study Committee on this task):

#### Preliminary Suggested Ethical Rules Needing Modification

-Ghostwriting. Lawyers who prepare written documents to be used by pro se litigants should be required to disclose their work. Possible implications of Rule 3.1, 3.3 and Practice Book 4.2 and CBA Committee on Professional Ethics Informal Opinion 98-5 (Duties to the Court Owed by a Lawyer Assisting a *Pro Se* Litigant).

-Communication with "represented" client. Rule 4.2 should be drafted to create a presumption that the Rule does not apply to a client receiving limited scope services unless the attorney providing those services affirmatively notifies opposing counsel to the contrary.

-Scope of representation. Rule 1.2 should be modified to establish criteria to guide clients and lawyers in defining scope of a limited services agreement, including the fee arrangement and when and how the relationship is to be terminated.

-Duty of a lawyer to investigate. Ethical rules should define the extent of the lawyer's duty to investigate the client's circumstances to insure the appropriateness of a limited service agreement and to clarify the extent to which a lawyer providing limited legal services can rely on the representations a client. Possible implications of Rules 1.2 and 1.3.

**CBA Unbundled Legal Services Study Committee**

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