

University of Missouri School of Law

University of Missouri School of Law Scholarship Repository

Faculty Blogs

Faculty Scholarship

12-24-2017

Mosten and Scully's New Book on Unbundled Legal Services

John M. Lande

Follow this and additional works at: https://scholarship.law.missouri.edu/fac_blogs



Part of the [Dispute Resolution and Arbitration Commons](#)

MOSTEN AND SCULLY'S NEW BOOK ON UNBUNDLED LEGAL SERVICES

DECEMBER 24, 2017 | JOHN LANDE | [LEAVE A COMMENT](#)

I have known Forrest (Woody) Mosten for quite a while. He co-authored several articles on collaborative law with me, putting him at risk of tarnishing his stellar reputation. We also co-authored an article, *Family Lawyering: Past, Present, and Future*. Much more significantly, Woody is known as the “father of unbundling” (as well as being a tireless promoter of good causes like preventive law and peacebuilding).

What is Unbundling and Why is it Important?

Unbundling goes by many names, including “limited scope legal services.” Lawyers provide specified services to clients rather than “full service” representation. It’s like ordering food à la carte instead of a fixed, seven-course meal.

So, instead of hiring lawyers to take complete control of a case, people may hire them to perform specific tasks, such as drafting documents, coaching people to represent themselves, negotiating as settlement counsel or collaborative lawyers (where the lawyers do not represent the clients in litigation), representing clients in mediation, and a long list of other possible tasks including those identified in a [comment to Missouri Rule of Professional Conduct 4-1.2](#).

Unbundling can be a valuable intermediate option between complete full-service representation and complete self-representation. Some people don’t want to retain lawyers to provide full-service representation but they do want some limited legal assistance.

Some people just can’t afford full-service representation, but even some who can afford it prefer not to buy it. Shockingly, some people don’t like lawyers. As Clark Cunningham documented, [clients often complain that lawyers don’t listen well](#) – and charge a lot of money for the privilege of having their concerns ignored. People often fear that lawyers will escalate conflict and make matters more difficult and complicated than necessary. Some people want to maintain control over their affairs and don’t want to relinquish too much control to their lawyers.

On the other hand, self-representation without legal assistance also can be very problematic. The legal system can be too confusing and terrifying to manage without any professional assistance. It can be particularly scary when people engage in bitter conflict with adversaries who they fear and distrust.

Dealing with self-represented litigants (who have their own acronym – SRLs) creates real problems for the legal system. SRLs generally don't understand the substantive and procedural rules very well and can have unrealistic expectations. Judges, mediators, and opposing counsel may be tempted to advise them, but that presents serious ethical problems. A number of people at the recent mediation training I did with Susan Yates said that [working with SRLs is a challenging problem for them](#).

So unbundling has the potential to solve a lot of problems for litigants and the legal system.

In fact, lawyers have been providing unbundled services for a very long time, but it hasn't had a name until recently and there is no uniform unbundled procedure. It is only recently that people have developed and promoted good unbundled practice.

Woody wrote, "What's really new about unbundling? Lawyers have long provided client consultations, second opinions, answered phone questions, and provided other discrete task services. What is really new about unbundling is the mind-set of lawyers to proactively make such limited services available and to tell Jane Q. Public how to get them." *Unbundling*, 40 Family Court Review 15, 15 (2002).

Enter Woody Mosten

In 2000, Woody wrote *Unbundling Legal Services: A Guide to Delivering Legal Services a la Carte*, a manual published by the ABA Law Practice Management Section. He has written numerous publications on unbundling since then and stimulated the legal community to take proactive steps to make this valuable set of services more available to the public.

The ABA Family Law Section just published his new book (with Elizabeth Potter Scully), [Unbundled Legal Services: A Family Lawyer's Guide](#). As you can see from the website, this book is a comprehensive guide for lawyers who want to offer unbundled legal services. Doing this is trickier than it sounds and it entails some ethical and malpractice pitfalls, described in chapter 12. So anyone providing these services would be well-advised to get this book.

Unbundling is particularly helpful in family matters because parties generally understand the issues (if not the law) and sometimes can represent themselves well – especially if they

have some legal help. Many family courts are overwhelmed with large numbers of cases involving SRLs, so providing unbundled legal services can make a significant contribution to the legal system.

Unbundling is not just for family matters, however. In virtually all types of cases, some people have the interests in unbundling that are described above.

It may become increasingly important in the future as tectonic forces change the structure of legal services.

So What's It To You?

If you are a law professor, consider covering unbundling in your courses whenever appropriate. In my view, every family law course should include significant discussion of unbundling. It is also appropriate for lawyering, ADR survey, negotiation, mediation, and professional responsibility courses, among others. And it would be great if you could teach a course devoted entirely to unbundling.

If you are a dispute resolution practitioner – advocate or neutral – consider whether unbundling would be appropriate in any of your cases. When parties are self-represented, you might suggest that they consider getting unbundled legal assistance. It might seem paradoxical for lawyers to suggest this to their opposing parties, but doing so could be in their clients' interests by making the process work more smoothly.

If you are a judge, court administrator, or bar association official, consider providing information and training on unbundling and encouraging lawyers to offer these services.

◀ DID YOU HEAR ABOUT? ◀ LAWYERING ◀ RESOURCES ◀ SKILLS AND TECHNIQUES

This site uses Akismet to reduce spam. [Learn how your comment data is processed.](#)

