

THE RISKS AND BENEFITS OF UNBUNDLED LEGAL REPRESENTATION IN CONTESTED DOMESTIC RELATIONS CASES

By James B. Lapin, Esq.

“It is ludicrous to suggest that in the present system, a lay person armed with a few discrete sticks from the advocate’s bundle can emerge from the trial thicket unscathed so that others will not be put to unnecessary expense.” John L. Kane, Jr., *Debunking Unbundling*, Colo. Law, Feb. 2000 at 15, 16.

The use of unbundled legal services is nothing new in this country, and it may be preferable to no representation at all; however, the use of such services in domestic relations cases has caused difficulties for the parties, attorneys, and the courts. Although the Model Rules of Professional Conduct expressly permit attorneys to provide limited representation to their clients, to fulfill their ethical duties and to provide full satisfaction to domestic relations clients, attorneys must provide full service representation. *See* Michele N. Struffolino, *Taking Limited Representation to the Limits: The Efficacy of Using Unbundled Legal Services in Domestic-Relations Matters Involving Litigation*, 2 St. Mary’s J. Legal Mal. & Ethics 166. Much of the information below was taken from this article.

I. The Process of Unbundling

A. What are the client’s goals, and would unbundled services assist in meeting them?

Understanding the concept of unbundled legal services and can be best undertaken by first examining what tasks may be required to provide “full bundled,” traditional legal representation. In all attorney-client relationships, the client retains the assistance of counsel to achieve certain goals. While the client maintains primary control over determining the goals, the

attorney is responsible, after consultation with a client, for planning and accomplishing the means to obtain the goals. The first step is therefore to ascertain the client's goals and then to determine whether unbundled services would be effective in helping the client to reach those goals.

A careful assessment of whether it is reasonable to offer limited representation requires consideration of two main factors. (1) The first factor asks whether the client has the ability to handle the balance of the case without the legal assistance. (2) The second factor concerns the complexity of the legal matter at issue. As the complexity of the issues increases so does the need for legal assistance.

The circumstances in contested domestic relations matters often prove less than optimal. Determining what is reasonable under the circumstances is a difficult task. A lawyer must ask whether a reasonably prudent and competent attorney would limit the scope of the representation in each situation. This investigatory obligation continues after the nature and scope of the limited representation are set. Throughout the representation the attorney must recognize when the limits imposed are no longer reasonable.

Assisting clients in obtaining their goals in a domestic relations matter requires skill beyond basic competency standards. An attorney entering into limited representation must start with identifying the client's goals and objectives and requires the attorney to assess the client's mental and emotional state and decision-making abilities.

One thing is quite clear: it is the lawyer who bears the burden of determining the propriety of what a limited legal representation services are appropriate. An attorney providing limited representation is not excused from providing competent representation and must analyze the benefits and dangers of limiting the scope of representation. This duty involves a careful

examination of the ethical rules regarding both limited and competent representation. Limited representation must nonetheless be competent representation. Competent representation requires an inquiry into the facts and circumstances of each case and an analysis of the possible legal issues. The comments to the rules governing competency and limited representation indicate that limited representation **might** somewhat relax the duty to make inquiries and investigate.

However, it remains unclear how much of an inquiry is nonetheless necessary. As is obvious an attorney performing limited legal services which services may be constrained by the work the client has authorized and which the client has done on his own and will do on his own in the future, complicates the attorney's role. Once an attorney determines that the potential client seeks more than just information, the attorney must then determine whether offering limited representation is "reasonable under the circumstances" and whether the attorney can obtain the client's "informed consent."

B. **Types of unbundling.**

Unbundling legal services can be either horizontal or vertical. Horizontal unbundling includes limiting the representation to specific tasks, for example, obtaining child support. Vertical unbundling occurs when the attorney is retained to perform only one or more tasks from the bundle such as offering advice or drafting a pleading. Within each task, a client may limit the extent of the attorney's involvement. Indeed, the client may retain one lawyer for one task and a different lawyer for another.

II. **The Necessity of Informed Consent and How to Get It.**

A. **Informed consent is not prescriptive.**

Limited representation must be based on informed consent. What constitutes informed consent is not always clear and differs from case to case and client to client. Informed consent

does denote that there is an agreement by a person to a proposed course of conduct after a lawyer has communicated adequate information and explanation about material risks of and reasonably available alternatives to the proposed course of conduct. To educate the client of the risks and alternatives the attorney must first obtain an understanding of the issues and the client's circumstances. The attorney should obtain data and material beyond merely the facts such as information necessary to understand the factors that may influence the client's decision making because judging the adequacy of the information provided to the client will depend on the client's understanding of the legal situation. The attorney should also inquire into the client's experience with the law and legal system, and ability to make decisions and whether the client has had other legal representation in the past.

It cannot be stressed enough the need for the attorney to obtain a thorough understanding of the client's situation at the initial interview. The attorney should provide information to the client to allow the client to make an informed decision about whether to obtain only limited representation as opposed to full representation. Information that is reasonably adequate should include but not be limited to, an explanation of the material advantages and disadvantages of the limited representation and a discussion of the alternatives available to the client. Obvious risks that should be communicated include disclosure of difficulties the client may have performing the tasks or parts of the case in which the client will be unrepresented.

B. Identifying collateral problems.

Alerting the client to other foreseeable collateral problems that may arise in litigation is also necessary for informed consent. An attorney owes a duty to the client which includes advising the client of existing legal rights. Failure to identify and advise the client of collateral matters may constitute a breach of this duty.

The case of *Nichols v. Keller*, 19 Cal.Rptr.2d 601 (Ct. App. 1993) involved two attorneys who found themselves defending malpractice claims by a client who admittedly retained the attorneys only for limited representation. The argument centered on the client not being fully informed of a collateral matter – the possibility of a third party claim. A trial court granted the attorney’s motion for summary judgment and stated that an attorney offering limited representation had no duty to advise a client of “all possible alternatives.” In reversing the trial court summary judgment, the appellate court directly addressed the obligation of an attorney to inform the client of the existence of collateral matters when providing limited representation. Even though the scope of representation can be limited, the duty to provide advice cannot be limited. An attorney is obligated to identify and provide information and advice regarding collateral matters that are reasonably apparent. Not only should an attorney furnish advice when requested, but he or she should also volunteer opinions when necessary to further the client’s objectives. An attorney need not provide a client with information regarding remote or tenuous alternatives; however, a client should be advised of reasonably foreseeable collateral matters that may result in adverse consequences if not considered.

C. The lawyer’s burden.

Even though Colo. RPC 1.2 does not require limited representation agreements, lawyers are advised to clarify and memorialize both the information provided and the nature and scope of the representation. The retainer agreement should serve three functions. One, identifying the legal problem for which the lawyer will provide services; two, describing the remedial measures the lawyer will take; and three, identifying which services the lawyer will provide and which services the lawyer will not provide. However, even with these agreements, limiting the scope of

the representation to specific matters may not protect the attorney from inadequate disclosure claims by the client. *Benet v. Schwartz*, 93 C. 7295, 1995 WL 117884 (N.D. Ill. 1995).

In *In Re Egwim*, 291 B.R. 559 (Bankr. N.D. Ga. 2003) the court held that attorneys will have the burden to show that the client gave informed consent. The court anticipated that attorneys will rarely be able to satisfy this heavy burden in every case. The Model Rules of Professional Conduct are client-centered. They seek to require ideal, rather than realistic, performance by attorneys. Legal ethics norms expect lawyers to maximize their client's positions, regardless of whether the client is paying them to do so or not. The suggestion is that ethical rules are designed to influence attorneys to provide more, even though there is a specific agreement to provide less. This dilemma may increase the likelihood that an ethical attorney, who understands the financial implications involved with limited scope representation, may decline to provide limited representation.

Compare the outcome in *Lerner v. Laufer*, 819 A.2d 471 (N.J.Super.Ct.App.Bib 2003). There, husband and wife had worked with a mediator. The wife then retained an attorney for the limited purpose of reviewing the agreement and obtaining a decree of divorce. The attorney drafted a letter of representation expressly limiting the scope of the representation to specific tasks and specifically excluded tasks that the lawyer would not perform. The letter specifically stated that the lawyer was in no position to make recommendations or determinations as to whether the agreement was fair and reasonable. Shortly after the divorce, the wife learned that the business that the husband was awarded was proceeding to an initial public offering which would increase the value of the assets awarded to the husband. Predictably, the wife filed a malpractice action against her lawyer. One year later, and after extensive discovery, depositions, the retention of an expert and obviously a great expenditure of money by the lawyer for his

deductible, the trial court granted summary judgment. The case went to the New Jersey Court of Appeals and the Court of Appeals stated “it was not a breach of an attorney’s standard of care ‘to limit the scope of representation’ in a ‘precisely drafted consent agreement’ and to exclude the performance of services usually provided to a client in a contested matter.”

The appellate court provided words of caution:

We necessarily confine our ruling to the facts of this case. No genuine issues of material fact raised dispute relating to [the wife’s] competence, her general knowledge of the family’s financial and personal affairs, or the voluntariness of her actions in submitting to mediation, in approving the mediator, or in seeking the approval of the [Property Settlement Agreement] by the court. [The wife] expressly denied that she had been subjected to any domestic violence. There is no contention that any term of the [Property Settlement Agreement] violated any law, any expression of public policy endemic to family disputes generally, failed to protect best interests of the children or foster non[disclosure of the family’s affairs to appropriate taxing authorities.

See Lerner, 819 A.2d at 483 (holding limited representation was allowable under state’s counterpart to Model Rule of Professional Conduct 1.2(c)).

This case and the few other opinions regarding the use of unbundled legal services should provide no peace of mind to attorneys using unbundled legal services in contested cases involving litigation.

III. Risks to the Attorney in Providing Unbundled Services.

An attorney who decides to provide limited scope representation, risks liability on three theories: breach of contract, legal malpractice, and ethics violations with the state disciplinary board. Although an attorney is allowed to provide limited representation an attorney may not limit their exposure.

As pro se litigants hail from a variety of backgrounds ranging from indigent to upper-class and from high-school drop out to the most educated members of society, a lawyer should be extremely careful in accepting and deciding to offer unbundled legal services. A 1994 ABA

Report on the needs of the self-represented divorce litigants found that 20% of the pro se litigants said that they could afford a lawyer but chose otherwise. It is expected that the 20% figure is substantially greater now with the increase in self-help resources available to the public.

Attorneys providing limited representation operate in uncharted waters with little confidence in being protected against malpractice and ethical complaints.

IV. Risks to Litigants.

Limited legal representation is often inadequate and ineffective. Providing only some assistance rather than full representation in contested matters may cause more harm than good to those intending to reap the benefits of this alternate form of representation.

It has been estimated that as many as 30% of divorces are considered high conflict. Furthermore, one-third of these families will remain in conflict regarding child-rearing for another 3-5 years.

With these unique challenges, providing full representation in domestic relations matters is no easy task. However, full and competent representation by an experienced attorney often leads to resolution without extensive court involvement. 95% of all divorce cases eventually settle; however, it is the remaining 5% that do not settle that drive the system. Given the cost of legal representation, which is increasing, unbundled legal services are viewed by some as a possible alternative.

Nevertheless, making full and adequate representation available in contested domestic relation matters is the best way to protect the litigants, attorneys and court resources. The ABA warns that providing unbundled legal services should not be considered a substitute for full legal representation when full legal representation is necessary to provide the litigant fair and equal access to justice. The benefit of the reduced cost of limited representation outweighs the risk of

proceeding without an attorney in all aspects of a case **if** the case can be completely or substantially resolved without litigation. However, the reverse is not true. The risks of proceeding without full representation when the matter involves on-going litigation are too great to justify a reduction in attorney fees.

V. Rule Changes.

While the ABA and the Colorado Rules of Professional Conduct specifically authorize the use of unbundled legal services, I suggest additional changes in ethics and procedural rules should be adopted to alleviate the concerns of attorneys willing to provide services to pro se litigants on an unbundled basis.

VI. Best Practices for Unbundling Legal Services

A. Determine on a case by case basis whether the individual client's legal needs may be unbundled and whether the individual client is a candidate for the provision of unbundled services, or if full-service representation must be provided.

B. If you decline to unbundle legal services your decision should be memorialized in a letter to the client.

C. If you decide to offer unbundled services, ensure that the client has a clear understanding of which services he or she will be receiving and which services will not be provided. You bear the burden of showing the client provided informed consent for the limited scope representation. The engagement letter should have a **detailed** definition of the nature of the unbundled services including the specific tasks that the firm will handle as well as identifying the tasks that the firm will not be providing. The firm may want to educate the client about the differences in services between the full-service representation and unbundled services so that the

client can make an informed opinion and value-judgment before entering into the limited service engagement.

D. When the responsibilities change it is imperative to update the engagement letter.

E. Ask thorough questions of the client and review all pertinent documents regarding the client's case so that potential collateral issues can be addressed with the client. Whether asked to or not, the attorney needs to make the client aware of potential collateral issues that may arise even after the attorney has completed the representation.

F. Maintain competent and diligent representation of the client by taking a close look at the entire case before considering unbundling and then continue that standard of care until the matter is returned to the client. Again, make sure that the client is aware of collateral issues.

G. Be careful to stick to the tasks that you have agreed to provide and do not offer advice beyond those tasks or extend your work into matters for which you initially agreed would be the client's sole responsibility.

H. Proposed engagement letters (See attached)

VI. Proper Safeguards

It is the lawyer's burden to determine whether the limitation is reasonable or unreasonable for unbundled services. The Supreme Court of Wisconsin defined informed consent as "an agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks and reasonably available alternatives to the proposed course of conduct."

As with all matters, when unforeseen problems become apparent the best policy is to withdraw from the limited representation as early as possible.

VII. Conclusion

Much of this outline was taken from Michelle Struffolino's article in the St. Mary's Journal of Legal Malpractice and Ethics, which concludes as follows:

Recognizing that limited representation is not appropriate in *contested* domestic relations matters will lead to the creation of better options for families seeking to attain just outcomes in crisis ... [A] correct analysis of the appropriateness of limited representation raises serious concerns for the family law attorney. The unique legal and emotional challenges involved in contested domestic relations cases requiring more than perfunctory involvement make it almost impossible for the attorney to conclude that offering some representation, leaving the litigant pro se status for other aspects of the case, is reasonable. These same challenges should lead the attorney to doubt whether obtaining the client's informed consent to limited representation is possible especially where the consent presumes a voluntary choice by the client based on the client's understanding and careful consideration of the risks and alternatives to limited representation. An analysis of the situation should lead the family law attorney to conclude that limited representation is not appropriate in *contested* domestic relations cases.

Emphasis added; references not included.

In closing, we advise:

1. Use good judgment.
2. Document your file.
3. Put everything in writing.
4. Educate your clients.
5. Do not dabble in areas of law with which you are not familiar.
6. Be wary of clients' unrealistic expectations.
7. Make sure the limitation on the scope of your services is reasonable.
8. Draft good fee agreements.
9. Use a checklist of tasks and responsibilities so that both you and your client knows what work you will and will not be doing.
10. Write a new agreement if the scope of the representation changes.

11. Review CBA Ethics Opinion 101, and the Colorado Rules of Professional Conduct, and especially Rule 1.2, which allow unbundled legal services in both litigation and non-litigation matters. A lawyer who provides limited representation must nonetheless make a sufficient inquiry into the factual and legal elements of the problem to provide competent representation.

12. Keep in mind that the more complex the litigation, the more elaborate the treatment, attention and preparation required. In *Flatow v. Ingalls*, 932 N.E.2d 726 (2010), the Indiana Court of Appeals held, “although an agreement for limited representation does not exempt a lawyer from the duty to provide competent representation, the limitation is a **factor** to be considered when determining the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.” However, “an attorney cannot be negligent for failing to do what there was no duty to undertake.”

Sample Engagement Agreement

Authors: Amy Goscha & Danaé D. Woody

[Letterhead]

[Date]

[Potential client name]

[Address]

Dear [potential client name]:

Thank you for choosing [law firm name] as your legal counsel. This is our Engagement Agreement, which is our contract with one another. Please read it carefully, and if you agree with its terms after fully understanding all of them, please sign in the space provided on page 4 of this Engagement Agreement.

ATTORNEY SERVICES

You have determined, after consultation with me, that you wish to retain my services as legal counsel in a limited capacity, for the specific purpose of [detailed description of exactly the services being provided under this agreement]. You understand that I will not be appearing as your counsel before the Court. Unless we agree otherwise at a later time, and enter into an Addendum expanding the scope of my limited legal services to you to include my appearance at a hearing, you will be appearing before the Court by yourself. This means you alone will be signing pleadings, going to Court, attending settlement conferences such as mediation, and negotiating and communicating with the opposing party and/or opposing counsel.

If my services include helping you draft pleadings to be filed with the Court, I am required to put my name, attorney registration number, address, and telephone number on those pleadings. I will not be signing those pleadings, however.

We have fully discussed the possible problems and dangers associated with this type of limited representation, as well as the benefits. You have agreed that you wish to proceed with this type of representation nevertheless, and you agree after consultation that your legal needs can be effectively met with this type of representation.

I will not at any time be responsible for any of your misunderstandings of law, the legal process, or of fact. You understand that one of the dangers of limited services is that you may not fully understand the law or the facts relevant to your matter, even though you have been advised by me regarding the same. Any of your misunderstandings may significantly prejudice your case.

I cannot, at any time, do anything on your behalf that I, as an officer of the Court, could not personally do. In my limited representation of you, I cannot be party to giving false information to the Court or to interposing any argument or pleading designed to harass or annoy the other party, or to cause unnecessary delay or needlessly increase the costs of litigation. Further, I will only draft pleadings on your behalf that I believe to be well-grounded in fact based upon a reasonable inquiry of you and if I believe the contents of the pleading are warranted by existing law or a good faith extension of the same.

In the event you wish me to fully represent you in this matter, and thus manage all aspects of your case, we will enter into a new engagement agreement and this engagement agreement will become null and void. However, we both may agree to add additional services by way of an Addendum to this agreement, which will not cause this agreement to be null and void, but will expand the scope of my limited legal services to you to those specific services agreed upon in the Addendum.

CLIENT RESPONSIBILITIES

You understand that as you will be preparing your case, I can only counsel you based upon information that you provide to me. You understand that I will not conduct any independent investigation into the facts of your case. The level of counseling will be commensurate with how much I know about your case. If you do not provide me with all of the information I need, I cannot provide you with a high level of legal counseling. You are solely responsible for providing me with all relevant facts of the case.

You specifically understand and agree that the management of this case is your sole responsibility. [Define communication protocol and case management procedures. Example: “Unless we agree otherwise at a later time, and enter into an Addendum expanding the scope of my limited legal services to you to include my appearance at a hearing, you will be appearing before the Court by yourself. This means you alone will be signing pleadings, going to Court, attending settlement conferences such as mediation, and negotiating and communicating with the opposing party and/or opposing counsel.] You must follow all Court rules during your case. If you do not follow these rules, you may be penalized, including but not limited to fines or sanctions issued by the Court.

CONSULTATION FEES

I will bill you an hourly fee of [hourly rate] for all telephone, e-mail, and in-person consultation with me regarding legal rights, statutory law and case law pertinent to your case, court rules, court procedures, preparation for hearings, and analysis of settlement positions. At this time, you have asked that I render consultation services regarding the following:

**[name of the matter such as Dissolution of Marriage]*

I will require a [amount of the retainer] retainer for consultation services. Hourly fees will be billed against the retainer. Should your retainer be depleted before consultation services are completed, I will require you to replenish your retainer. If you do not replenish the retainer, consultation services will terminate.

[Explain client’s responsibility for administrative costs and fees.]

You will be responsible for any and all costs associated with this matter, including, but not limited to, filing fees, witness fees, subpoenas, evaluations and reports, depositions, experts, outsourced copy costs and transcripts.

PREPARATION OF PLEADINGS

I will prepare the following pleadings on your behalf for the following flat fees:

[List any specific pleadings and specify the flat fee amount in the consultation fees section. If none, then state: "None, unless there is a specific Addendum to this Engagement Agreement that provides for such preparation."]

Payment for flat fee services is due before pleadings are prepared.

PLEADINGS MANAGEMENT, DOCKETING

I will not mail or e-file your pleadings to the Court, receive Court orders, or keep you apprised of Court deadlines. You are solely responsible for all filings and deadline management associated with your case.

OTHER SERVICES

I will provide you with other services, on the following terms:

[List any specific other services. If none, then state: "None, unless there is a specific Addendum to this Engagement Agreement that provides for such other services."]

CONTINGENCIES

If any of the following contingencies occur, I will discontinue limited representation:

[List contingencies.]

I will not counsel you on how to prepare for a contested hearing, unless there is a specific Addendum to this Engagement Agreement that provides for such representation.

TERMINATION OF SERVICES

You may terminate my services at any time for any or no reason. I may terminate my services at any time for any or no reason. You agree that if you petition the Court to disallow my termination of services to you, you will pay me my hourly consultation fee for any pleadings prepared by me or court appearances made by me in conjunction with such a petition.

PRIVACY POLICY

We collect nonpublic personal information about you from the following sources:

- Information we receive from you on applications or other forms;
- Information you provide for use in connection with our provision of financial products or services to you;
- Information about your transactions with us, our affiliates, or others; and
- Information we receive from a consumer reporting agency.

We do not disclose any nonpublic personal information about our clients or former clients to anyone, except as permitted by law. We restrict access to nonpublic personal information about you to those employees who need to know that information to provide products or services to you. We maintain physical, electronic, and procedural safeguards that comply with federal regulations to guard your nonpublic personal information. This notice is being provided to you in accordance with 16 C.F.R. Part 313—Privacy of Consumer Financial Information.

Sincerely,

[Law firm name]

[Attorney name]

I, *[potential client name]*, have fully read and understood the above engagement agreement, and agree to be bound by its terms. I specifically state that I have been fully counseled of the many possible problems associated with limited representation, and believe that my case can be adequately handled with limited representation. I also understand that at all times, I am solely responsible for managing my own case and for abiding by all court rules.

Agreed to by:

[potential client name]

Date

ENGAGEMENT LETTER: LIMITED SCOPE

This Agreement is made between the Attorney and Client named at the end of this agreement.

1. Nature of Agreement. This Agreement describes the relationship between the Attorney and Client. Specifically, this Agreement defines:

- a. The general nature of Client's case;
- b. The responsibilities and control that Client agrees to retain over the case;
- c. The services that Client seeks from Attorney in his/her capacity as attorney at law;
- d. The limits of Attorney's responsibilities;
- e. Methods to resolve disputes between Attorney and Client; and
- f. The method of payment by Client for services rendered by Attorney.

2. Nature of Case. The Client is requesting services from Attorney in the following matter:

3. Client Responsibilities and Control. The Client intends to handle his/her own case and understands that he/she will remain in control of the case and be responsible for all decisions made in the course of the case. The Client will:

- a. Cooperate with Attorney or Attorney's office by complying with all reasonable requests for information in connection with the matter for which Client is requesting services;
- b. Keep Attorney or Attorney's office advised of Client's concerns and any information that is pertinent to Client's case;
- c. Provide Attorney with copies of all correspondence to and from Client relevant to the case; and
- d. Keep all documents related to the case in a file for review by Attorney.

4. Services Sought by Client. The Client seeks the following services from Attorney (please indicate services sought with check mark):

- ☐ a. Legal advice-office visits, telephone calls, fax, mail, e-mail.
 - ☐ b. Advice about availability of alternative means to resolving the dispute, including mediation and arbitration.
 - ☐ c. Evaluation of Client's self-diagnosis of the case and advising Client about legal rights.
 - ☐ d. Guidance and procedural information for filing or serving documents.
 - ☐ e. Review correspondence and court documents.
 - ☐ f. Preparation of documents and/or suggestion concerning documents to be prepared.
 - ☐ g. Factual investigation: contacting witnesses, public record searches, in-depth interview of Client.
 - ☐ h. Legal research and analysis.
 - ☐ i. Discovery: interrogatories, depositions, requests for document production.
 - ☐ j. Planning for negotiations, including simulated role playing with Client.
 - ☐ k. Planning for court appearances made by Client, including simulated role playing with Client.
 - ☐ l. Backup and trouble shooting during the trial.
 - ☐ m. Referring Client to other counsel, expert, or professional.
 - ☐ n. Counseling Client about an appeal.
 - ☐ o. Procedural help with an appeal and assisting with substantive legal argumentation in an appeal.
 - ☐ p. Preventive planning and/or legal check-ups.
 - ☐ q. Other: _____
-

5. Attorney's Responsibilities. The Attorney shall exercise due professional care and observe strict confidentiality in providing the services identified by a check mark in Paragraph 4 above. In providing those services, Attorney **shall not**:

- a. Represent, speak for, appear for, or sign papers on the Client's behalf.
- b. Provide services in Paragraph 4 that are not identified by a check mark.
- c. Make decisions for Client about any aspect of the case.

6. Method and Payment for Services.

a. *Hourly fee.* The current hourly fee charged by Attorney for services under this agreement is as follows:

Senior Partner: \$ _____

Junior Partner: \$ _____

Associate: \$ _____

Unless a different fee arrangement is specified in clauses (b) or (c) of this Paragraph, the hourly fee shall be payable at the time of the service.

b. *Payment from Retainer.* The Client shall have the option of setting up a deposit fund with Attorney. Services are then paid for from this retainer account as they occur. If a retainer is established under this clause, Attorney shall mail Client a billing statement summarizing the type of services performed, the costs and expenses incurred, and the current balance in the retainer after the appropriate deductions have been made. Client may replenish the retainer or continue to draw the fund down as additional services are delivered. If the retainer becomes depleted, Client shall pay for additional services as provided in clauses (a) or (c) of this Paragraph.

c. *Flat Rate Charges.* The Attorney has the option of agreeing to provide one or more of the services described in Paragraph 4 for a flat rate. Any such agreement shall be set out in writing, dated, signed by both Attorney and Client, and attached to this Agreement.

d. *Attorney Fees.* Should it be necessary to institute any legal action for the enforcement of this Agreement, the prevailing party shall be entitled to receive from the other party all court costs and reasonable attorney fees incurred in that action.

7. Resolving Disputes Between Client and Attorney.

a. *Notice and Negotiation.* If any dispute between Client and Attorney arises under this Agreement, both Attorney and Client agree to meet and confer within ten (10) days of written notice by either Client or Attorney that the dispute exists. The purpose of this meeting and conference will be to negotiate a solution short of further dispute resolution proceedings.

b. *Mediation.* If the dispute is not resolved through negotiation, Client and Attorney shall attempt, within fifteen (15) days of failed negotiations, to agree on a neutral mediator whose role will be to facilitate further negotiations within fifteen (15) days. If Attorney and Client cannot agree on a neutral mediator, they shall request that the [local or state] bar association select a mediator. The mediation shall occur within fifteen (15) days after the mediator is selected. The Attorney and Client shall share the costs of mediation, provided that payment of the costs and any attorney fees may also be mediated.

c. *Arbitration.* If mediation fails to produce a full settlement of the dispute satisfactory to both Client and Attorney, Client and Attorney agree to submit to binding arbitration under the rules of the [governing] bar association. This arbitration must take place within sixty (60) days of the failure of mediation. Costs and attorney fees for arbitration and prior mediation may be awarded to the prevailing party.

8. Amendments and Additional Services. This written Agreement governs the entire relationship between Client and Attorney. All amendments shall be in writing and attached to this Agreement. If Client wishes to obtain additional services from Attorney as defined in Paragraph 4, a photocopy of Paragraph 4 that clearly denotes which extra services are to be provided, signed and dated by both Attorney and Client and attached to this Agreement, shall qualify as an amendment.

9. Statement of Client's Understanding. I have carefully read this Agreement and believe that I understand all of its provisions. I signify my agreement with the following statements by initialing each one:

___ I have accurately described the nature of my case in Paragraph 2.

___ I will remain in control of my case and assume responsibility for my case as described in Paragraph 3.

___ The services that I want Attorney to perform in my case are identified by check marks in Paragraph 4. I take responsibility for all other aspects of my case.

___ I accept the limitations on Attorney's responsibilities identified in Paragraph 5.

___ I shall pay Attorney for services rendered as described in Paragraph 6.

___ I will resolve any disputes I have with Attorney under this Agreement in the manner described in Paragraph 7.

UNBUNDLED LEGAL SERVICES

- ___ I understand that any amendments to this Agreement shall be in writing, as described in Paragraph 8.
- ___ I acknowledge that I have been advised by Attorney that I have the right to consult another independent Attorney to review this Agreement and to advise me on my rights as a Client before I sign this Agreement.

Client

Attorney

Date