

# ROADMAP FOR IMPLEMENTING A SUCCESSFUL UNBUNDLING PROGRAM

By

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## INTRODUCTION

Limited scope representation is a partnership between lawyers and litigants, where private attorneys provide some, but not all, of the services contained in traditional full service representation. While many of these clients have limited resources, an increasing number choose limited scope for reasons other than financial ones: they may want to retain more control over their legal matter, or may simply resent the idea that lawyers are gatekeepers to the courts. The limited scope movement is consumer driven, and rapidly gaining momentum. Done correctly, it is a low risk practice, of great service to the courts and litigants and profitable to the lawyer. The types of limited scope arrangements range from simple coaching, advice and counsel, document assistance, strategy and negotiation, to actually making court appearances for a limited purpose.

Interest in, and acceptance of the concept varies widely from legal culture to legal culture. However, since the demand is so great, more and more groups are seeking ways to expand the range of legal services they offer to meet the need of large numbers of unrepresented litigants. Of course, the best qualified to provide these services are the lawyers themselves.

The purpose of this article is to create a roadmap of the essential and nonessential but desirable components of a successful limited scope program, utilizing successful existing models, so that lawyers wishing to implement the concept for the first time in their jurisdictions have the benefit of the considerable work which has gone before.

Based upon the experience in Contra Costa County, California<sup>1</sup>, as well as other jurisdictions, the following represents a plan for creating and implementing a strategy for a successful limited scope program. Through trial and error over a period of several years, a program was developed which has proven adaptable to urban, suburban, semi-rural and rural areas, and which can significantly reduce the numbers of self-represented litigants, while providing an expanded and profitable client base for attorneys, a referral outlet for legal aid overflow, and a recruiting tool for *pro bono* programs.

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<sup>1</sup> The Family Law Section of the bar in Contra Costa County, California, began a successful limited scope program in 1996, which has served as a model for other counties in California and elsewhere. All references to Contra Costa County in this paper are to that program.

The various factors which contribute to success have been divided into two categories: the essential and the desirable. While only a few are indispensable, and many were entirely missing when the Contra Costa County program was successfully developed, the success of any new program will be largely determined by the degree to which the maximum number of these elements are incorporated into the planning and execution.

### **KEY ELEMENTS**

The key elements essential to a successful program include the following:

1. Elimination of rule impediments;
2. Support from the local bench;
3. Formal approval by at least one authoritative entity (statewide court administration, state bar, access to justice commission, local bar association, local court, etc.) willing to give the program its imprimatur;
4. Education of the private bar, including:
  - a. Overcoming misinformation, skepticism and fear;
  - b. Describing the benefits to private attorneys of adding limited scope to the range of services they offer;
5. High quality training in the ethical and practical issues;
6. Referral sources;
7. Coordinated follow up.

### **NONESSENTIAL BUT DESIRABLE ELEMENTS**

8. One key individual or group willing to coordinate efforts and be the point person as issues arise;
9. Encouragement by court administration;
10. Stable funding;
11. Standardized court forms;
12. Prepared materials including sample forms and fee agreements, office procedures, and intake protocols to increase confidence and reduce risk;
13. A model business plan for building a profitable limited scope practice

### **ASSEMBLING THE PACKAGE**

Each jurisdiction has its own legal culture, and variations occur from county to county and sometimes from court to court within a county. Not all of the elements are required, and many may be tailored or adapted as the local culture mandates. Enthusiasm and strong grass roots support can compensate for much. However, the following seven factors appear to be mandatory in some form.

## **ESSENTIAL COMPONENTS**

### **1. Elimination of Rule Impediments**

These are critical, and must be addressed as a threshold issue. States which have adopted the ABA Model Rules already have some assistance in rules 6.5 and 1.2 (c).

In states which have not adopted the Model Rules, impediments fall into three general categories:

1. Statutory prohibitions against limited scope.
2. Rules of professional conduct.
3. Case law.

By far the most troublesome are statutory prohibitions, since they may only be resolved by the legislature itself, and few who have not carefully studied these issues are aware of how important this practice is to providing access to the courts for large numbers of litigants. A specific and unequivocal statutory prohibition is a complete bar until removed. Fortunately, direct statutory prohibitions appear to be few in number.

Ethical prohibitions contained in the rules of professional conduct may be overcome by educating the rule makers, by reference to the ABA Model Rules, as well as rule changes in other states, such as California, which may be replicated in other jurisdictions.<sup>2</sup> Similarly, reference to ethics opinions in other states<sup>3</sup> can be of great value in effecting change.

Case law restrictions, direct or implied, are the easiest to resolve, as they may be overruled in a variety of ways. However, whatever the form of the rule impediment, it must be removed before proceeding.

If the impediment is perceived and implied rather than express, it may be amenable to education, clarification, or modification. “Soft” rule impediments, which derive from interpretation and local legal culture can often be addressed and refined by local rule changes accompanied by quality training.

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<sup>2</sup> Explicit permission granted by rules is less important than the absence of a specific prohibition. At the time the practice of limited scope took hold in parts of California, the Rules of Court were silent on limited scope and the practice hadn’t been given much thought outside of transactional work, where it is standard procedure. However, as discussed later, the addition of specific rules approving the practice and providing official standardized forms designed to facilitate limited scope, such as California’s form FL-950, and Rules 5.70 and 5.71 are invaluable to institutionalizing the practice and reassuring the private bar.

<sup>3</sup> Such as Los Angeles County Bar Association opinion 502 (available at <http://www.lacba.org>) and Colorado Opinion 101 (at <http://www.cobar.org>).

## 2. Support of the Local Bench

As the Contra Costa model was developing, the support was entirely local. In 1996, a strong family bar appealed to the family bench to address a way to jointly assist in the amelioration of the *pro se* crisis, which was seriously impairing the functioning of local court administration. Attorneys wanted to offer limited scope to unrepresented litigants, but required reassurance that the bench would honor the limitation on scope and allow them to withdraw from the case at the conclusion of their duties.

The strategy adopted was one of education of and partnership with the local bench. The bar's commitment was to provide training to its members so that quality service would be provided. In the vast majority of limited scope arrangements, the practice would be transparent to the courts, that is, they would see well drafted pleadings with relevant information in an understandable form, clear and enforceable orders, and well prepared *pro se* litigants, but would not know who had assisted them. In the few cases where an actual limited court appearance was required<sup>4</sup>, the bench would have the benefit of a qualified attorney. The trade-off which was negotiated was that, in turn, the bench agreed 1) not to enlarge the scope of the representation, and 2) to release the attorney from the case on completion of the agreed services. It was made clear that this was a joint effort of bench and bar, and when done properly, would benefit both, as well as, and perhaps most importantly, benefiting the public by providing essential legal services.

While some measure of cooperation of the local bench is always required, such an explicit partnership is not. In most cases, unless a limited scope attorney appears in court, the only way the judge would know that an attorney was even involved would be by the quality of the pleadings or presentation.

The condition of local bench support need not include the entire bench, nor must the support be enthusiastic. Even lukewarm support may well be enough to build on, as judges see the positive benefits in the day to day operations of their courts. However, the local bench cannot be overtly hostile. And sometimes the support of a single local judge is sufficient, if it is the right one. Experience demonstrates that the most sympathetic judges are likely to be those whose calendars carry high concentrations of *pro se* litigants.

When approaching judges who are unfamiliar with or hostile to limited scope, it is important to emphasize the benefits to court administration. Pleadings drafted by professionals are easier to follow, and more likely to contain relevant and reliable information. Orders drafted by professionals are more likely to be unambiguous and enforceable. Educated and well prepared *pro se* litigants spend less time asking clerks for assistance, make fewer trips to the filing window, and take less of the judge's time when their matter is called.

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<sup>4</sup> Only a very small percentage of limited scope agreements require the attorney to appear in court.

Some judges will have concerns that if attorneys make limited court appearances, their court calendars will become unmanageable. This is generally not true. If possible, the part of the case for which the attorney is responsible can be called first, and then the attorney is excused. The balance of the case is then handled by the self-represented litigant. As with most other issues in limited scope, the perceived problems regarding calendar management are usually practical in nature, and can be worked through. It is important to underscore the benefits to them of having an attorney for the difficult parts of a matter, which benefits far outweigh the occasional complication of calendar management.

Judges want to hear from other judges. As a result, a good strategy for obtaining bench support is to put your local judges in touch with judges in other jurisdictions who are experienced with limited scope representation and can describe how it has improved the functioning of their own courts. If you can arrange a meeting of judges, having them tele-conference in an experienced judge from another court can be very effective. A judge will be much more receptive to information which comes from another judge who speaks from actual experience with the practice.

Finally, educate the bench on the importance of respecting the limitation on scope. Done correctly, this practice is of immense help to the courts and the smooth administration of justice. If judges expand the scope, or refuse to excuse an attorney when the assigned part of the case is completed, the pool of attorneys willing to provide limited scope assistance will dry up, and everyone will lose. This is usually just a matter of good bench – bar communication and cooperation.

### **3. Formal Approval from One Authoritative Source**

Formal approval by at least one authoritative stakeholder is required to give a limited scope program credibility and get it off the ground. This approval doesn't have to be statewide, and it doesn't have to be broad based. Enthusiastic support from a single high profile appellate justice or access to justice group may well suffice.

When the Contra Costa program was developing in 1997, the official approval came from the strong and well organized Family Law Section of the local county bar association. The California State Bar was not a supporter of the practice at that time, although it had not officially opposed it, either. Nevertheless, by carefully adhering to the Rules of Professional Conduct and providing quality training to practitioners, it was possible to ensure that the program met all of the standards of professional responsibility imposed by the State Bar. One decision which turned out to be extremely important to the success of the program was to videotape the initial training. There was, therefore, a record of the high quality of the training, strict adherence to rules of professional conduct, and anticipation of practical issues which might arise, as well as suggested solutions to them. By the time the State Bar got around to looking at the program a year or two later, it was already successfully providing competent services to limited scope litigants, and there was an objective record of the standard of care. As a result, even individuals within

the State Bar organization who had originally been skeptical were convinced that limited scope was not just an important method for delivery of legal services, but that it could be done ethically, competently, and with full recognition of the lawyer's professional responsibilities to their clients and the court.

The authoritative approval need not come from the established bar, and in some areas, those groups are extremely resistant and entrenched in traditional methods. However, even in traditional groups, there are always individuals who are open to trying new things, and willing to explore new ideas. Further, each state has commissions dedicated to promoting access to justice, committees on the delivery of legal services, individuals who are active in standing committees of the ABA and other respected legal groups, or a proactive appellate Justice or two. Every jurisdiction has someone who speaks with authority about attorneys' obligations to create new and innovative methods of delivering legal services to the unrepresented and under-represented. A key strategy at the outset is to identify those resources and bring them into the process.

To find an appropriate spokesperson or stakeholder in your jurisdiction, look to groups which promote access, and individuals who figure prominently in respected organizations such as the American Bar Association or American Judicature Society, and who serve on committees with an access focus.

It doesn't matter particularly who is the source of the approval, although the more who weigh in positively, the better it will be. However, in order to overcome attorney fear of discipline, and general reluctance to try something new and unfamiliar, *someone* in authority must be willing to step forward and publicly and enthusiastically say that this is a good thing.

Of course, as discussed in more detail later, when any new practice is being adopted, it is critical that it be done with strict adherence to the highest standard of professional competence. If a new and unfamiliar thing is done sloppily, problems *will* arise, and those problems will be cited as evidence that the unfamiliar thing *itself* is the problem, rather than the manner of its execution. Once a thing is established as a familiar part of the local legal culture, practical standards and best practices will naturally form from the collective experience. However, when it is new, and the standard is still forming, it must be impeccable.

#### **4. Education of the Private Bar**

This is also a critical and indispensable part of the strategy. Many elements of the established bar are still extremely traditional and resistant to change, and despite overwhelming evidence that this is no longer their grandfather's (or great-grandfather's) law practice, cling to the old ways as the exclusive method of delivering legal services. Sometimes this attitude is driven by entrenched habit and tradition, sometimes by a sincere belief that anything other than traditional full service representation is a disservice to the client and a breach of professional responsibility.

Lawyers confronted with a new and (at least locally) untried form of practice, will need reassurance to overcome skepticism and fear. They don't want to run the risk of discipline or malpractice, judicial opprobrium, or loss of revenue. Many will fear that introducing limited scope will deprive them of their existing full service clients. Others will simply be misinformed about the practice of limited scope. And finally, there *are* nuances to limited scope which are not present in full service representation, and lawyers must be willing to be trained to do it competently.

For this reason, before approaching traditional elements of the bar, it is important to have the first three factors, elimination of rule impediments, bench support, and approval from at least one authoritative source, firmly in place. These factors alone will go far toward allaying the trepidation of the traditional bar.

The second aspect of educating the private bar concerns the practicalities of limited scope. They may fear that this will take away their existing clients, and those fears must be allayed. The statistics themselves provide the best evidence: if 70% or 80% of litigants are currently unrepresented, this is a golden opportunity to *expand* their practices, and capture an entire market which is currently unserved by lawyers. When reassured that limited scope is a consumer driven movement, demanded by people who can afford to pay for legal services, they can begin to see the benefits to themselves of embracing it. When this reassurance is coupled with the promise of good practical training and prepared materials, it can be a powerful inducement.

In carrying out this part of the strategy, it is important to carefully screen the segment of the bar which you approach first. Limited scope is essentially a consumer law practice, so the best groups to target are those which already have heavy concentrations in the traditional consumer specialties: family law, landlord-tenant, consumer rights, elder law, etc. If possible, target small firm and solo practitioners, as these tend to be the most favorably inclined, and also the most interested in finding ways to expand their client base. *Don't* start out with a group heavily focused on traditional civil litigation, such as personal injury or business and real estate litigation. They won't be aware of the need and the opportunities, and the concept is less likely to resonate with them. The last thing you want to do is set yourself up for failure even before you have reached the lawyers who would be most receptive by selecting a predictably hostile bar group who nixes the idea because they don't understand or need it.

One way to find a good target group is a sub-specialty of the general bar (as was done with the Contra Costa Family Law Section). This not only produces a more receptive audience, but allows the program to be born and nurtured into a smaller pond at the outset, an important consideration if you are starting something new which may need tweaking before it is ready to go mainstream in your jurisdiction.

This education is best provided by someone who is familiar not only with the ethical nuances, but with the practical issues raised by unbundling, including interactions

with clients, the courts and opposing parties, billing and marketing opportunities, and the like.

And finally, if the group continues to contain a powerful skeptic in a key position, one effective strategy is to point out to that individual that *he* doesn't have to offer limited scope if he doesn't want to. This isn't about imposing a mandatory requirement of limited scope on all lawyers. However, if he has colleagues who *are* interested in expanding their practices in this way, and are willing to be trained to do it effectively and profitably, the fact that there are others within the group who would not be comfortable offering these services should not be an impediment to others doing so.

## **5. High Quality Training**

This one is simply indispensable. Limited scope representation is not second rate service, and is not limited liability. It is limited only in scope, and the standard of care for an attorney performing limited scope services is precisely the same as if those services were being provided in a full service context. It is critical that this rule be reinforced, and that attorneys be given high quality training.

There are only a few rules which are peculiar to limited scope, but they are critically important. This isn't the time to allow enthusiastic individuals to plow on into a new field of practice without a full understanding of the subtleties which it presents. The training should, of course, start with the ethical issues involving the attorney's professional responsibilities in limited scope. This is always the starting point, as the attorney has the same duties of loyalty, confidentiality and competence, whether limited in scope or not.

However, training in ethics is not enough. Experience demonstrates that the problems which do arise are more likely to be practical than ethical in nature. They include how to set and document the limitations on scope, what to do when new issues arise, how to deal with a represented or unrepresented opponent, who is to be served with pleadings, how to apportion tasks, and most importantly, when limited scope isn't appropriate due to the nature of the issues presented or the inability of the client to self-represent, even if well coached.

This training will not be effective if done from an academic model alone. Of course, all of the academic bases must be covered, and covered well. However, it is important that the trainer be able to answer the inevitable practical questions, or be able to volunteer "You will probably be confronted with ..... and here are a couple of ways to handle it."

For that reason, when setting up your training program, a *caveat* is in order. There are some excellent training materials which have already been developed, and are available to be tailored to other jurisdictions, or other areas of practice (as they were

developed initially for family law).<sup>5</sup> These materials are listed more specifically in the Appendix. However, do not just download the materials and change the cover sheet. They are office forms and procedures, and are not designed to stand alone without clear information about how (and how not) to use them.

Fortunately, there are also established models for limited scope training, and experienced trainers who are willing to assist you set it up and do it correctly.<sup>6</sup> Most of them donate their time because they believe in the cause and want to see its acceptance expanded. Take advantage of the available resources, do not reinvent the wheel, and cover all of the bases. You will defeat your purpose if some member of your bar gets into trouble because of sloppy training which results in the failure to spot a key issue. As indicated before, there are only a few rules peculiar to limited scope, but they are critical and their importance cannot be underestimated.

## **6. Referral Sources**

Referral sources should be identified as part of your initial plan, ideally at the outset. There are several reasons why this is important:

- Good referral sources are individuals and groups who have access to the target client base, but can't meet the need themselves. They have a vested interest in promoting limited scope and making it successful and will be of great assistance when building your program.
- The best training will get rusty if not reinforced immediately by practical experience. If you give a great program and an attorney doesn't see a limited scope client for six months, something is more likely to slip through the cracks.
- When convincing a sometimes skeptical bar that limited scope is a good marketing move, it is helpful to be able to point to an existing pool of unrepresented litigants who can afford to pay for limited scope assistance. These are virtually "turnkey" potential clients.
- It is also a good idea to include some marketing tips in your training, as these tools do not come naturally to all lawyers, and your program is more likely to thrive if you give your lawyers the tools they need to succeed.

Fortunately, the need for limited scope is so great that it isn't at all difficult to find referral sources. Each can be a separate source for a stream of referrals.

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<sup>5</sup> See the Risk Management Materials at <http://www.calbar.ca.gov>. Search for "Risk Management Packet."

<sup>6</sup> See PLI training located at <http://www.pli.edu>. Search for "family law."

When the Contra Costa program was getting underway in 1996 and 1997, California had just instituted its Family Law Facilitator<sup>7</sup> program. The Facilitators run court-based self help centers staffed and supervised by attorneys. They are often limited by funding restrictions in the kinds of matters in which they offer assistance, and are constantly presented with litigants who need more service than they can provide, or whose matter is too complex for self help without more personalized attorney assistance. They often have no place to send these people, and welcome a pool of trained attorneys whom they can place on a referral list at their center.<sup>8</sup> This was a ready-made opportunity for attorneys venturing into unbundled practice, and is particularly important in locations where there is not yet an unbundled lawyer referral panel.<sup>9</sup>

Although self help centers are just getting started in some areas, and not yet in existence in others, experience suggests that the self help center's effectiveness as a referral source is substantially increased if the center is staffed (as opposed to an unstaffed kiosk), and if specific training of unbundled lawyers has already taken place.

Another key source for referrals is legal aid providers, who are often limited by funding or policy. They, too, are looking for places they can send people who need more than they can provide. And they, too, will want to be reassured that the training has been high quality.

Don't overlook *pro bono* and moderate means programs as potential referral sources. Although *pro bono*, by definition, doesn't pay, program administrators are among the most enthusiastic supporters of limited scope training, simply because it is easier to recruit a volunteer for a limited and finite piece of legal work than for protracted custody litigation which might take years. They may well be willing to underwrite training in order to increase the pool of well trained volunteer attorneys.<sup>10</sup>

And don't forget the internet. Limited scope is a consumer driven movement, as middle class litigants are increasingly insisting on retaining control of their legal matter, and looking for a coach rather than a full service advocate. They may well type "unbundled attorney" into their search engine. If your group or county has a website (and it should by now), be sure to prominently highlight your training program, and link to as many unbundled websites as possible to get maximum exposure.

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<sup>7</sup> For more information, see <http://www.courtinfo.ca.gov>.

<sup>8</sup> Of course, no one wants to run the risk of negligent referral, so it is important to reassure your referral sources, whoever they may be, that quality training has been provided, and no one is on the list who has not completed the training.

<sup>9</sup> In practice, referral panels follow rather than precede a successful local unbundled program. Once the need and viability are established, it is easier to set up a formal panel. And with every other aspect of limited scope, someone has gone before. Limited scope referral protocols have been developed in a number of states, and their experience should be tapped in setting up yours. Resources are listed in the Appendix.

<sup>10</sup> Training is often paid for by the attorneys themselves, who are looking for ways to expand their practices. However, if this is unrealistic, training can be offered in exchange for taking a *pro bono* case. This benefits everyone: the *pro bono* or moderate means panel has a trained and committed volunteer, and the same skills can be used by the lawyer in offering limited scope services for pay.

## 7. Coordinated Follow Up

The success of your program will be greatly enhanced by good follow up. This can take several forms:

- Mentoring by experienced unbundlers
- Support groups, study groups or committees where limited scope attorneys can bring their practical issues and brainstorm with others trained in unbundling
- List serves where practitioners can share ideas and solutions
- Periodic retraining and brush-up

Much of the training you will give will be reinforced by practical experience. Some will have to be expanded or repeated as new issues arise in the context of limited scope. It is invaluable to provide a resource where attorneys can ask questions in advance rather than trying to “wing it,” and share common experiences. If you have access to experienced unbundlers locally, ask them to act as mentors. If you don’t, they are in other jurisdictions, only as far away as the “send” button on your email program. Most of the issues which come up in limited scope are practical, and it is helpful to provide someone with experience to whom they can turn when something unexpected arises.

Support groups are another important resource. When Contra Costa began its program, there *were* no experienced mentors. We set up a standing committee on unbundling, and met regularly for the first couple of years. Attorneys would bring their issues, brainstorm them, and work out solutions. As limited scope became more mainstream, the committee met less frequently, in part because the unbundlers were calling each other with issues as they came up. Nevertheless, the committee still exists and meets whenever one or more members express a need to cross-fertilize unbundling issues. They can be formal committees or informal study groups where everyone brings a brown bag lunch. The format isn’t important, but the availability of a method of sharing experiences and ideas is.

Although not in existence when the program started, list serves are becoming an efficient and cost-effective way of sharing ideas and solutions. They also have the advantage of not being limited by geography.

Finally, it is extremely helpful to periodically offer the training program again. Not only will the content change as your group becomes more experienced, but new lawyers will be moving in all the time. They will want access to the same tools their colleagues are using to expand and grow their own practices. And if your county is setting up an unbundled referral panel, training will be essential to assure quality control. It is a good idea to make that training available to experienced unbundlers as well. Not

only can they update their skills, but the more experienced attorneys can answer questions for and mentor the newer ones.

As with anything new, your unbundling program will evolve as it grows. That evolution will require continuing education. I've taught my three hour training countless times since 1997, and the way I teach it now bears little resemblance to the training I filmed in 2002, and none at all to the first one in 1997 where I was feeling my way. People who attended the early trainings routinely show up for refreshers, not only to brush up on their skills, but to find out what is going on in the field of limited scope and what new resources are available to make their practices even more satisfying and profitable.

### **PULLING THE KEY ELEMENTS TOGETHER**

The foregoing elements are by far the most important to creating a successful unbundling program. While it may not be fatal if one or more is missing in your jurisdiction, success will be much more elusive if it is.

Spend time and effort at the outset to identify the players and resources in your legal community which will fit the categories above, find experienced mentors who are willing to work with you in setting up your program, and plan carefully at the beginning for maximum success. The Contra Costa model grew from the ground up, and evolved as it did so. It is by no means the only successful one. However, it illustrates key components of a viable program, and how they might be assembled.

### **NONESSENTIAL BUT DESIRABLE ELEMENTS**

The absence of the following elements may not present insurmountable barriers to the viability of your program, but the likelihood of success will be vastly improved if you can incorporate the bulk of them into your plans.

#### **1. One key point person or group**

The more effective the coordination between all of the elements, the greater the likelihood of success. It is just that simple. Ideally, the point person is someone who can either speak the language of all of the stakeholders: the bar, the bench, court administration, legal aid, *pro bono* (and some of these are different languages, indeed) or who can partner with someone else who speaks one or more of the other dialects. Frankly, there is enough commonality of interest in these groups with respect to providing *pro se* assistance, that there is ground for building considerable consensus.

Sometimes the point group is not an organized one, but rather an *ad hoc* assortment of individuals with common goals. A few individuals who are placed at key

positions make all of the difference. They may include an appellate justice with particular interest in access issues, a local judge overwhelmed with an unmanageable *pro se* calendar, a legal aid advocate, an ethicist interested in plowing new intellectual turf, a barrister's or sole practitioner's group interested in expanding their client base, someone from the lawyer referral community, and state bar staff attorneys. The latter are particularly helpful. Most statewide bar associations have attorney staff who are assigned to assist various programs, and all have access to justice or similar programs, or committees on the delivery of legal services. Your state bar staff attorneys can put you in touch with other stakeholders, as well as the key contacts in each, and help you coordinate with them for maximum success.

Limited scope is evolving independently in several parts of the country. It is important to have someone who is knowledgeable and in a position to evaluate the success of the program, tweak it as necessary, and head off potential clashes with the local legal culture (whether private bar, courts, judges, or other groups) as they arise. There is more than one model to follow, and as experience in limited scope grows, it is extremely helpful to have someone who can integrate and modify as it as required. And of course, if you can quantify the benefits to court, bar, litigants, and other stakeholders, all the better.

Never underestimate the power of a single well-placed and enthusiastic individual. Utilize and coordinate all the contacts you have. If your group of supporters is geographically scattered, conference call meetings help preserve coordination and momentum.

## **2. Encouragement by Court Administration**

This is not essential, and varies widely from state to state, but is invaluable when available. Most courts are struggling with the issues created by overwhelming numbers of *pro se* litigants, and will welcome strategies for assisting them. By partnering with court administration, you gain not only a powerful ally, but a superb source of contacts. Target the person or office within your state court administration who works most closely with *pro se* issues. If that person can't help you, they can point you in the direction of someone who can. Every state is dealing with the same issues, and although they are sometimes arriving at different conclusions, all have people who have thought about the issues and are willing to experiment with new solutions.

If the statewide court administration supports limited scope, it can immeasurably assist in training judges on the benefits and importance of encouraging limited scope, is particularly important to overcoming resistance. The California Administrative Office of the Courts, which is responsible for judicial training, has taken a leading role in making limited scope a high priority, and encouraging judges to promote it while respecting the boundaries established by the limitation.<sup>11</sup>

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<sup>11</sup> See "Twenty Things a Judicial Officer Can Do to Encourage Limited Scope Representation" in the Risk Management Materials previously cited.

As discussed above, approval by a statewide organization is of great value in providing credibility to the practice and reassuring the skeptical on both sides of the bench. When that support comes from statewide court administration, and includes judicial training specific to the issues raised by limited scope, the acceptance curve is greatly accelerated.

### **3. Reliable Funding Sources**

This was totally unavailable when the Contra Costa program was born. Lawyers paid a modest fee for the training, which occurred at the county bar offices. The fee covered the cost of photocopying the materials. Continuing education credit was provided by the county bar association.

As the program took off, funding support was cobbled together from a variety of sources, including the Administrative Office of the Courts, Center for Children, Families and the Courts, California Commission on Access to Justice, and the State Bar of California. Trainers donated their time, and all any group had to do to sponsor a training was to raise enough money to cover the out of pocket costs, which were (and are) extremely modest. Since so many of the materials are available for free on various websites, the costs are often limited to promotion and photocopying.

One key source of financial support was grant money, where the Administrative Office of the Courts and others provided financial support to various local groups who developed action plans for promoting limited scope representation in their legal community. When starting out, it is helpful, but not essential, to assemble sources of grant money.

### **4. Standardized Court Forms**

If attorneys are going to be appearing in court, it is extremely helpful to have some means of notifying the court and opposing party of the limitations on scope. When attorneys appear in court, the limitations in scope take two general forms: either the attorney appears for a single hearing or conference and then withdraws, or appears for a single issue (e.g. custody) through a series of hearings while the client self-represents on other issues. In either event, it is important for the court to know the limitations on scope for purpose of notice and other administrative functions, and the opposing party or counsel needs to know whether they should be negotiating with the attorney or client on a given issue.

When the program was in its infancy in Contra Costa, this notice took the form of a letter from the unbundled lawyer to the opposing party/counsel and the judge to whom the case was assigned. This was cumbersome, and not particularly amenable to the

common situation where a new issue pops up in the middle of the litigation and the scope changes to include or exclude it from the attorney's responsibilities.

The issue was resolved when California adopted its standardized form FL-950, which is a mandatory family law form for limited scope. Attorneys can check the boxes indicating which areas are within the scope, the form is signed by both the attorney and the client, served on the opposing party and filed with the court.<sup>12</sup>

Such a form eliminates a great deal of potential confusion and greatly adds to the smooth conduct of court business.

Standardized forms have an additional benefit. In states with standardized forms, some attorneys don't believe a thing is permissible unless there is an official court form which blesses it. Despite strong encouragement from the Judicial Council, some skeptical California attorneys simply didn't believe limited scope was ethical until they saw a form for it in their official forms software.

## **5. Prepared materials**

This one is so important that it almost got moved up to Essential Elements above. Lawyers are notoriously poor office managers, especially small and sole practitioners. They are generally not good at setting up office procedures, intake sheets and the like, and are often dreadful at drafting and updating fee agreements. The last thing you want is for an unbundled lawyer to send out his standard full service fee agreement, and think he has a limited scope client. Therefore, it is very important to have sample forms for the attorney to use and tailor. Providing these forms, as well as detailed instructions on how to use them, makes it much more likely that the work will be done competently and safely.

Fortunately, the California Commission on Access to Justice has issued a set of sample Risk Management Materials tailored for family law and available for free download on the California State Bar website, <http://www.calbar.ca.gov>. These materials include not only client intake sheets, checklists, sample letters, client handouts, fee agreements, court forms, and Best Practices.<sup>13</sup> These are not only essential training materials, but invaluable quality control tools. Remember, when you are starting something new, it is critical that it be of the highest quality, so that the nay-sayers can't latch on to a single incident of carelessness and scuttle the entire program as a result.

There are many benefits to prepared materials. They have been devised and vetted by very experienced practitioners and ethicists. Having them in hand will greatly increase the confidence of your unbundled lawyers. If used correctly (and they *will be* because your quality training will ensure that they are) they reduce risk. And if dubious

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<sup>12</sup> This form is available on the California Judicial Council website at <http://www.courtinfo.ca.gov>.

<sup>13</sup> The download is in pdf format. If you want a Word version to make it easier to tailor them to your jurisdiction, the contact is [ChrisZupanovich@calbar.ca.gov](mailto:ChrisZupanovich@calbar.ca.gov).

malpractice carriers ask for information on ameliorative office procedures, there is a ready made answer for them. The attorney can refer to the risk management materials and certify that they routinely use them.

As with trainers, this is not the time to reinvent the wheel or get sloppy. Take advantage of experienced mentors in other states and partner with them to tailor the materials to your jurisdiction and legal culture.

## **6. A business plan for building a profitable limited scope practice**

Lawyers as a group aren't the greatest business managers on the planet. They are generally more interested in practicing law than running an office. Since limited scope representation is, by definition, "pay as you go" there are no accounts receivable. That means that, properly done, it is a profit center. Clients who unbundle can pay for some, but not all, of the services contained in traditional full representation. You will be doing your bar a great service by providing them with a business plan (currently being developed by the author<sup>14</sup>) which will give them a roadmap to success. That will not only maintain interest, but reinforce the program, as more and more attorneys want to share in the success.

The plan should include billing protocols and guidelines, case management and staff use standards, client development tools and all of the other components which go into building a profitable legal practice. You might even want to share it with your full service bar.

## **CONCLUSION**

The foregoing is designed to provide a sample roadmap for establishing and encouraging limited scope representation. Some traditional elements may be hostile to the concept, some will feel threatened by it, some may feel it is unethical, and others simply won't understand it. By taking advantage of the work which has already been done in other jurisdictions, partnering with experienced practitioners, and tailoring their work to your jurisdiction and legal culture, you can greatly streamline the process and vastly increase the odds of developing a successful program. And as questions arise, remember, there are mentors out there. Use them. That's what we are here for<sup>15</sup>.

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<sup>14</sup> To obtain a copy when it is completed, email the author and reference "unbundling" in the subject line.

<sup>15</sup> The author can be reached at [sue@divorcefromhell.com](mailto:sue@divorcefromhell.com), P.O. Box 2335, Danville, CA 94526-7335, or 925-838-2660

## APPENDIX

### Unbundling Web Links

Limited Scope Training on the Web: As a public service, Practising Law Institute filmed a three hour limited scope training, which is available for free on its website, <http://www.pli.edu>. Search for “family law.” A working copy of the script is available by contacting the author.

Risk Management Materials The California Commission on Access to Justice has developed a complete set of risk management materials for use in family law limited scope representation, including checklists, best practices, four variations on fee agreements, and the official California court forms. It can be located on the California State Bar website by clicking on CalBarJournal and locating the archived issue for February 2004. It is available in either pdf or Word. To get a pdf copy, go to the website at <http://calbar.ca.gov>. From the home page, click public services, then assistance programs, then access to justice and follow the links to the risk management materials. For a Word version, email [Chris.Zupanovich@calbar.ca.gov](mailto:Chris.Zupanovich@calbar.ca.gov) and she will get it to you. This is essential for anyone contemplating limited scope family law representation.

<http://www.unbundledlaw.org> This cite came out of the first national conference on unbundling in October 2000. It includes the conference program and recommendations, and is continually updated with the latest activities and reports from around the country. They’ve just added a section on sample retainer agreements and are working on one on Malpractice Avoidance Tips. If you’re doing this work, check it regularly for recent postings.

<http://www.cobar.org> This is the Colorado Bar Association web site. Look for Ethics Opinion 101 for a comprehensive discussion of the ethical issues, and citations to opinions in other states.

<http://www.lacba.org> This is the Los Angeles County Bar web site. Look for Ethics opinion 502. It is the only California opinion, and was very thoughtfully written by some ethics and malpractice experts.

<http://calbar.ca.gov> This is the California State Bar web site, where you can read the Report on Limited Scope Legal Assistance with Preliminary Recommendations by the Limited Representation Committee of the Commission on Access to Justice. It’s very thorough and supportive, and the recommendations were unanimously approved by the Board of Governors in 2001. Don’t miss the appendix, which has lots of other cross links and resources.

<http://www.selfhelpsupport.org> This is a wealth of information designed to assist litigants and the attorneys assisting them. Check it frequently for updates. It has an excellent resource library which is continually being updated.

<http://www.abanet.org/genpractice/magazine/octnov2001/mosten.html> This is Woody Mosten’s unbundling article in the GP Solo magazine of the ABA which appeared in the October-November 2001 issue.

<http://www.divorceinfo.com/unbundlingbiblio.htm>

<http://www.zorza.net/resources/Ethics/mosten-borden.htm>

<http://www.equaljustice.org/ethics/unbund.htm>

[http://www.digital-lawyer.com/copy\\_of\\_justice/prose/proseresource.htm](http://www.digital-lawyer.com/copy_of_justice/prose/proseresource.htm)

<http://www.pro-selaw.org>