

A judge's view on the benefits of 'unbundling'

By Judge Mark A. Juhas



Common wisdom tells us that upwards of 80 percent of the parties in family law courtrooms are unrepresented. The number of unrepresented litigants in housing court and small claims appeals is no doubt higher. Anecdotally, unrepresented litigants are becoming more common in civil matters as well.

Full access to justice in the court system demands that 100 percent of court users get the level of legal assistance they need to properly resolve their legal problems. A few litigants have simple, straightforward matters and can navigate the legal system with only self-help; on the other hand, some litigants require full representation. The vast majority of court users, however, are best served if an attorney provides them with at least some assistance. In California, attorneys have been able to provide this help and advice to citizens facing civil matters through "unbundling" or limited scope representation for a number of years.

Limited scope representation is invaluable to both the litigant and the court. Although many court procedures are second nature to a trained lawyer, they can be confusing and difficult for a litigant. Specific and targeted assistance can prevent unnecessary trips to the courthouse to file papers or appear in court. It goes without saying that the work done in a court is personnel-intensive. Virtually every trip to court requires interaction with one or more court employees.

With a limited scope attorney's assistance, every time a litigant is able to smoothly conduct business, both the court and the litigant "win." The litigant quickly goes on about his or her business, and court staff can serve other court users. Judicial officers are also well served; a litigant does not repeatedly return to a courtroom over and over before resolving the problem at hand.

Civil litigation relies on paperwork; courts use all this paper to gather the information needed to make the appropriate decision. Both California law and the code of professional responsibility support a limited scope attorney "ghostwriting" forms and pleadings for a litigant. Judicial officers review files well before a case is called. How the judge views a party's position after initially reading the pleadings may or may not carry the day, but it certainly has an impact on how the case is ultimately resolved. When a judicial officer reads a request that was attorney drafted, it makes all the difference in framing the issues and making any ultimate hearing more efficient. Additionally, a skilled attorney is familiar with the law and with what facts the judge will need to decide the matter. A cogent and well-written brief could be the difference between prevailing and not prevailing in court.

Judicial officers statewide enthusiastically welcome limited-scope attorneys to the counsel table. Limited-scope attorneys not only provide the opportunity for better outcomes, they make the court process run smoother from start to finish, resulting in more efficient hearings. This is a "win-win" for both the court and the litigant. Whether it is due to fewer court appearances, fewer rejected pleadings or better outcomes, it is a result that we all support.

Los Angeles County Superior Court Judge Mark A. Juhas has presided in family court since he was appointed to the bench in 2002. He also chairs the California Commission on Access to Justice and teaches extensively in the areas of family law, self-represented litigants and access to justice.

