

UNBUNDLED SERVICES TO ENHANCE PEACEMAKING FOR DIVORCING FAMILIES

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Unbundling, also known as limited-scope representation, has been adopted by judges, the organized legal profession, and divorcing parties. Unbundling is a legal access approach to better and more affordably serve unrepresented divorce litigants as well as to assist overburdened and underfunded courts. This article will focus on another critical benefit of unbundling: the ability of divorcing professionals to provide information and support to divorcing families to help reduce family conflicts. This article shall discuss four unbundled peacemaking roles that lawyers can play: (1) Collaborative Lawyer; (2) Lawyer Coach for Self-Represented Litigants; (3) Lawyer for Mediation Participants; and (4) Preventive Legal Health Care Provider.

Key Points for the Family Court Community:

- Overview of limited-scope lawyering roles
- Impact of unbundled representation on peacemaking
- Best practices of noncourt lawyering

Keywords: *Collaborative Law; Limited-Scope Representation; Mediation; Peacemaking; Prevention of Conflict; Self-Represented Divorce Litigants; and Unbundled Legal Services.*

WHAT ARE UNBUNDLED LEGAL SERVICES AND HOW DO THEY WORK?

Unbundling is not a new concept. Essentially, unbundling is an *agreement* between the client and lawyer to limit the scope of services that the lawyer renders. There are numerous replicable models of lawyers successfully unbundling their services to increase legal access.¹

Examples of unbundling include the following:

- *Advice:* If a client wants advice only, advice can be offered at an initial consultation or throughout the case as determined by the client with input from the lawyer. The lawyer and client collaborate in helping the client decide if and when further consultations may be needed.
- *Research:* Based on the lawyer's advice, if the client wants legal research, a personal or telephonic/Web unbundled service provides this legal information. Research may take as little as 15 minutes or as much as ten hours. The client and lawyer are teammates in joint charge of determining the scope of the job and who will do the work—the lawyer, the client, or a negotiated collaborative effort between the two.
- *Drafting:* Lawyers can ghostwrite letters or court pleadings for the client to transmit or review and comment on documents the client has prepared or be engaged only to send a letter on behalf of the client on law firm letterhead.
- *Negotiation:* The lawyer can teach the client how to negotiate with his/her spouse or the spouse's lawyer directly in preparation for mediation or a settlement meeting. Or the lawyer can be engaged to conduct negotiations on behalf of the client without being counsel of record for the entire court case.
- *Court appearances:* If a client desires, an unbundled lawyer can offer limited representation for court appearances, hearings, and mediation. At the other end of the spectrum, lawyers

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can provide Collaborative Law representation in which the lawyer provides all services related to the case, *except* representation in court, from which the lawyer would be disqualified under the terms of a Collaborative Law participation agreement.

A lawyer may be engaged for a single issue only, and the client will either represent himself and/or engage another representative to handle all other issues. In the same way, a lawyer might represent a client in a single hearing on temporary child custody, but the client will represent herself at subsequent hearings on child custody or at trial on all issues. Lawyer and client are in charge of determining the scope of representation and unbundling; in unbundling-friendly jurisdictions, the court and other parties (and lawyer for the other party, if there is one) are required to honor that lawyer–client decision to unbundle.

The limitation of legal services based on informed consent and a written agreement is permitted in every state and in many Western countries.² “Second opinions” are classic unbundled services. Every time a lawyer writes a single letter, instead of three possible letters, drafts one agreement instead of five possible agreements, or makes one phone call instead of several possible phone calls, the services are limited de facto.

INFORMED CONSENT REGARDING THE LITIGATION BACKGROUND AND ORIENTATION OF A FAMILY LAWYER

Therapy for individuals and families has already undergone significant unbundling impact. Traditional psychoanalysis is seldom used today except for those with sufficient financial resources and personal commitment to undergo lengthy treatment that could last many years, several times per week. Individual psychoanalysis has given way to a variety of unbundled shorter term and affordable models such as cognitive behavioral therapy, crisis counseling, short-term couples’ work, family systems therapy, and parenting and divorce coaching.

This same trend may be true for divorce legal services. The traditional family lawyer is a full service lawyer who has the background, skills, and availability to file necessary court documents and represent the client in any court litigation necessary to obtain relief desired. Unlike a cancer patient who sees an internist or a medical oncologist well before deciding that surgery is an option, a family law clients generally engages their surgeon (litigator) early in the process.³ Even if a client wants to avoid court (as most do), few clients are informed by their family lawyer that there may be other lawyers in the same community who do not litigate. Further, there is rarely a lawyer–client discussion about the impact on the client of having a lawyer whose income and professional view of client care may be heavily impacted by training, participation, and confidence in the litigation process. It is not unusual for professionals to bias their advice based on the approach and services that they offer. While they generally also offer less invasive procedures, surgeons are more likely to recommend the surgical option. In the same, while they endorse settlement, many litigators readily recommend and utilize the courts as a key tool in their professional approach.

Adequate informed consent should require that lawyers who litigate to discuss the possible availability of lawyers who are not also providers of litigation services. Lawyers who litigate should offer a discussion of the benefits and risks of utilizing a lawyer who litigates compared with one who does not. Most ethical opinions require written informed consent before a client chooses legal representation that limits scope (particularly, a limitation of scope that excludes litigation services such as Collaborative Law).³ I am proposing a heretical concept—namely that informed consent be required in the reverse: *Before* accepting a litigation engagement, a lawyer should proactively and clearly inform a client about the benefits and risks of being represented by a lawyer who provides litigation services, acknowledge an understanding and undertaking of those benefits and risks as well as being informed of local availability of competent family lawyers who will offer unbundled legal services, and acknowledge such consent of engaging the lawyer litigator in a lawyer–client fee agreement or other written document.

Below are four models of unbundled lawyering that are currently available in the legal marketplace. These models may be offered by lawyers who also offer full service including litigation.⁴ Full service vis-à-vis limited-scope representation is not an immutable situation. Conversion from one form of service delivery to the other can occur in several different permutations⁵:

- A. From the client being unrepresented to engaging a limited-scope lawyer;
- B. From limited-scope representation to full-service representation;
- C. From full-service representation to limited-scope representation;
- D. From limited-scope representation to self-represented;
- E. From full-service representation to self-represented

UNBUNDLED LAWYER PEACEMAKING MODEL 1: COLLABORATIVE LAWYER (OFTEN IN AN INTERDISCIPLINARY TEAM)

Collaborative lawyering is the most explicit unbundled peacemaking role for several reasons. First, the label of this model connotes a different approach to lawyering: collaborative as differentiated from adversarial. Second, a Collaborative Case requires that both clients and lawyers sign an agreement that disqualifies the lawyers from participating in a litigated proceeding for their respective clients and requires withdrawal or termination of the Collaborative Law Case if either party or lawyer violates this condition. In essence, both lawyers agree that their professional relationship may be terminated not just by their own actions or by their clients but by actions of the other party or attorney as well. Third, parties and lawyers agree to conduct their actions by a set of guidelines and principles that embody peacemaking at the highest level. Some of these guidelines include:

- Respect and dignity for the other party and other professionals;
- Direct and open communication with the other party and professionals;
- Voluntary and full disclosure of relevant information and documents necessary to make agreements;
- Commitment to the healing of the family⁷; and
- Use of interest-based negotiation to try to meet the needs of both parties.

In addition to the use of interdisciplinary teams, Collaborative professionals also work in conjunction with either independent mediators⁸ or utilize one of the members of the Collaborative team to serve as case manager and facilitator.⁹

UNBUNDLED LAWYER PEACEMAKING MODEL 2: LIMITED-SCOPE LAWYER ADVISOR AND COACH FOR UNREPRESENTED LITIGANTS TO EXPLORE CON- SENSUAL DISPUTE RESOLUTION PROCESS OPTIONS AND A PEACEMAKING APPROACH TO NEGOTIATION

The high numbers of self-represented litigants (SLRs), their characteristics, reasons for self-representing, and their challenges to navigate successfully through the court system are well documented.¹⁰

One of the key findings of the original 1993 American Bar Association study on self-representation is that, without lawyers, SLRs can get their paperwork done, but they do not receive advice and guidance as to how to improve family dynamics through therapy and mediation or even how to more effectively directly communicate or negotiate with the other spouse.¹¹

By providing advice on how to tamp down the conflict and take positive steps to improve the overall family situation, an unbundled lawyer can make an important contribution to the peacemaking capacity of SLR clients in a number of ways:

TEACHING DIVORCE DYNAMICS

Clients can be educated about common interactional patterns of divorcing spouses that may give them additional insight into their current situation. If, for example, lawyers can teach clients about the four distinct divorces (emotional, physical, financial, and legal), it may help the client better understand and implement the negotiation process.¹² For example, if the spousal (emotional) divorce is well underway, the couple will probably be less raw and reactive toward each other and they can focus on other issues. If all four divorces are at early stages, there will be more work to do on all fronts. Similarly, teaching the client about the long-term effect of anger may help give a perspective that can make it easier for the client to get through the divorce.¹³

ASSESSING THE LEGAL STRENGTHS AND WEAKNESSES OF EACH PARTY'S POSITION

This is a traditional lawyer function. Instead of merely sharing this information with the client to obtain settlement authority, helping the client learn this assessment, teach the client to use it in discussions with his/her spouse.

ANALYZING THE PERSONALITIES OF THE PARTIES, COMMUNICATION DYNAMICS, EMOTIONAL AND FINANCIAL LEVERAGE

Family lawyers are generally experienced negotiators and can transfer their experience to clients for use at the family dining table or restaurant, when the spouses are trying to work out a deal themselves. In short, skilled lawyers have the ability to insightfully read their clients, opposing parties, counsel, and others involved in and affected by a negotiation. In addition to their own experience, family lawyers generally have direct knowledge of and access to negotiation resources that can help.

Lawyers can be invaluable in helping the client understand negotiation dynamics. By sharing their impressions and teaching the client how to appreciate and empathize with the underlying needs and goals of their spouse, lawyers can help their clients to maximize their effectiveness in formulating and presenting their proposals. Helping a client recognize the behaviors of his/her spouse that pushed the client's buttons and understand what destructive behaviors the spouse may unleash in reaction to the other party the client can reduce conflict overall. As one client admitted after a coaching session,

I want to thank you for beating me over the head this morning. I needed it. I began to see the whole picture more clearly again . . . what was happening to me and the level I was permitting myself to sink to. I didn't like the picture at all. I am going to start writing the letter [to my wife's lawyer], which I think you'll be pleased with.

TEACHING NEGOTIATION THEORY AND TECHNIQUES

The only negotiation training to which many family lawyers have been exposed has been on-the-job training. That is all that many family lawyers who are naturals or experienced in negotiation may need. The recent boom in negotiation training and literature has made less talented lawyers more knowledgeable and competent in negotiation skills. Regardless of formal training, lawyers can give their clients a customized crash course in the relevant negotiation skills needed to reach his/her goals. A lawyer can recommend appropriate or client-friendly negotiation books and tapes available for client study. An otherwise unrepresented client can greatly benefit from reading books for the lay public, such as, *We Are Still Family* by Dr. Constance Ahrens or a film that features children going through divorce such as *Split*.

DEVELOPING A NEGOTIATION PLAN

Regardless of the techniques and interventions that the client actually displays during the negotiation, the quality of the negotiation plan and the degree of pre-meeting preparation may be the keys to

a successful outcome. Unrepresented clients generally do not have the experience or training to develop such a negotiation plan. Coming up with an initial settlement position is often the most difficult task facing a lawyer who is representing a client in a negotiation. In an unbundled situation, a lawyer can help the otherwise unrepresented client develop a plan with several backup positions and prepare responses for anticipated concerns that may be raised by the other spouse.

PREPARING THROUGH ROLE PLAYING

Progressive law schools emphasize simulated role playing for teaching law students essential skills such as client counseling, negotiation, and trial practice. In an unbundled situation, the client can benefit from her own individual clinical instructor by rehearsing a negotiation and then receiving constructive feedback to the client's performance (often with videotape or an iPhone) to prepare for the real meeting with the other spouse over a coffee table or at Starbucks. This type of rehearsal can be conducted in front of the client's friends or even the lawyer's office staff to get comments that might help clients in perhaps one of the most important conversations of his/her life.

CONSULTING IN MID-NEGOTIATION

Although remaining on the sidelines, the lawyer coach can remain available by telephone during (or shortly after) a spousal meeting to serve as a resource and emotional support for the otherwise self-represented client as needed.

UNBUNDLED LAWYER PEACEMAKING MODEL 3: UNBUNDLED SERVICES AS A CONSULTING LAWYER FOR PARTIES PARTICIPATING IN A MEDIATION PROCESS

Mediation is now part of the family law process in a myriad of ways. Some issues mandate mediation within the court setting, not just once, but often many times before an ultimate judicial decision. In addition, sophisticated lawyers and other divorce professionals recommend the voluntary use of court-appointed and private-sector mediation in the early, middle, and late court process.

Many SLRs may resist participation in mediation or be less successful in meeting their goals without the help and support of a lawyer. This is particularly true because many of such mediations are scheduled in the courthouse just before a court hearing or scheduled late in the process with a court hearing or trial looming imminently. However, the same financial constraints exist, preventing clients from getting limited legal help during these mediations if the lawyer must also be willing to be obligated to handle any subsequent trial and other court proceedings.

Therefore, an unbundled alternative is for a client to hire an unbundled lawyer whose scope is to either just serve as an out-of-session lawyer coach or perhaps to attend mediation sessions with the client. This limited lawyer assignment is for the mediation work only and not to handle other aspects of the case without a separate specific agreement.¹⁴

It is beyond the scope of this article to fully discuss the various ways that a lawyer can help a mediation participant.¹⁵ Key tasks are assisting in setting up and designing the mediation process; providing legal and negotiation assistance; and reviewing drafts of the mediator and drafting settlement, court, and other legal documents (e.g., deeds, Qualified Domestic Relations Orders, etc.) on behalf of their clients.¹⁶

To underscore that the unbundled lawyer approaches the mediation in a peacemaking way, two additional safeguards can be explored. First, the parties can seek to engage lawyers who themselves are family mediators (in other cases) and/or who have undergone Collaborative Training. Second, the parties could also utilize a disqualification agreement, so that the lawyers involved in the

mediation have both feet in the mediation process and not one foot in the courthouse through filing of motions or requests that could prematurely escalate a situation that would otherwise settle in the “safe container” of the mediation process.

UNBUNDLED LAWYER AS PREVENTIVE LEGAL HEALTH PROVIDER: PEACEMAKING MODEL 4

As an adjunct to the other three unbundled models or as a standalone service, lawyers can provide preventive help to heal divorcing families after the rupture of divorce, manage future conflicts better, and possibly avoid or minimize future conflicts.

Client may be positively motivated to be open to preventive planning by an unbundled lawyer after suffering through angina of family conflict that hopefully has been resolved. Lawyers can be peacemaking legal health care providers in either a symptomatic or asymptomatic manner.

An example of symptomatic prevention arises from the recent negotiations and opts to prevent such high-level conflict in the future through a multistage dispute resolution protocol that will mandate conversations and use of a child therapist, required use of mediation or even several forms of evaluation before utilizing the court system in the future.¹⁷

A sample future dispute resolution protocol may be as follows.

FUTURE DISPUTE RESOLUTION PROTOCOL

In the future, should there be a dispute, you agreed to the following multistep process to place as many barriers as possible between the parties and the courthouse and to give every opportunity for amicable and controlled resolution:

1. *Direct Discussion:* If there is a problem or concern, you both will make time to discuss this concern or problem in person or over the telephone.
2. *Written Notice:* If the matter remains unresolved, the party with the concerns shall give written notice to the other party with a copy to each Collaborative Professional of the details of the problem or concern and a proposed solution.
3. *Personal Neutral Meet and Confer:* If the matter remains unresolved, the parties shall meet in a neutral venue for a maximum of one hour to attempt to resolve the problem or concern as set out in the written notice.
4. *Meet with a Neutral Child Specialist or Both Divorce Coaches:* If the matter remains unresolved, the parties will meet with a neutral child specialist or both divorce coaches to attempt to resolve the problem or concern.
5. *Collaborative Joint Session:* If the matter remains unresolved, the two of you will meet with the Collaborative Divorce Lawyers (and Coaches) for a reasonable amount of time (a minimum of three sessions unless resolved earlier).
6. *Confidential Mini-Evaluation:* If the matter remains unresolved, you shall select a neutral qualified child custody evaluator to perform a Confidential Mini-Evaluation that shall *not* be admissible in court.
7. *Formal Custody Evaluation:* If the matter remains unresolved, you will mutually select a second qualified child custody evaluator to perform a Full Evaluation that shall be admissible in court.
8. *Collaborative Joint Session:* Following the submission of an Evaluation Report, prior to submitting the report to court, the parties shall return to Collaborative Joint Sessions for a reasonable amount of time (a minimum of three sessions unless resolved earlier).

9. *Mediation*: If following the Collaborative Joint Sessions the matter remains unresolved, prior to submitting the Evaluation report to court, the parties shall return to mediation for a reasonable amount of time (a minimum of three sessions unless resolved earlier).
10. *Court Determination*: If the matter remains unresolved, either party may initiate litigation or determination of the concern or problem by a judicial officer. The Collaborative Attorneys and all members of the Collaborative Divorce Team are disqualified from participating in the court litigation.
11. *Mediation*: Following judicial determination, the parties shall return to Collaborative Joint Sessions for a reasonable amount of time (a minimum of three sessions unless resolved earlier) to clarify any judicial ruling and to repair the family.

Asymptomatic prevention encourages proactive work by parties to meet and talk things out when no current problem exists. Some examples of asymptomatic prevention may be regularly scheduled parenting telephone calls or meetings on a weekly or monthly time interval. Just by sharing what is going on with the children and identifying problems at the earliest level, parents can nip nascent problems in the bud. A second example would be for any settlement to build in a reevaluation process in the future of a particular provision or the relationship as a whole. The parties may have agreed that a child is to attend Sunrise Middle School in three years. The parties could agree to sit down in twenty-four months and explore whether Sunrise is still a good option and how to maximize their child's transition to this school.

By recommending these preventive approaches, a lawyer is fulfilling the ultimate peacemaking mission: helping the client avoid conflict in the first instance and providing guidance to do so in a way to keep their relationship functioning at the best possible level in order to make decisions for the welfare of the family.

CONCLUSION: PEACEMAKING BENEFITS FOR LAWYERS

Unbundling literature has long extolled the virtue of limited-scope services to help the unrepresented gain legal access, acquire some relief for the courts in dealing with the flood of SLRs, and provide additional practice-building opportunities for lawyers. Even legal malpractice carriers encourage their lawyer policy holders to unbundle.¹⁸

Unbundling provides additional benefits for lawyers by not just offering peacemaking to clients as the peacemaker is a beneficiary of the peacemaking process as well.

In his article, *The Contemplative Lawyer: On the Potential Contributors of Mindfulness Meditation to Law Students, Lawyers, and their Clients*, Professor Leonard Riskin¹⁹ states:

Mindfulness concentrates on the personal evolution of lawyer to better do our jobs by acquiring compassion, helps us provide professional distance so that we do not get caught up in the emotions and reactivity of our clients, and frees us from habitual mindsets that hinder our creativity in negotiation or in the courtroom.²⁰

Riskin further defines mindfulness as: “being aware, moment to moment, without judgment, of one’s bodily sensations, thoughts, emotions, and consciousness. It is a systematic strategy for paying attention and for investigating one’s own mind that one cultivates through meditation and then deploys in daily life.”²¹

Jacqueline Nolan-Haley has observed that peacemakers also try to be humble and strive for authentic connectedness with clients, opposing counsel, and others.²²

The evolution from adversarial advocacy toward a more client-centered approach to our work is well underway. Offering unbundled services to clients with a peacemaking approach furthers this effort—with lawyers benefiting personally and professionally along with our clients. Learning from our efforts with colleagues, we try not to carry grudges against others or against ourselves. We

hopefully are more open to offering apology to those whom we have hurt or who feel hurt by us regardless of who is right. At the same time, we must be willing to accept the apology of others, regardless of how inartfully delivered or even if we doubt the motives or integrity of the person offering an apology.²³

By being available to SLRs on a limited-scope basis, lawyers are not just providing more accessible legal services, they are offering support and guidance to help their clients attain peace in their personal lives and for their children. Instead of leading their clients into adversarial escalated conflict, peacemaking lawyers have the privilege of witnessing their clients display their courage by participating in the most difficult conversations. Lawyers are invited into the intimacies of families who struggle to grapple to behave differently and better with each other. I have shed more than a few tears along with my clients and peacemaking colleagues sitting around the same table together. These are tears of admiration for clients' courage and wonder at the opportunity to witness inspirational opening statements with aspirations for a healing future, apologies for past failures in behavior, or expressions of gratitude upon reaching a settlement that they never imagined.

Peacemaking is more than improved client service—it offers personal rewards that motivate many of us to run (not walk) to the office each morning—and offers a vision of how we hope to act in our lives with our own families and others we touch outside of our professional efforts at offering client care.

NOTES

1. Recent sources that discuss developments in unbundling include M. Sue Talia, *Limited Scope Representation*, in *REINVENTING THE PRACTICE OF LAW* (Luz Herrera ed., 2014); Rebecca Aviel, *Counsel for the Divorce*, 55 B.C.L. REV. 1099 (2014); Kristen M. Blankley, *Adding by Subtracting: How Limited Scope Agreements for Dispute Resolution Representation Can Increase Access to Attorney Services*, 28 OHIO ST. J. ON DISP. RESOL. 3 (2013); D. James Greiner & Molly M. Jennings, *The Evolution of Unbundling in Litigation: Three Case Studies and Literature Review*, 89 DENV. U. L. REV. 825 (2012); Wayne Moore, *Providing Legal Services to Moderate Income People* (2014), available at http://www.americanbar.org/content/dam/aba/images/office_president/wayne_moore.pdf; Forrest S. Mosten, *Unbundling Legal Services 2014, Recommendations for the Courts*, 53 JUDGES J. 10 (January 2014) (ABA White Paper on Unbundling). Guidance to lawyers to deliver ethical and competent unbundled services have been sponsored by states (California State Bar Risk Management Packet, http://calbar.ca.gov/calbar/pdfs/accessjustice/Risk-Management-Packet_2004-01-12.pdf (last visited July 7, 2015)) and most recently by the Law Society of England and Wales (*LAW GAZETTE*, Mar. 20, 2015), available at <http://www.lawgazette.co.uk/law/law-society-backs-unbundling-of-more-civil-claims/5047754.fullarticle#.VQxY-TAi0SQ.yahoo>. However, these efforts to promote unbundling are not universally appreciated by practicing lawyers as reflected in the following comments printed in the *Law Gazette* article:

- Marshall Hall: We all know our Barrister Chums on the Bench will absolutely ignore all efforts to limit liability when un-bundling, and make us responsible for anything that went wrong during the case. . . Anyone who therefore offers 'unbundled' advice has to be totally bonkers. . .
- Anonymous . . . Only a lunatic would agree to work on such terms. You either act for a client or you don't. Its black and white in my view. You would end up doing stacks of work pro bono because client's would not understand the terms of the retainer and would expect to have their hands held from the cradle to grave.

It is risible that the Law Society is endorsing this type of thing and is a quite shocking indictment of the state of the civil litigation at present.

- Dominic Cooper
 - . . . I got the email (*on Guidance from the Law Society*) last night and almost exploded! It basically says - work for less, don't do as good a job, and don't get paid a proper fee, but take on all the liability.
 - Indeed, it makes clear that if you do this, you will be found liable for not having investigated the rest of the client's circumstances. I would go so far as to argue that it does the profession a dis-service, because it suggests solicitors are liable to an extent that I think even the Court of Appeal have never suggested. It won't take a long time for our bewigged learned friends to dig this practice note up in the future and use it in submission to His Honour that our PII policy should be paying compensation to an unbundled client because we never asked her the circumstances of how much debt she was actually in (or whatever).
- Anonymous
 - Good god !

We are dismantling our own jobs !
 And our own 'non' representative body is advocating it !
 Seriously there has to be a break away from this whole ethos.
 I cannot imagine any other profession voting, like a turkey, for Christmas. . . .

- Anonymous
 Why are the Law Society steering their members down this sort of path? The civil litigation system is broke I'm afraid. . . . Suggesting we can all survive by undertaking this type of work is moronic.
- Martin Laver
 To unbundle is to undermine.
 Clients rightly expect nothing but the highest professional standards from solicitors. Journeymen doing half a job in the eyes of the client, irrespective of the weasel words in the retainer, will devalue the profession as a whole.
 Leave the unbundled to the unadmitted.
 I shall bundle until I can bundle no more.
- Anonymous
 Just who are these people at the Law Society? Do they know anything at all about anything?
 They really must be absolutely crackers to promote this nonsense. It just makes you scream.

An ongoing project at Institute for the Advancement of the American Legal System in Denver is the development of unbundled toolboxes for self represented litigants, lawyers, and courts <http://iaals.du.edu/> (last visited May 25, 2015).

2. See ABA MODEL RULES OF PROFESSIONAL CONDUCT R.1.2(c) (2013).

3. See UCLA: R. 14., Appropriateness of Collaborative Law. Before a prospective party signs a Collaborative Law participation agreement, a prospective Collaborative Lawyer shall: (1) Assess with the prospective party factors the lawyer reasonably believes relate to whether a collaborative law process is appropriate for the prospective party's matter; (2) Provide the prospective party with information that the lawyer reasonably believes is sufficient for the party to make an informed decision about the material benefits and risks of a collaborative law process as compared to the material benefits and risks of other reasonably available alternatives for resolving the proposed collaborative matter, such as litigation, mediation, arbitration, or expert evaluation; and (3) Advise the prospective party that: (A) After signing an agreement if a party initiates a proceeding or seeks tribunal intervention in a pending proceeding related to the collaborative matter, the collaborative law process terminates; (B) Participation in a collaborative law process is voluntary and any party has the right to terminate unilaterally a collaborative law process with or without cause; and (C) The collaborative lawyer and any lawyer in a law firm with which the collaborative lawyer is associated may not appear before a tribunal to represent a party in a proceeding related to the collaborative matter, except as authorized by Rule 9(c), 10(b), or 11(b).

Most Collaborative practitioners still offer litigation services (in different cases, of course). It is beyond the scope of this article to explore whether Collaborative lawyers who still work in the litigation world (most for the majority of their professional time) work with clients significantly differently than collaborative lawyers who are full time peacemakers and no longer go to court. See Forrest S. Mosten, Developing a Peacemaking Law Practice, ABA Law Practice Today (January 2015), http://www.americanbar.org/publications/law_practice_today_home/law_practice_today_archive.html.

4. See STEPHANIE KIMBRO, LIMITED SCOPE LEGAL SERVICES: UNBUNDLING AND THE SELF-HELP CLIENT 23 –26 (ABA 2012).

5. A fuller discussion of conversion permutations is beyond the scope of this article focusing on the peacemaking benefits of limited-scope representation.

6. For a discussion of the interdisciplinary professional involvement, see, Susan Gamache, *Family Peacemaking with an Interdisciplinary Team: A Therapist's Perspective*, 53 FAM. CT. REV. 3 (2015).

7. FORREST S. MOSTEN & ELIZABETH POTTER SCULLY, THE COMPLETE GUIDE TO MEDIATION: BUILDING A PROFITABLE FAMILY LAW (2d ed. 2015); Frederick J. Glassman, *Medicollab: Making Room at the Table for Creative Lasting Resolution*, 9 COLLABORATIVE REV. 30 (2007);.

8. Gamache, *supra* note 7.

9. Julie MacFarlane, *The National Self-Represented Litigants Final Report: Identifying and Meeting Needs of Self-Represented Litigants*, Treasure's Advisory Group on Access to Justice (2013).

10. See *Legal Needs and Civil Justice: A Survey of Americans, Major Findings from the Comprehensive Legal Needs Study*, ABA (1994), available at <http://www.americanbar.org/content/dam/aba/migrated/legalservices/downloads/sclaid/legal-needsstudy.authcheckdam.pdf>.

11. *Id.*

12. JUDITH S. WALLERSTEIN & SANDRA BLAKESLEE, SECOND CHANCES: MEN, WOMEN, AND CHILDREN A DECADE AFTER DIVORCE 7–8 (1989) (“Divorce is the only major family crisis in which social support falls away. . . . when a man and a woman divorce, many people tend to act as if they believe it might be contagious. The divorced person is seen as a loose cannon. We have

names for them: rogue elephant, black widow. Despite the widespread acceptance of divorce in modern society, there remains something frightening at its core.”).

13. For a detailed resource on the role of the family lawyer in mediation, see MOSTEN & SCULLY, *supra* note 7.

14. See HAROLD ABRAMSON, *MEDIATION REPRESENTATION: ADVOCATING AS A PROBLEM SOLVER IN ANY COUNTRY OR CULTURE* (2d 2010); DWIGHT GOLANN, *SHARING A MEDIATOR’S POWERS, EFFECTIVE ADVOCACY IN SETTLEMENT* (2014); ERIC R. GALTON, *REPRESENTING CLIENTS IN MEDIATION* (1994); MOSTEN & SCULLY, *supra* note 7.

15. The issue of whether mediators can or should draft settlement documents is unsettled at this time. Some states permit mediators who are not lawyers to draft such documents. Other states prohibit mediators who are licensed attorneys from neutrally drafting final settlement documents. Other approaches require the lawyer mediator to change roles to draft such documents with dual representation based on informed consent. For further discussion, see Memorandum of Hon. Michael Dwyer (Wisconsin), *Considerations Regarding Preserving the Neutrality of Lawyer Mediators*, January 6, 2015. Judge Dwyer may be reached at Michael.Dwyer@wicourts.gov; see also MOSTEN & SCULLY, *supra* note 7, at chap. 10 (*Reviewing and Drafting Mediated Agreements*).

16. FORREST S. MOSTEN, *COLLABORATIVE DIVORCE HANDBOOK* (2009).

17. Starting in 1997, the Oregon State Bar’s malpractice program has encouraged its state’s lawyers to unbundle; see William Howe III & Elizabeth Potter Scully, *Redesigning the Family Law System to Promote Healthy Families*, 53 FAM. CT. REV. 3 (2015). Lawyers Mutual Insurance Company, which insures more California lawyers than any other legal malpractice insurance carrier, has been supporting unbundling for many years. In 2014, Lawyer’s Mutual produced a one-hour video for its policy holders on best practices to offer limited service representation. See www.lmic.com and contact Kim Spirito (spirito@lawyersmutual.com), Vice President of Loss Prevention and Claims to discuss access to the video and supporting materials.

18. See also JOSEPH GOLDSTEIN, *INSIGHT MEDITATION: THE PRACTICE OF FREEDOM* (1993).

19. Leonard L. Riskin, *The Contemplative Lawyer: On the Potential Contributors of Mindfulness Meditation to Law Students, Lawyers, and their Clients*, 7 HARV. NEGOT. L. REV. 1, 30 (2002). See also ROBERT H. MNOOKIN ET AL., *BEYOND WINNING: NEGOTIATING TO CREATE VALUE IN DEALS AND DISPUTES* 56, 203 (2000); Robert S. Adler & Elliot M. Silverstein, *When David Meets Goliath: Dealing with Power Differentials in Negotiation*, 5 HARV. NEGOT. L. REV. 1, 59–60 (2000); Clark Freshman et al., *Adapting Meditation to Promote Negotiation Success: A Guide to Varieties and Scientific Support*, 7 HARV. NEGOT. L. REV. 67, 77 (2002) (citing Leigh Thompson & D. Hrebec, *Lose-Lose Agreements in Interdependent Decision Making*, 120 PSYCHOL. BULL. 396 (1996) (“Mindful negotiation training could include training people to label positional impulses as they arise rather than acting on them. Existing meta-analyses suggest negotiators fail to identify opportunities for tradeoffs in nearly half of their negotiations. Training negotiators to note a ‘competing impulse’ before rejecting a potential tradeoff may cut this tendency substantially.”)).

20. Leonard L. Riskin, *Mindfulness: Foundational Training for Dispute Resolution*, 54 J. LEGAL EDUC. 79, 83 (2004) (citing JON KABAT-ZINN, *FULL CATASTROPHE LIVING* (1990)).

21. Jacqueline Nolan-Haley, *Finding Interior Peace in the Ordinary Practice of Law: Wisdom from the Spiritual Tradition of St. Teresa of Avila*, 44 J. CATHOLIC LEGAL STUD. 29, 39 (2007).

22. See Kenneth Cloke, *Designing Heart-Based Systems to Encourage Forgiveness and Reconciliation in Divorcing Families*, 53 FAM. CT. REV. 3 (2015) (discussing the importance of apology and forgiveness in heartfelt interventions).

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