

## **The Ethics of Unbundling**

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### **Brief Description:**

Many states are examining unbundled legal services as a method of enhancing access to the courts. Part of this examination includes an analysis of ethics and procedural rules. A few states have now amended their rules of professional conduct and procedure to enable unbundled practices. This session looks at the need for rule changes, the areas that have been addressed and the ways in which some states have paved the way for unbundled practices.

### **Topical Outline:**

- I. The Need for Rule Changes – What difference does it make?
  - a. Limitations within current rules
  - b. Failure of rules to specifically address unbundled practices
  - c. Concerns by practitioners, mythological and otherwise
  - d. Differing ethics opinions
  
- II. Issues being addressed by rule changes
  - a. Coaching/Brief Advice
  - b. Ghostwriting
  - c. Limited appearances
  - d. Limited representation agreement
  - e. Notice to opposing counsel
  
- III. Coaching/Brief Advice
  - a. The Information/Advice dichotomy
  - b. Limited scope of representation
    1. ABA Model Rule 1.2(c)
    2. Florida RPC 4-1.2(c) – requires writing
  - c. Excusing conflicts checks for non-profit and court annexed programs
    1. ABA Model Rule 6.5
    2. Washington RPC 6.5
  
- IV. Ghostwriting
  - a. Obligation to sign pleadings

1. CO CRCP 11
    2. FL Family Law Rules of Procedure, Rule 12.040
    3. Maine Rule of Civil Procedure 11
    4. Nevada Rule 5.28
  - b. No obligation to sign pleadings
    1. CA Rule 5.70
  - c. Permitting a lawyer who ghostwrites to rely on party's representation of facts
    1. WA CR 11
- V. Limited Appearances
  - a. CA Rule 5.71
  - b. FL Family Law Rule 12.040
  - c. ME Bar Rule 3.4(i) – requiring consent of client
  - d. ME RCP 89(a) governing withdrawal
  - e. Nevada Rule 5.28
  - f. WA CR 70.1
  - g. WY Rule 102
- VI. Limited Representation Agreement
  - a. ME Bar Rule 3.4(i)
- VII. Notice to Opposing Counsel
  - a. Presumption that a self-represented person is unrepresented unless notified otherwise
    1. CO RPC 4.2 and 4.3
    2. FL RPC 4-4.2(b) and 4-4.3(b)
    3. ME Bar Rule 3.6(f)
    4. WA RPC 4.2(b) and 4.3(b)
- VIII. Creating an Agenda for Unbundling Enabling Policies
  - a. Sharing Resources
    1. Selfhelpsupport.org
    2. ABA Pro Se/Unbundling Resource Center
  - b. Training and Education
    1. Courts
    2. Lawyers
    3. Decision-makers
    4. Clients
  - c. Advocacy