



## The Ethics of Unbundling

Call it what you will: unbundling, discrete task representation, or limited-scope representation – the [ethical](#) and [malpractice issues](#) are the same. Newly published [OSB Formal Opinion No. 2011-183](#) solidifies the [bar's position](#) on the subject.

Here is what you need to know:

[Oregon RPC 1.2\(b\)](#) expressly permits unbundling provided:

- The limitation is reasonable under the circumstances and
- The client gives informed consent to the limited-scope representation

### When is Limited Scope Representation “Reasonable?”

To answer this question, [OSB Formal Opinion No. 2011-183](#) points to commentary from the [ABA](#) model rule. Factors include:

- The client’s objectives (limited to securing general information about the law?)
- The nature of the legal problem (common situation, typically uncomplicated?)
- The time allotted (is it sufficient to yield advice upon which the client could rely?)

### What About Informed Consent?

- Explain the risks of discrete task representation with an eye toward the complexity of the matter and the client’s ability to identify, appreciate or address the critical issues that may arise
- Review the limits of [Oregon RPC 4.2](#) (communication with represented parties). Existence of a limited-scope representation agreement may not invoke this rule. Therefore, if the client “wants the protection of communication only through the lawyer on some or all issues, then the lawyer should be sure to communicate clearly to opposing counsel the scope of the limited representation and the extent to which communications are to be directed through the lawyer.” [OSB Formal Opinion No. 2011-183](#). (See Footnote 6.)
- State as fully as possible what you will not do for the client
- Offer “reasonably available alternatives” such as having a lawyer involved “in each material aspect of the legal matter.” [OSB Formal Opinion No. 2011-183](#).
- Get it in writing! Obtaining the client’s written consent is not required by [Oregon RPC 1.2\(b\)](#), but it is strongly encouraged and will help avoid potential misunderstandings later. (Remember – certain fee arrangements must be in writing. Contingent and earned-upon-receipt fees come to mind.)

### **Are There Any Other Considerations?**

Limiting the scope of representation does not limit the scope of your ethical duties to your client. Lawyers who unbundle services must still provide competent representation, communicate adequately with their clients, avoid neglecting matters entrusted to them, and screen for conflicts of interest.

In addition, lawyers who provide unbundled services must conform with applicable law or procedural requirements, such as submitting a Certificate of Document Preparation pursuant to [UTCRC](#) 2.010(7) when necessary.

### **What is My Malpractice Exposure?**

For an overview of the malpractice risks involved in unbundling legal services in a virtual practice setting, [read my post](#). For a complete discussion of the subject, see [\*Unbundling in the 21st Century: How to Reduce Malpractice Exposure While Meeting Client Needs\*](#).

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