

GROWING TRENDS IN THE DELIVERY OF FAMILY LEGAL SERVICES

By Gini Nelson

Nationally, as well as here in New Mexico, family law attorneys are increasingly considering broadening or otherwise incorporating into their practice, aspects of three, growing trends in the delivery of legal services. The trends are: (1) Unbundling of Legal Services; (2) Attorney Mediation; and (3) Collaborative Law. This article will briefly identify these trends, and each trend will be then be discussed at greater length in upcoming issues of the newsletter.

Unbundling.

What the heck is "unbundling?" When potential clients call me, I tell them that one kind of service I can offer is that of being their "consultant/coach," by which I mean that I offer "unbundled" legal services. Forrest S. Mosten, Esq., probably the best known proponent of the unbundling movement, and author of the ABA-published *Unbundling Legal Services, A Guide to Delivering Legal Services a la Carte* (2000), defines it as follows:

The client is in charge of selecting one or several discrete lawyering tasks contained within the full-service package. The discrete tasks can be listed according to their separate tasks:

1. Advising the Client
2. Legal Research
3. Gathering of Facts
4. Discovery
5. Negotiation
6. Drafting of Documents
7. Court Representation

Unbundling Legal Services, A Guide to Delivering Legal Services a la Carte, p.1. Further:

The unbundled client specifically contracts for the following:

8. Extent of services provided by the lawyer
9. Depth of services provided by the lawyer
10. Communication and decision control between lawyer and client during the unbundled engagement *id.* at 2

Basically, attorneys offering these services are breaking up their usual legal-service package and offering their services one at a time.

Attorney Mediation.

If a potential client calls me about a divorce, for example, I offer them three options, if appropriate: (1) I may be able to represent them; (2) I offer them unbundled services (being their consultant and/or coach as they go through the process self-represented); and (3) I advise them of the possibility of my mediating their issues, assuming the divorce is basically uncontested. I advise clients about the values of mediation even if I am representing them, and could not, therefore, be their mediator.

Forrest S. Mosten, Esq. is also one of the best known proponents for the use of mediation, among other options other than litigation for dispute resolution, as well as an internationally recognized mediation expert. He believes lawyers can be involved in the mediation process without taking it over. He has authored the ABA-published *The Complete Guide to Mediation* (1997), as well as the Jossey-Bass-published *Mediation Career Guide* (2001). Together with identifying and discussing all the "carrot" reasons why mediation may well be the best option for a client, he identifies an emerging duty for attorneys to advise clients about mediation.

Collaborative Law.

This form of lawyering is, to some degree, a hybrid of an unbundled practice approach that uses a mediative negotiation style. It seeks to integrate non-adversarial and cooperative strategies, and relies heavily on the empowerment of the clients as informed decision-makers. Lawyers who commit to being collaborative lawyers agree that they will never go to court in a particular case if settlement negotiations fail, and they meet in four-way meetings in which the clients are empowered to play a major role. The clients themselves conduct the settlement negotiations, with their lawyers there to assure there is also legal protection.

Thus, collaborative family practice, where it is established, can become the third primary dispute resolution option for families in divorce and/or separation, together with mediation and litigation.

Whew! Exciting trends! More in upcoming issues!