

Prologue

EMBRACING THE FUTURE: UNBUNDLING AS AN EFFECTIVE AND PROFITABLE RESPONSE TO THE PRO SE MOVEMENT

A 1992 report from the National Center for State Courts examined divorce cases in 16 U.S. cities. In 7 of those cities, at least one-third of cases proceeded without any lawyers. In none of those cities were both parties represented by a lawyer in more than half the cases.¹ In the 25 years preceding the publication of this book, family law cases have transitioned from those that are primarily lawyer represented to those that are primarily self-represented.

While lack of financial resources is one commonly invoked reason for self-representation, there are many other key reasons why family law parties choose to proceed without attorneys. The 2016 IAALS report *Cases Without Counsel: Research on Experiences of Self-Representation in U.S. Family Court*, for example, identified additional considerations that tend to determine whether a litigant opts to proceed pro se. One is cost priority, meaning that even parties who have the means to hire counsel use their money for other things. Another is litigants' confidence in their ability to represent themselves without the need of a lawyer. Other litigants prefer to represent themselves because they wish to maintain an amicable relationship with the other party and many people believe that lawyers will provoke family conflict. Some spouses have entered into agreements requiring mediation, which they believe obviates the need for legal representation. And finally, many people just like the control over their lives that doing it themselves provides.

Unbundling legal services speaks directly to these considerations. It is a way for clients to save money on fees by targeting their funds to the tasks they believe are most pressing and most warrant the skills, expertise, and intervention of a licensed legal professional. Unbundled coaching and legal education services can bolster parties' confidence and empower them to proceed on their own in a way that court forms and self-help websites alone cannot. *Cases Without Counsel* litigant interviewees specifically identified the

reassurance provided by human contact in a meeting with a lawyer as the factor that gave them confidence in their ability to handle much of the work themselves. Even when litigants have reached substantive agreement, they are likely to need a competent, skilled attorney to memorialize it in an accurate and enforceable way. Unbundling relies heavily on the primacy of client self-control and self-determination and is far more consistent with those values than traditional, lawyer-centric full service representation.

Finally, and perhaps most relevant for our purposes, a growing number of self-represented litigants embody a do-it-yourself, “Home Depot” mentality. This do-it-yourself attitude has a strong generational component, in that younger, tech-savvy litigants used to the wide availability of information online tend to value self-sufficiency and self-involvement. “Generation Y has become Generation DIY,” proclaims millennialmarketing.com.² Millennials are set to become the largest group of consumers, having finally outnumbered Baby Boomers in 2015. Marketing experts note that customization and curation (i.e., offering a handful of choices to customize) are desirable for millennial consumers, who reject “one size fits all” approaches:

“As the buying power of millennials increases, entrepreneurs seeking their business must understand that members of this generation expect to be treated as individuals. . . . The look and feel of a customized product is important to members of this generation who are growing up in a society far more diverse and embracing of diversity than preceding generations. This affects their taste in consumer goods and how they are marketed to.”³

Law is, like other professions and industries, faced with the conundrum of how best to meet the evolving needs of their consumers. As Brooke Moore pointed out in her December 2016 article in the ABA’s *Law Practice Today*, *The Middle Class, An Untapped Legal Marketplace*, “The bottom line is that in order to stay relevant, the legal profession must acknowledge and respond to the growing needs and demands of the average legal consumer.” If millennials, the now-largest cohort of legal consumers, need and demand (1) to be treated like partners; (2) to access specialized, customized services; and (3) the opportunity to select services from an array of choices, unbundling legal services is the perfect model for these consumers.

Unbundled legal services are client-focused and based on the notion that clients are partners in the lawyer-client relationship. Unbundled services can be narrowly tailored to suit the preferences, skills, and resources of an individual litigant as well as the parameters of a particular dispute. Finally, unbundled services require that attorneys and clients develop a menu of legal services from which the client is then free to choose, curating the client’s own representation. Unbundling and millennial consumer behavior are beautifully symbiotic.

Legal consumers of moderate means, including millennials as well as other cohorts, represent a massive, untapped market. It is a major tactical error for family lawyers to limit their marketing efforts only to consumers who can afford and who desire traditional full service legal representation. Attorneys who wish to survive and thrive professionally must find concrete and successful ways of addressing the needs and preferences of consumers who are increasingly focused on self-sufficiency, control, and empowerment.

We believe that unbundling is tailor-made to suit this new generation of consumers, and that—happily—it also provides attorneys a wealth of opportunities for sophisticated, creative work, professional satisfaction, and financial success. The future is here—and it is unbundled!

ENDNOTES

1. John A. Goerdts, *Divorce Courts: Case Management, Case Characteristics, and the Pace of Litigation in 16 Urban Jurisdictions*, NATIONAL CENTER FOR STATE COURTS (1992), <http://cdm16501.contentdm.oclc.org/cdm/ref/collection/famct/id/4>.
2. Jeff Fromm, *Generation Y Has Become Generation DIY*, MILLENNIAL MARKETING (Dec. 2013), <http://www.millennialmarketing.com/2013/12/generation-y-has-become-generation-diy>.
3. Debra Kaye, *Marketing to Millennials? Make It Personal and Customized*, ENTREPRENEUR.COM (July 2014), <https://www.entrepreneur.com/article/234891>.