Unbundled Legal Services: At the tipping-point?

By Sara Smith and Will Hornsby

Introduction

Unbundling is a model for the delivery of legal services where the lawyer and client agree, generally at the beginning of the representation, that the lawyer will provide some but not all of the services to address a legal matter, while the client will address the remaining issues. The unbundled model has been common for corporate or institutional legal services where outside law firms tend to team with in-house counsel to address legal matters. However, lawyers who provide personal legal services tend to do so on a “soup-to-nuts” full-service basis. Unbundling is recognized as an emerging model for people who need services involving family law, consumer, housing and small claims matters.

This article begins by looking at unbundling, sometimes referred to as “limited scope representation,” “discrete task representation,” and “limited assistance representation,” as a delivery model stimulated by the growth of pro se representation over 30 years ago. It then discusses the advocacy for unbundling set out by advocates for better access to legal services, including bar associations and ad hoc entities charged with expanding affordable access, as well as the efforts taken to clarify policies enabling lawyers to limit the scope of their services. This paper then examines the findings of surveys from the American Bar Association, looking at the perspectives of consumer demand for unbundled services and the lawyers’ supply of those services. The paper concludes with a presentation of programs designed to stimulate the use and provision of the unbundled model.
As the research indicates, unbundling is part of how some lawyers practice. It has not (yet?) been widely adopted. The question posed here is whether, given the proliferation of pro se litigation, wide-spread recommendations by those dedicated to expanding access to legal services, the adoption of policies enabling the model, consumer demand, and special projects to stimulate its use, the elements are in place for this model to reach a tipping point where it becomes a far larger part of the equation to expand affordable legal services.

1. The Expansion of Pro Se Litigation and Emergence of Unbundled Legal Services

In the early 1980s the American Bar Association’s Special Committee on the Delivery of Legal Services\(^1\) made the observation that an increasing number of litigants were advancing their legal issues on a pro se basis in Arizona. The Committee believed this was the result, in part, of a liberalized definition of the unauthorized practice of law and the resulting availability of inexpensive document preparation kits that litigants would use in lieu of engaging lawyers.

In an effort to measure the increase of pro se representation, the Committee sponsored a research project that reviewed divorce and bankruptcy filings in Maricopa County, Arizona\(^2\) from 1980 through 1985.\(^3\) It concluded that pro se representation for divorces doubled from 24 percent to 47 percent over that time, while pro se bankruptcies increased at a more modest pace, from seven percent to 11 percent.\(^4\)

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\(^1\) The Special Committee was restructured as the Standing Committee on the Delivery of Legal Services in 1990.
\(^2\) Maricopa County includes Phoenix.
\(^4\) Id. at 34.
In 1992, the National Center for State Courts released data from 16 metropolitan courts illustrating the relatively high frequency of pro se litigation for divorces at that time.\textsuperscript{5} In no jurisdiction did both parties have a lawyer in more than half the cases. In Washington, DC, San Diego, Tucson and Oakland, neither party had a lawyer in 40 percent or more of the cases.\textsuperscript{6}

Clearly family law was shifting from an area that was dominated by those who were represented by lawyers to one where people were more likely to self-represent. Several theories emerged in an effort to explain this transformation.\textsuperscript{7} Some suggested that those in the US were generally becoming more self-reliant and cited the emergence of stores such as Home Depot as examples of a do-it-yourself culture. Others speculated that the processes involved in getting divorced went from one based on advocacy to one that was more administrative. States adopted a “no-fault” option as one of the grounds for divorce. Child support guidelines were adopted to determine the percentage of the non-custodian’s income to be paid for support in the absence of special factors. In the absence of special circumstances, the advocacy of a counselor was sometimes replaced with a hand-held calculator sitting on the judge’s bench. Simplified or consent proceedings made the process easier for those with limited assets. And, of course, many speculated that litigants self-represented because of the cost of a lawyer.\textsuperscript{8} Some did not have the legal fees, some did not have the discretionary resources to obtain the legal fees and others just did not believe the cost of a lawyer was of value.\textsuperscript{9} Quite possibly all of these factors played a role in the disintermediation of lawyers in the family law arena.

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\textsuperscript{5} Divorce Court: Case management, case characteristics and the pace of litigation in 16 Urban Jurisdictions, Goerdt, National Center for State Courts, 1992.

\textsuperscript{6} Id. at 48.

\textsuperscript{7} Defining the Role of Lawyers in Pro Se Litigation, Hornsby, 41 Judges J 5 (2002).

\textsuperscript{8} Recent analysis of pro se litigation indicates, “…full scale representation was simply cost prohibited or did not take priority over other financial obligations.” See Cases with Counsel, Knowlton, The Institute for the Advancement of the American Legal System, 2016, at 23.

\textsuperscript{9} Supra note 7.
The courts, which had relied on a customer base that knew what it was doing when lawyers were involved, were faced with the challenge of serving those who did not when the pro se litigants entered in substantial numbers. Based in part on the ABA’s research, the Superior Court of Arizona in Maricopa County took the lead in experimenting with changes that enabled it to respond to a high percentage of pro se litigants. The model that emerged from this was the Maricopa County Self-Help Center. The court dedicated a portion of its law library to a center where self-represented litigants could access forms (remember, this was pre-Internet), get procedural assistance from specially-trained counter clerks and get information about practitioners who had received court training on, and were willing to offer, unbundled legal services.\(^\text{10}\)

Since the inauguration of the Maricopa County Self-Help Center in the early 1990s, this model has grown to what is estimated to be nearly 500 centers, mostly in court houses, but also in public and law libraries, serving about 3.7 million people a year.\(^\text{11}\)

While the process involved in domestic relations law became simpler and the courts responded to the litigants’ needs for addressing that process, disputes over issues of custody, child support, visitation, alimony and property distribution remained unchanged and challenging for the self-represented litigants. Lawyers, and indeed no one else, were able to give litigants legal advice and help with issues of judgment. (Should I do this? Should I do that? What should I do?) While lawyers had become disintermediated from full representation in family law cases, to

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\(^{10}\) Not only did the Maricopa County Courts originate a self-help center, it also evangelized it by inviting judges and court administrators to periodic workshops where the Court could walk others through its work and encourage them to replicate it. See “Meeting the Challenge of Pro Se Litigation, Goldschmidt, Mahoney, Solomon and Green, American Judicature Society, 1998 for details about the Self-Service Center of the Superior Court of Maricopa County, Arizona.

\(^{11}\) Self-Help Center Census: A National Survey, the ABA Standing Committee on the Delivery of Legal Services, 2014.
use a term from Richard Susskind, the process of unbundling or limited scope representation enabled lawyers to be re-intermediated, that is to re-enter the system that resulted when litigants abandoned full services to go it alone. While unbundling redefined the lawyer’s role, it held out the potential of putting lawyers back into the system in a meaningful way.

Los Angeles-based family law practitioner and mediator Forrest S. Mosten was the alpha advocate for unbundling by practitioners and has now been a leading proponent of it for more than two decades along with others such as M. Sue Talia. They have cast the unbundling model as opportunity for practitioners, where lawyers can reach potential clients who would otherwise forego representation altogether. They also speak in terms of client empowerment, where the participating client can exercise control over the matter, can take a degree of ownership in the case and share responsibility for the outcome. Specific efforts to encourage practitioners to provide unbundled legal services are discussed further below.

2. Advocacy for the Unbundling Model

Not only does unbundling assist the courts in their efforts for litigants to be better prepared and assist lawyers to expand the base of potential clients who would not otherwise engage a lawyer to address their legal needs, it has also been a recurring recommended model for those advancing access to justice for under-served populations.

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13 After several articles on the topic, Mosten published Unbundled Legal Services: A guide to delivering legal services a la carte in 2000. In 2004, he received the ABA Louis M Brown Award for lifetime achievement.
14 Mosten is scheduled to publish Unbundled Legal Services: A Family Lawyer’s Guide in 2017, co-authored by Elizabeth Potter Scully.
Throughout the 2000s, one report after another has included unbundling, or limited scope representation, among the recommendations to improve our system of dispute resolution and narrow the justice gap.

In 2005, the Joint Iowa Judges Association and Iowa State Bar Association Task Force on Pro Se Litigation stated:

We believe we must shift from thinking of legal services as a dichotomy of represented/unrepresented, or “all or nothing” to conceptualizing and facilitating legal services delivery along a continuum… We believe that more prospective clients would seek lawyers’ services if they were free to contract with lawyers for the completion of limited and designated tasks… Limited representation by the private bar offers a way to expand legal services to people of limited financial means. This will leave these litigants better prepared and should relieve judges and other court staff from the pressures of giving advice or advocacy. It can also offer lawyers an opportunity to adapt a law practice that offers “all or nothing” services into one in which they may enter agreements with litigants to limit the scope of their representation to discrete legal tasks, as they often do with their transactional clients.16

The 2006 Report and Recommendations of the Supreme Court of Ohio Task Force on Pro Se and Indigent Litigants came to the same conclusion and indicated:

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Many, if not most, unrepresented litigants need more than procedural assistance (e.g. what form to use, how to docket their case, what time to appear in court). They also need assistance with decision-making and judgment; they need to know their options, possible outcomes and strategies to pursue their objectives… The task force believes that pro se litigants can, in appropriate cases, optimize their outcomes if they can obtain assistance from a lawyer with discrete limited phases or aspects of their respective cases. The opportunity for limited representation is especially valuable to the otherwise unrepresented individual when that individual cannot afford to otherwise obtain representation with respect to all aspects of a case. Counsel’s limited appearance may not only advantage that attorney’s client but also may help the justice system operate more smoothly.\(^\text{17}\)

In 2008, the Massachusetts Supreme Court convened a Steering Committee on Self-Representation. Its report stated:

Experience has shown that LAR [Limited Assistance Representation] is appropriate for use in many categories typically involving self-represented parties and that it is an extremely helpful innovation for several reasons: (1) it allows legal aid and pro bono attorneys to assist more people; (2) it allows people who cannot afford full service representation but who have some funds to pay a lawyer to obtain meaningful assistance with their legal problems; and (3) it has positive impact on the operations of the court.\(^\text{18}\)

\(^{17}\) [http://www.supremecourt.ohio.gov/Publications/prose/report_april06.pdf](http://www.supremecourt.ohio.gov/Publications/prose/report_april06.pdf)

\(^{18}\) Addressing the Needs of Self-Represented Litigants in Our Courts, Supreme Judicial Court Steering Committee on Self-Representation, 2008.
The American Bar Association passed a resolution at its 2013 Midyear Meeting calling on practitioners to offer unbundled services as a means of increasing access to justice and calling on bar associations and courts to make the public better aware of unbundling as an option to meet their legal needs.\textsuperscript{19}

Since the resolution was adopted, reports from Vermont, Illinois, Texas, Michigan and Oregon have advanced unbundling.\textsuperscript{20} Some of these reports were from state futures committees, which were stimulated by the ABA Commission on the Future of Legal Services, which in its final report also recommended unbundling as a means of increased access.\textsuperscript{21}

The Illinois State Bar Association’s Task Force on the Future of Legal Services indicated in its 2016 report:

Many states’ future efforts recognize unbundling (or limited scope representation) as one opportunity for lawyers to successfully navigate the changing legal marketplace. Providing unbundled services satisfies consumer needs and expectations while also allowing lawyers to provide high value services to a broader market of legal consumers. Clients engaging with lawyers on an unbundled basis may even foster more traditional representations. The availability of unbundling may also have a positive impact on court efficiency by having better prepared self-represented parties.\textsuperscript{22}

\textsuperscript{19} https://www.americanbar.org/content/dam/aba/administrative/delivery_legal_services/ls_del_unbundling_resolution_108.authcheckdam.pdf
\textsuperscript{20} See ABA Standing Committee on the Delivery of Legal Services 2016 Year in Review, at https://www.americanbar.org/content/dam/aba/administrative/delivery_legal_services/ls_del_2016_year_in_review.authcheckdam.pdf
\textsuperscript{22} https://www.isba.org/sites/default/files/committees/Future%20of%20Legal%20Services%20Report.pdf
The State Bar of Michigan 21st Century Task Force put unbundling at the top of its list of recommendations to nurture new service delivery options and indicated that unbundling is integral to expanding access to justice.\textsuperscript{23}

3. Shifts in Policies to Enable Unbundled Legal Services

In order for unbundling to reach its full potential as a model that makes the courts more efficient, expands access to those who cannot afford full traditional representation and optimizes opportunities for practitioners, the policies that govern this model must be clear and attainable. Policy-makers must inform practitioners not only of the benefits but of the boundaries when providing limited scope representation.

As a first step in this process, the ABA Commission on Ethics 2000 recommended a change to the ABA Model Rules of Professional Conduct, amending Model Rule 1.2(c). The amended Rule explicitly permits a lawyer to limit the scope of representation when the limitation is reasonable under the circumstances and the client gives informed consent to the limitation.\textsuperscript{24}

The Reporter’s notes accompanying the report calling for the rule change makes it clear that this rule has a dual purpose of setting out clarity for the lawyer’s obligations and of expanding access to legal services. The notes state:

The Commission recommends that paragraph (c) be modified to more clearly permit, but also more specifically regulate, agreements by which a lawyer limits the scope of representation to be provided to a client. Although lawyers enter into

\textsuperscript{23} https://www.michbar.org/file/future/21c_WorkProduct.pdf
\textsuperscript{24} https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_2_scope_of_representation_allocation_of_authority_between_client_lawyer.html
such agreements in a variety of practice settings, this proposal in part is intended to provide a framework in which lawyers may expand access to legal services by providing limited but nonetheless valuable legal services to low and moderate-income persons who otherwise would be unable to obtain counsel.25

Over 40 states have adopted this rule or some variation of it.26 It is important to note that even those states that have not adopted Model Rule 1.2(c) do not include provisions that prohibit limited scope representation. They simply do not explicitly set out the terms under which it is permissible.

As valuable and widely embraced as Model Rule 1.2(c) may be, it leaves practitioners questioning many of the nuances inherent in an unbundled practice. What are the lawyer’s obligations regarding communications with opposing counsel when providing unbundled services? What does a lawyer need to do to certify pleadings when the scope of representation is limited to document preparation? What disclosures must be made to the court when preparing documents? May a lawyer enter a limited appearance to provide unbundled legal services instead of a general appearance? Under what circumstances may a lawyer have leave to withdraw from representation after concluding the scope of the representation?27

Ethics opinions by both the ABA and various state entities address some of these issues, but are not necessarily consistent with one another. For example, ABA Formal Opinion 742

25 https://www.americanbar.org/content/dam/aba/administrative/delivery_legal_services/ls_del_unbundling_resolution_108.authcheckdam.pdf
26 For example some states require the agreement to be in writing. See An Analysis of Rules that Enable Lawyers to Serve Self-Represented Litigants, Standing Committee on the Delivery of Legal Services, 2014, at https://www.americanbar.org/content/dam/aba/administrative/delivery_legal_services/ls_del_unbundling_white_paper_2014.authcheckdam.pdf
27 Id.
provides direction on communications with persons who receive limited scope representation. However at least a dozen states have adopted rules of professional conduct or comments to those rules that vary from the ABA Model Rules governing this issue and would come to different results. Likewise, ABA Formal Opinion 07-446 concludes that a lawyer may draft pleadings for an unbundled client without signing them. While some states concur with this conclusion, others include rules requiring lawyers to indicate the pleadings were prepared by a lawyer and still other states indicate the pleadings must include the name and address of the lawyer who prepared them.

The area of least direction, least authority and perhaps most concern involves the circumstances under which a lawyer may withdraw from representation in court once the terms of the lawyer-client limited scope agreement are completed. Without certainty that the court will release the lawyer from further obligations, it seems unlikely that many lawyers would enter into a limited scope agreement with a client. Some states have embraced rules of civil procedure that set out the circumstances under which the lawyer’s work is concluded, but most have not.

While the aspirations set out by the states to advance unbundled legal services are valuable pieces of the access to justice puzzle, the buy-in required from lawyers needs policies that create clarity and certainty. As Michigan’s 21st Century Task Force states, the first steps include the implementation of “a high-quality, comprehensive limited scope representation

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29 Supra note 26.
30 [https://www.americanbar.org/content/dam/aba/administrative/delivery_legal_services/ls_del_aba_07_446_2007.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/delivery_legal_services/ls_del_aba_07_446_2007.authcheckdam.pdf)
31 Supra note 26.
32 Id.
system, including guidelines, attorney and client education, rules and commentary, and court forms focusing on civil cases.”33

As we move on a path toward such a system, it is important to look at just what we know about unbundled legal services and what some states are doing to advance this model.

4. The Research of Unbundled Legal Services

In 2010, the Standing Committee on the Delivery of Legal Services commissioned Harris Interactive to conduct a national public opinion poll to examine aspects of decision-making when people seek services for personal legal matters.34 Two of the questions explored public attitudes toward unbundling, the first of which asked the participants to identify their familiarity with unbundling. In anticipation that many of those being polled would be unfamiliar with the term or confused by it, the pollster read a statement to survey respondents introducing the concept. Despite that introduction, 70% of respondents indicated that they were “not at all familiar” with unbundling and only 11% indicated that they were “familiar” or “very familiar” with unbundling.

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33 Supra note 23.

While respondents may not have been very familiar with unbundling, they were, however, interested in it after they learned about it. When asked how likely they would be to talk to a lawyer about the possibility of unbundled legal services when faced with a personal legal matter, two-thirds were “very likely” (34%) or “somewhat likely” (32%) to do so. Respondents over 65 were less likely to explore unbundling as an option. Only about one in five of the respondents in that age group were “very likely” to talk to a lawyer about unbundling, compared to a third of respondents overall. However, approximately half of all moderate-income respondents – with household annual incomes between $35,000 and $50,000 per year – were “very likely” to talk to a lawyer about unbundling.35

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For the majority of respondents, the option for unbundling is an important consideration when choosing a lawyer. When asked how important it would be that the lawyer provide an unbundling option, 62 percent overall indicated that it would be “very important” or “somewhat important.” The youngest participants were the most likely to consider the option important. Specifically, four out of five respondents between 18 and 24 thought it was “somewhat” or “very important,” compared to just half of respondents over 65. Further, the importance of the willingness of a lawyer to provide unbundled services was higher for respondents with lower incomes and lower for those with higher incomes. About four out of five respondents with annual household incomes less than $15,000 believed that the willingness of a lawyer to unbundle was “very” or “somewhat important,” compared to just half of those with household incomes over $100,000 per year. As income increased, the importance of whether the lawyer offers unbundled services decreased.
In January 2017, the ABA Standing Committee on Pro Bono and Public Service launched a multi-state survey to learn more about lawyers’ experiences with and attitudes toward pro bono legal services. The Committee partnered with entities at the state level, such as access to justice commissions, courts, bar associations and legal service providers, who distributed the survey to their lawyer populations. All in all, twenty-five states participated, resulting in approximately 45,000 completed surveys.36

To capitalize on the extensive outreach necessary to accomplish a survey of this scale, as well as the demographic information collected, the Pro Bono Committee expanded the survey to include questions prepared by the Standing Committee on the Delivery of Legal Services regarding the respondents’ use of and attitudes toward unbundling. The questions involving unbundling were limited to only the subset of respondents who indicated that they were in private practice, which amounted to 34,104 or 74.2 percent of all survey respondents.37

Because the vast majority of the survey asked about pro bono, a notice was included to mark the departure from questions about free services to those about fee-generating services. After defining unbundling, the survey asked what percentage of participants’ overall caseloads involved unbundled legal services for a fee in 2016. Results show that 69 percent of respondents did not unbundle any of their services in 2016.38 Further, 23 percent of the 31 percent who did unbundle their services only did so for 20 percent or less of their caseloads. Only 8 percent of the lawyers surveyed unbundled more than 20 percent of their caseload in 2016.

36 The 45,000 figure includes partial surveys that reached 50% completion. Subsequent analyses reported may reflect a different total.
37 The data was weighted by gender and practice setting to be more representative of the population.
38 This figure is only slightly lower than that found in the ABA Legal Technology Resource Center’s “2015 Legal Technology Survey Report.” There, 37% of lawyers reported that their firms offer unbundled legal services. https://www.americanbar.org/groups/departments_offices/legal_technology_resources/publications.html
Generally, respondents who provide personal legal services were more likely to have unbundled their services in 2016, such as those who chose housing, family law, immigration and estate planning as being among their practice areas. In contrast, those who provide contingency-fee based or corporate services were less likely to have unbundled their services in 2016, such as those who chose medical malpractice, personal injury, securities or intellectual property as being among the areas in which they practice.

Solo and small-firm lawyers were more likely to have unbundled their services in 2016 than those in large firms (p < .001). Specifically, 34 percent of solo practitioners and 35 percent of lawyers in firms with 2 to 10 lawyers indicated that they unbundled in 2016. This compares to less than 20 percent of respondents in firms with over 100 lawyers. Approximately 21 percent of lawyers in firms with 21 to 100 lawyers unbundled, and 26.2 percent of lawyers in firms with 11 to 20 lawyers unbundled.
Lawyers thirty-nine and under were the most likely age group to have unbundled their services in 2016, with 33.5 percent reporting that they did so, and lawyers eighty and over the least likely at 20.7 percent (p < .001). However, the decline from one end of the spectrum to the other is gradual, scaling down around 4% or less from one age group to the next.\textsuperscript{39} Similarly, lawyers who have been practicing ten years or less were the most likely to have unbundled their services in 2016 at 34.4 percent, while lawyers who have been practicing for over fifty years were the least likely at 18.8 percent (p < .001). However, like with age, the decline is mostly gradual, scaling down just 3.5 percent or less from one group to the next in all but one instance where the drop is slightly greater (from 41-50 years in practice to 50 plus years in practice).\textsuperscript{40}

\textsuperscript{39} Based on age groups: 39 and under; 40’s; 50’s; 60’s; 70’s; and 80 and over.
\textsuperscript{40} Number of years in practice grouped into: 10 years or less; 11-20 years; 21-30 years; 31-40 years; 41-50 years; and 50 years and over.
Those who indicated that they did not unbundle any of their services in 2016 were then asked a follow-up question to better understand the reasons why. Respondents were asked to rate a series of statements on a scale of “strongly disagree,” “disagree,” “agree” and “strongly agree.”

The results show that lawyers are concerned about both disciplinary and financial ramifications. In total, 67 percent of the respondents who did not unbundle their services agreed that unbundling exposes them to more malpractice claims (24% strongly agreed; 43% agreed). Almost half agreed that unbundling may be unethical (14% strongly agreed; 32% agreed). Sixty-three percent agreed that it is difficult to get enough clients to make unbundling worthwhile (15% strongly agreed; 47% agreed), and 54 percent agreed that unbundling cases do not produce enough revenue (13% strongly agreed; 40% agreed). Fifty-eight percent agreed that clients are
just not interested in unbundling (17% strongly agreed; 41% agreed), a belief challenged in the data from the consumer research discussed above. And while three out of four respondents indicated that unbundling would not work for much of their practice – the dominant response – less than a third indicated that it is their firm that prohibits it.

Those who indicated that they unbundled at least some percentage of their overall caseload were also asked a follow-up question designed to gain insights into their experiences. Again, respondents were asked to rate a series of statements on a scale of “strongly disagree,” “disagree,” “agree” and “strongly agree.”

Overall, respondents’ experiences with unbundling have been positive. Of the statements provided, respondents who unbundled agreed most with those involving financial benefits for lawyers, and access and affordability for clients. For instance, more than three-quarters of respondents who provided unbundling agreed with the statement, “Unbundling lowers the costs of cases so that more people can afford my services,” (17% strongly agreed; 61% agreed). Almost 70 percent agreed with, “Unbundling allows me to offer legal services at a more competitive price,” (13% strongly agreed; 56% agreed). Sixty percent agreed with, “Unbundling lowers receivables and results in fewer uncollectable fees,” (10% strongly agreed; 50% agreed) and nearly half agreed with “Unbundling clients are likely to become full-service clients,” (6% strongly agreed; 43% agreed). Interestingly, respondents agreed with statements involving client satisfaction to a lesser degree. The statements, “Unbundling clients are more engaged in the process and invested in the outcome than full-service clients,” and “Unbundling clients are more satisfied with their service than full-service clients,” only yielded positions of agreement from 37 percent and 33 percent of respondents, respectively. Notably, a third of respondents who provided unbundling were less worried about disciplinary complaints for their unbundled cases.
Participants were then asked what might encourage them to provide [more] unbundled legal services out of a series of examples. The top three choices all involve some form of guidance or clarity, more specifically concerning: (1) ethical obligations; (2) malpractice exposure; and (3) court procedures, in that order. Occupying the fourth spot are programs to connect them with prospective clients interested in unbundled services.
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<td>More guidance/clarity concerning ethical obligations for unbundled matters</td>
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<td>2</td>
<td>More guidance/clarity concerning malpractice exposure for unbundled matters</td>
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<td>3</td>
<td>More guidance/clarity concerning court procedures for unbundled matters</td>
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<tr>
<td>4</td>
<td>Programs to connect you with prospective clients interested in unbundled legal services</td>
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<td>5</td>
<td>Sample limited-scope agreements</td>
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<td>6</td>
<td>Nothing. Unbundling is just not in my future.</td>
<td>5.45</td>
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<td>7</td>
<td>Information to better understand fee structures for unbundled legal services</td>
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<tr>
<td>8</td>
<td>Opportunities to network with lawyers who unbundle</td>
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Which of the following might encourage you to provide [more] unbundled legal services? Please drag and drop the below statements in order of how influential they would be (with 1 being the most influential).

5. Examples of Unbundling Initiatives

While there is still work to do, entities at all levels have undertaken a variety of initiatives to contribute to the widespread implementation of unbundling and to alleviate those concerns that permeate the profession. As described above, in addition to authorizing unbundling through the adoption of 1.2(c) or something similar, many states have issued ethics opinions on the subject and have revised their professional conduct and court rules to provide more clarity and guidance to attorneys providing limited scope services.\textsuperscript{41} Further, access to justice commissions, bar associations, courts, law schools, legal aid organizations and nonprofits have taken additional measures to: (a) educate lawyers and judges about the rules, ethics and benefits of unbundling; (b) educate the public about the availability of unbundling; and (c) connect lawyers who are willing to offer unbundled services with clients who may benefit from unbundled assistance.

Most common are online resources which can include any combination of articles, brochures, checklists, frequently asked questions, lending libraries, rules, ethics opinions, sample forms, sample limited scope agreements, toolkits and videos. Some resources are more tailored

\textsuperscript{41} See the Unbundling Resource Center from the ABA Standing Committee on the Delivery of Legal Services for a state-by-state list of unbundling rules and ethics opinions, at \url{https://www.americanbar.org/groups/delivery_legal_services/resources.html}. 
to the attorney,\textsuperscript{42} and others to the prospective client.\textsuperscript{43} They can stand alone, supplement existing self-representation resources,\textsuperscript{44} or be tied to a particular practice area.\textsuperscript{45} Some entities have devoted continuing legal education programs\textsuperscript{46} and others even entire conferences to the subject.\textsuperscript{47} The following examples illustrate how some entities are taking implementation to the next level.

In 2015, the Colorado Bar Association Modest Means Task Force – now called the Modern Law Practice Initiative – launched its Unbundling Road Show to educate lawyers about unbundling as a pathway to support access to justice for those of moderate incomes. As the name would suggest, the Road Show presentations occur throughout the state and educate lawyers on the rules and ethical considerations associated with the provision of unbundled services.\textsuperscript{48} Perhaps most importantly, given what we know from above, to dispel the perceived increase in risk for malpractice claims, emphasis is given to the fact that there is no history of disciplinary cases tied to unbundling with the Colorado Office of Attorney Regulation Counsel.

\textsuperscript{42} See the Illinois State Bar Association “Limited Scope Representation - Practice Resource Center,” at https://www.isba.org/practiceresourcecenter/limitedscope:
\textsuperscript{43} See the Judicial Branch of California “Limited-Scope Representation” webpage, at http://www.courts.ca.gov/1085.htm.
\textsuperscript{44} See the Alaska Court System’s Self-Help Services website, specifically the “Finding a Lawyer” webpage which links to the Alaska Bar’s Unbundling Attorney list, at http://courts.alaska.gov/shc/shclawyer.htm.
The Road Show may have officially launched in 2015, but the idea originated in 2010 when Justice Gregory J. Hobbs Jr., former Associate Justice of the Colorado Supreme Court, invited Judge Adam Espinosa, then a senior trial attorney for the Colorado Supreme Court Office of Attorney Regulation Counsel, to speak about unbundling during the presentations of certificates for the Colorado Supreme Court’s Pro Bono Recognition Program. An advocate of using unbundling for pro bono and self-represented assistance, Justice Hobbs was instrumental in the Colorado Supreme Court’s passage of rules clarifying the obligations of attorneys providing unbundling. The presentations continued through 2014 with a rotating cast of judges, including Justice Hobbs himself. It was these early programs that helped frame what would later become the Road Show.

Realization of the Road Show can be attributed to a few key factors. First, the Colorado Supreme Court’s demonstrated record of supporting unbundling has helped to legitimize it. To communicate the Court’s endorsement and assuage fears, the Road Show panels always include at least one judge. Second, Colorado has a unique network of Access to Justice Committees located throughout the state. All but one of 22 judicial districts in Colorado have such a committee working with the needs of the local community. It is primarily through these local hubs that presentations are planned and outreach is conducted, adding familiarity and exposing both urban and rural lawyers to unbundling. It is also through these relationships that local

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50 Many of the same people who acted as panelists between 2010 and 2014 continue to present in the Road Shows, such as Judge Espinosa and Judge Daniel M. Taubman who graciously provided the Road Show content for this article.

practicing attorneys who provide unbundled services are often pulled into presentations which further increases credibility.

Since their launch in 2015, there have been over 30 Road Show presentations in front of approximately 600 attendees.\textsuperscript{52} Each participant is provided the Colorado Bar’s “Practical and Ethical Considerations to Integrating Unbundled Legal Services” toolkit, which is now in its third edition. The Road Shows have since been expanded to judges, kicking off with the Judicial Conference in 2016 and including a presentation to federal judges and magistrates in 2017. The presentation, “What Judges Need to Know about Unbundling,” introduces the types of unbundling and applicable rules, and further discusses the bench’s role in advancing unbundling.

Another note-worthy initiative comes from the Alaska Bar Association. In October 2010, the Alaska Bar’s Board of Governors voted to create the Unbundled Law Section, the country’s first state bar section dedicated to unbundling.\textsuperscript{53} It began when Katherine Alteneder,\textsuperscript{54} an attorney whose family law practice centered on unbundling, submitted a letter requesting the formation of the section with the support of numerous other members of the Alaska Bar.\textsuperscript{55} In the letter, Alteneder explained how the “growing number of pro se litigants and the prohibitive cost of full-representation for middle income people” had led to a “surge” in the provision on

\textsuperscript{52} These figures are approximations; a precise count of presentations and attendees is not kept. This figure does not count the many presentations that took place between 2010 and 2014 in connection with the Colorado Supreme Court’s Pro Bono Recognition Program.

\textsuperscript{53} The Utah State Bar has also established a Limited Scope Representation Section. (\texttt{http://www.utahbar.org/directories/section-chairs-of-the-utah-state-bar/}). The Texas Access to Justice Commission has established a Limited Scope Representation Committee which has attributes of both the Colorado Road Shows and the Alaska Bar’s Unbundled Section; Committee members are available to travel throughout the state presenting CLEs about limited scope representation. According to their website, law firms, local bars and other groups are encouraged to schedule a presentation. (\texttt{http://www.texasatj.org/limited-scope-representation}).

\textsuperscript{54} Prior to private practice Katherine worked for both the Alaska Legal Services Corporation and the Alaska Court System where she helped develop the statewide Family Law Self-Help Center. Most recently, Katherine has been the Executive Director of the Self-Represented Litigation Network since September 2013.

\textsuperscript{55} See the Formation Request Letter (October 11, 2010), at \url{https://www.americanbar.org/content/dam/aba/administrative/delivery_legal_services/ls_del_alaska_unbundled_law_section_formation_request_letter.authcheckdam.pdf}. 
unbundled legal services. The stated goal was to “create a clearinghouse for professional
development and resources to support this emerging approach to practicing law, so that members
continue to offer the highest quality professional services to the public.”

The Unbundled Law Section is comprised of lawyers from a variety of substantive areas
who offer unbundled legal services. They meet regularly to hone their skills in sessions like,
“Bar Website Tools Available to Aid Unbundled Practitioners” and “Unbundled Fee
Agreements: Let's Compare and Contrast,” where members are encouraged to bring or advance-
email their unbundled fee agreements. In addition to organizing substantive trainings and
hosting online resources, the Section maintains a directory of lawyers who offer unbundled
services, broken down by area of law, available on the Alaska Bar Association’s website.

A major factor in the success of the Section is its reciprocal relationship with the Alaska
Court System’s Family Law Self-Help Center (FLSHC). Annually, the FLSHC responds to
nearly 7,000 phone calls and over 60,000 individuals visit their website. Online through their
website, and over the phone through the FLSHC Helpline, FLSHC refers litigants needing advice
or assistance with a discrete issue or task to the Section’s list to find an unbundled attorney.
Printed lists are provided in classes – some court-mandated – to self-represented litigants in

\[\text{\footnotesize 56 Id. at 1.}\]
\[\text{\footnotesize 57 Id. at 4.}\]
\[\text{\footnotesize 58 Session titles provided by current Alaska Bar Association Unbundled Section Chair, Ryan Roley.}\]
\[\text{\footnotesize 59 https://www.alaskabar.org/servlet/content/Unbundled_Legal_Services_atty_list.html}\]
\[\text{\footnotesize 60 See also the work done in Canada, where the National Self-Represented Litigants Project National Database of Professionals Assisting SRLs, Mediate BC's Family Unbundled Legal Services Project and the Alberta Limited Legal Services Project all maintain directories of lawyers who provide unbundled services that are available to the public.}\]
\[\text{\footnotesize 62 See the Alaska Court System’s Self-Help Services website, specifically the “Finding a Lawyer” webpage which links to the Alaska Bar’s Unbundling Attorney list, at http://courts.alaska.gov/shc/shclawyer.htm and the “About the Family Law Self Help Center Page” which provides information about the Helpline, at http://www.courts.alaska.gov/shc/family/shcabout.htm.}\]
Anchorage family law cases. In turn, unbundled lawyers can refer clients to the FLSHC’s online resources. In addition to having a robust self-help center, like in Colorado, support from the Chief Justice and the bench at-large has been integral in advancing these relationships.

Also from the FLSHC is the Early Resolution Program (ERP). The ERP, which operates in four of the state’s largest volume courts, triages all newly-filed divorce and custody cases involving two self-represented litigants. Up to nine selected cases are placed on the court calendar for the same hearing timeslot. There, parties work with volunteer attorneys who are available to provide unbundled legal services, advise their clients, and negotiate with the opposing party’s volunteer attorney. Some cases are assigned to court mediators or the settlement judge to resolve the issues in the case. All agreements are heard by the settlement judge and the final paperwork is completed and distributed in the courtroom at the end of the ERP hearing.

Next, there is the Federal Pro Se Legal Assistance Project, a partnership between the U.S. District Court for the Eastern District of New York and the New York City Bar Justice Center. The Project operates on-site at the U.S. District Court for the Eastern District of New York’s Brooklyn courthouse to provide free, unbundled legal services to pro se litigants who cannot afford an attorney. Along with a full-time staff attorney, the Project works with pro bono associates from the private bar and legal interns to assist pro se litigants by explaining federal court procedures, providing brief legal counseling, advising litigants about potential jurisdictional hurdles prior to filing suit, reviewing draft pleadings and drafting correspondence.

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63 For a list of available classes, see http://www.courts.alaska.gov/shc/classes.htm.
64 Supra note 59.
65 http://www.citybarjusticecenter.org/projects/federal-pro-se-legal-assistance-project/
On another front, some law schools are making notable efforts to introduce these concepts to law students. For example, the Suffolk University Law School has launched the Accelerator-to-Practice Program, a comprehensive three-year course of study to prepare graduates to join or start sustainable law practices serving low and average income clients. By offering courses in alternative delivery models, the program is able to familiarize students with unbundling early in their legal education so that they can enter the profession with the knowledge and confidence to apply it to their practice.

Conclusion

As pro se litigation emerged and expanded, beginning more than three decades ago, client demand for unbundled legal services became increasingly evident. State and national studies and reports focused on the access gap and the future of legal services have found value in the prospect of unbundled services, indicating the win-win-win nature of greater access for consumers, a larger client-base for practitioners and better prepared litigants leading to more efficient courts. At the same time, too many consumers are unaware of the availability of unbundled services and only a fraction of practitioners offer their services in this way. For the first time, we are getting empirical research that gives us a glimpse of the practitioner’s orientation toward this delivery model. As we compare this information to the efforts being made by stakeholders to expand unbundling, we see that many of those initiatives are responsive to the concerns and needs of practitioners.

In his acclaimed book *The Tipping Point: How Little Things Can Make a Big Difference*, Malcolm Gladwell talks about that moment of critical mass when a confluence of factors make

66 https://www.suffolk.edu/law/academics/31538.php
ideas spread like a virus – what we now refer to as “going viral.” As we go further down the paths that advance affordable access, generate increased opportunities for practitioners and facilitate greater efficiencies in the courts, it remains to be seen whether the findings of the state and national reports, the consumer demands, and the needs of practitioners for clarity and direction will result in unbundled legal services reaching its tipping-point.

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