

# DIALOGUE

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## News and Perspectives from the ABA Division for Legal Services

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LRIS Feature

LAMP

**Unbundled Legal Services and LRIS**

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*By Al Charne*

Pro Bono

More than 20 years have passed since Forest Mosten began promoting the unbundling of legal services.<sup>1</sup> The premise for unbundled legal services is that when appropriate, a client and lawyer can agree that the lawyer will provide some, but not all, of the work required for a particular legal matter.

LRIS

**Unbundled  
Legal Services  
and LRIS**

Outside of litigation, unbundled services are nothing new. Clients hire lawyers to review and provide advice on leases, to write letters, to review employment contracts and severance agreements, to draft contracts after terms are negotiated, to review marital settlement agreements after successful mediation or negotiation between the parties themselves, etc. Lawyer Referral and Information Services (LRISs) have always referred these matters to panel members.

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The ABA Model Rules of Professional Conduct allow lawyers to provide unbundled legal services. Rule 1.2(c) provides: ***A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances, the client gives informed consent and where necessary notice is provided to the tribunal and/or opposing counsel.*** Forty-one of the fifty states have adopted Rule 1.2(c); other states have modified and added requirements to those rules to further embrace the unbundled concept.

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As far back as 2001, Justice Fern A. Fisher, Deputy Chief Administrative Judge for Courts within New York City and her Chief Counsel, Rochelle K. Klempner, wrote about the efficacy, difficulties, and practical and ethical issues of unbundled legal services in New York.<sup>2</sup> In 2006, believing the time had come to test the value of limited legal services in New York; a pilot project was instituted in the Housing Court of the Civil Court of the City of New York, co-sponsored by the New York City Bar Association. The model was applied only in nonpayment proceedings, and only landlords of buildings with three units or fewer were eligible on the landlord side. Although there was no income test, only 15% of litigants had annual incomes above \$40,000.

The program was modeled after a successful unbundled lawyer-for-the-day program in San Francisco. A joint report on this program was prepared by Judge Fisher and Judge Juanita Bing Newton.<sup>3</sup>

The report concluded that although full legal services in litigated matters is preferable, the unbundled legal services offered in this program benefitted the litigants, judge and courtroom staff. Both this and many other successful pro bono projects have made good use of unbundled legal services. At the same time, law clinics, bar associations, court-sponsored programs and pro bono agencies have been forced to increasingly provide limited services in response to budget cuts and ever growing demands for services.

Can LRISs, which are "in the business of public service," incorporate unbundled services as a meaningful addition to the services they provide to the public?

In the litigation context, unbundled legal services may include:

- Document Review
- Preparation of Documents and Legal Forms
- Drafting of Pleadings or Orders/Ghost writing
- Legal Research
- Negotiating
- Preparation of Exhibits and Evidence
- Court Coaching
- Limited Court Appearances

On its Pro Se/Unbundled Resource page, the ABA Standing Committee on the Delivery of Legal Services created a well-stocked library of resources on unbundling. In November 2009, the committee published a white paper entitled: "An Analysis of Rules that Enable Lawyers to Serve Pro Se Litigants." Much of this information is available on the ABA's website.<sup>4</sup>

Courts in New York, Washington, California and Florida have established offices for the self-represented, and courthouse facilitators who assist with procedural information and form preparation. Numerous pro bono agencies and bar association services throughout the country help large numbers of clients with form preparation and brief services due to the limited capacity of providers.

Many state courts provide downloadable forms and extensive information on how to complete them through the internet. The website [www.lawhelp.org](http://www.lawhelp.org), in addition to listing the pro bono services available in most states, also has extensive information about legal rights and court procedures in many languages. These pro bono programs provide substantial help to litigants and to the courts, often through volunteer lawyer-for-a-day and clinical programs.

What about risks to the lawyer? Won't the lawyers be reluctant to offer unbundled services?

There have been a few cases in which courts have held that a lawyer may be sanctioned for rendering what the lawyer claimed to be an unbundled or limited legal service. The following matters involved private lawyers that charged fees for their services:

In *Nichols v. Keller*, 15 Cal.App.4th 1672 (1993), a firm that limited its practice to workers compensation was found to have breached the duty to inform his client of a possible third party claim.

In *Hale v. U.S.*, 509 F.3d 1139 (9th Cir. 2007), the lawyer prepared the bankruptcy petition and exhibits for the client to file pro se. The agreement with the client provided that the representation did not include any representation other than preparation, assistance, pro se advice and counsel, pre-filing. The client did not sign the petition. In upholding the sanctioning of Hale, the Court of Appeals held that he failed to obtain informed consent to his limited representation and that the bankruptcy court should not countenance Hale's exclusion of critical and necessary services, or endorse the pretense of adequate advice and informed consent.

And, in a disciplinary matter, *People v. Stevens*, 10PDJ002 (Colo.O.P.D.J. 10-7-2010), the lawyer was suspended for representation in a criminal case that the lawyer claimed was limited representation on a rape charge. There was no limited engagement retainer agreement. The disciplinary body found that the client and the client's parents (who paid the fees) did not understand the representation to be limited, and that the representation was not competent.

From this brief survey of cases one can surmise that problems are most likely to arise when the communication between lawyer and client is less than absolutely clear. It is the lawyer's responsibility to ensure that the client not only understands the responsibilities s/he undertakes, but is capable of following through on those responsibilities. It is preferable to have such communication in writing, and a number of states require this. When the limited service or representation has ended, the client should be clearly informed and, if necessary, so should the court.

Some states provide suggested or mandatory engagement forms for unbundled or limited legal services. Iowa requires written consent, with several specific exceptions. Maine, Missouri and Wyoming require that the client and attorney define the scope of representation and the specific limitations of service by using a designated form that is appended to their rules of professional conduct.

Maine's rules include an attachment headed, "Limited Representation Agreement," which provides a checklist of services the lawyer may agree to perform. As part of the agreement, the client must indicate that s/he understands the attorney has not promised any outcome, the lawyer is relying on the client's disclosure of facts, and the lawyer's obligation is limited to those items designated in the agreement.

### **The LRIS Experience**

Many LRIS directors have found establishing regular fee paying unbundled legal services in litigation matters to be challenging. However, there have been some successes and interesting niche markets.

The main area in which unbundled legal services have success is family law. The LRIS of the Contra Costa County Bar Association is an example of a successful program, fueled by its enthusiastic support and leadership role in promoting unbundled services. Visitors to the Contra Costa Superior Court website see the message: *If you feel that you cannot afford to hire a lawyer to handle your whole court case, you can consider hiring a lawyer to help you with just parts of the case (such as checking over court forms, attending a court hearing, or attending a deposition). This kind of legal help is sometimes called "unbundled legal services."* Visitors then see a link to the LRIS, which has lawyers specifically listed for unbundled services. On the ABA's LRIS list serve very few respondents reported substantial numbers of unbundled panel members or retained matters, and those programs seem to be limited to family law.

The New York City Bar Association LRS's experience has been somewhat different from that of other bar associations in that it has had some limited success in more general civil matters, including consumer-related complaints and defenses. A few panel members have handled many matters in which they drafted complaints and answers, interrogatories and other discovery demands, prepared clients for depositions and prepared a checklist for the client to use in presenting his/her case in court. LRS panel members have also provided unbundled services to clients who received "excess letters" from their insurance company after the insurance company notified the client that potential liability might exceed policy limits. In such matters the panel member often just continued to advise the client, weighing both liability and the likelihood of an actual excess award. Similarly, the LRS referred a number of unbundled matters where the clients were professionals who were capable of handling various aspects of a lawsuit themselves with the advice of counsel.

An interesting additional unbundled service was recently started as a cooperative effort between the New York City Bar Association LRS and the bar association's Small Law Firm Committee. Less experienced attorneys handling matters for which they need advice and direction were referred to experienced panel members for a set fee of \$100 per hour, with a minimum of just \$100. Most of these requests dealt with trust and estate issues, although some involved matrimonial, employment, and entertainment law.

### **Do Unbundled Legal Services Fit the 'Business of Public Service' Model?**

Unbundled legal services are mainly used for two reasons: The client cannot afford the cost of full legal representation, and the particular matter can be segmented such that a pro se client can reasonably handle those aspects not requiring a lawyer. And, sometimes, a third reason comes into play: The client wants and is capable of exercising control over the case.

LRISs have for years struggled with the connotation that a bar association referral service is one step above Legal Aid and that its lawyers are newly admitted or ready to retire. LRISs have worked hard to develop

qualifications standards and objective experience requirements, and paid diligent attention to client feedback and areas of improvement, in order to counter the belief that those who can actually afford to pay a lawyer should seek counsel elsewhere.

In turn, experienced panel members — many of whom have been in practice for more than 20 years — may fear that advertising the lowest cost service will hurt their reputation and harm the reputation of the LRIS. Moreover, they may feel that limiting legal services demeans the professionalism these lawyers associate with assuming the responsibilities attendant to full representation.

Lawyers often join a lawyer referral service to enhance their practice with clients that can pay reasonable fees for services the lawyer provides. To make an unbundled practice financially viable may require a much greater number of clients and that the lawyer provide a very different set of services than would be involved in traditional full representation.

A panel member may be concerned if a client wants to hire her for a limited court appearance. This may confuse the court with respect to roles: Who is the responsible party for the case? With whom should the opposing party communicate? Panel members may also have questions: What is the lawyer's duty when receiving motion papers from the opposing party with a short return date, when the limited services the lawyer agreed to were already completed? These can be strong disincentives for lawyers to venture into providing unbundled legal services.

However, on the plus side of the unbundled equation is the opportunity for the lawyer to greatly expand his/her client base, and to collect fees on short duration matters for which the client pays a reasonable fee for the actual service provided and time involved. Many unbundled services are not particularly labor intensive and an opportunity for cost capitalization — partially automated document compilation based upon factual input from the client and the lawyer's analysis. Some clients who seek unbundled services may decide that full representation is more appropriate. And, of course, those who are well served will spread the word to family and friends.

### **Unbundled Competition**

Pro se litigants also have access to a form of unbundled services through some commercial online services. One such service is LegalZoom, an online service that offers a way for pro se litigants to prepare documents for their case. Very basic questions are answered online and LegalZoom mails the appropriate documents with instructions on how to complete them.

Although, LegalZoom makes it clear that it is simply a document assembly service, and does not provide legal advice, the company is now also offering a "personal legal advisor," who is an attorney, for a fee. LegalZoom states that the attorney would "advise you and answer all the questions" that you may have. This may otherwise seem like a full-fledged service, but questions abound as to whether attorneys will be available in all states and if those attorneys will compete directly with LRISs.

A great many "paralegal services" and other document preparation services are available to anyone with access to the internet. Storefront offices for such services also exist. While the legality and question of unauthorized practice of law remains, it is clear that there is a market for these services as some lawyers continue to price themselves beyond the means of even middle income consumers.

### **Conclusion**

For complex matters and for clients who can afford full representation, the preferred model is the one that LRISs will continue to provide. By setting meaningful experience requirements and monitoring client satisfaction, LRISs will remain a wise choice for consumers of legal services. And, knowledgeable LRIS staff will continue to help guide the public to the legal services that they require.

It is time for LRISs to consider providing a range of unbundled legal services, perhaps even developing online forms or helping the public with

court–provided forms. LRISs may well be able to provide new services that increase access to justice by recruiting and training panel members who want to provide the more limited services that are increasingly in demand. However, deciding how to do this, and maintaining our reputation as the appropriate place for clients who have serious, complex, substantial legal matters remains a challenge worthy of ongoing analysis, discussion, and innovation.

*Al Charne is Executive Director of the New York City Bar Association LRS.*

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[1](#) How To Deliver Legal Services a la Carte For Improved Service And Profits  
Forrest S. Mosten, Unbundling Legal Services (2000, ABA Section on Law Practice Management)

[2](#) Unbundled Legal Services in New York State: Untying the Bundle, 29  
Fordham Urb.  
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[3](#) [Volunteer Lawyer for a Day Project Report, a Test of Unbundled Legal Services in the New York City Housing Court](#). February 2008

[4](#)  
[http://www.americanbar.org/groups/delivery\\_legal\\_services/resources.html](http://www.americanbar.org/groups/delivery_legal_services/resources.html)

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