Serving the DIY Client:

A Guide to Unbundling Legal Services for the Private Practitioner

By Stephanie Kimbro Esq.

Table of Contents

I. Introduction - 4
II. What is Unbundling? - 9
    a. A Brief Background -11
III. Why is unbundling growing in popularity? - 15
    a. The Market -16
    b. The Regulators - 18
    c. The Public - 21
    d. The Critics - 24
IV. Ethics Concerns with Unbundling - 26
    a. Competent Representation- 26
    b. Defining the Scope of Representation - 31
V. Best Practices for Unbundling - 36
    a. Check for Conflicts - 36
    b. Educate clients with checklists and instructions - 37

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c. Keep Digital Records of Interactions with Clients - 38
d. Consider Offering Fixed Fee or Value Billing - 39
e. Explaining Unbundled Services to Full-Service Clients - 41
f. Assisting the Pro Se Litigant – Ghostwriting - 42
g. Malpractice Insurance for Unbundling - 44
h. Good Customer Service - 45
VI. Using Technology to Unbundle Legal Services - 47
a. Document Assembly and Automation – 49
b. Online Case and Client Management - 52
c. Streamlining the Workflow - 53
d. Delivering Unbundled Services Online -55

Checklist for the Unbundling Practitioner - 59

A Few Case Studies - 63

Additional Resources - 69

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Introduction

We live in a do-it-yourself (DIY) society. Consumers are comfortable going online to handle business and professional transactions. They shop, conduct banking and investing, earn degrees and communicate with family and friends over the Internet. The public has gotten used to controlling online interactions and many individuals see the benefit and convenience of handling business on their own time.

The DIY consumer also understands that when a product or service has a DIY component, it tends to be more affordable.

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This is seen as an acceptable tradeoff for doing a little or a lot of the footwork. In the current economy, many lower to moderate income individuals are more than willing to do the extra work to save money on their legal needs.

For at least the past five years, online legal service companies, such as LegalZoom, have educated consumers about DIY legal services. Consumers fill out questionnaires and purchase automated legal forms for sale online that they must then be responsible for executing and filing at the courthouse. DIY legal form kits are also for sale at most office supply stores. Other consumers make the dangerous choice to cut and paste together legal forms from samples they have found online on various free legal resource websites. Countering this trend, some non-profits and court systems have taken steps to create self-help centers and to work with private practitioners who volunteer in court-sponsored limited services programs. However, these resources are not available for all individuals and may pertain to assistance in only certain areas of the law.

While some law firms have provided unbundled legal services for years, it is not a practice that private practitioners have widely embraced. Some non-profit legal aid organizations still carry reservations about unbundling based on the philosophy that everyone is entitled to full service representation, whether or not that ideal will ever come to pass and in

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spite of the growing number of pro se litigants flooding the court systems. Private practitioners, if aware of how to unbundle, may not see how to integrate it into their practice in a way that would be cost-effective, either with technology and/or alternative forms of billing, such as value or fixed fee billing methods. They may also believe there are too many malpractice risks for the private practitioner in limited scope representation and additional administrative burdens to make sure it's handled correctly. Guidelines and best practices are for law office management are not often taught in law schools, much less alternative forms of delivering legal services, such as providing limited scope assistance.

Yet, forty-one states have either adopted the ABA Model Rule 1.2(c) permitting unbundling of legal services or have adopted a similar rule. Combine that with the fact that the number of pro se individuals in the United States continues to rise steadily along with increasing numbers of individuals going online to seek out unbundled legal services from non-attorney companies. Our profession needs to renew enthusiasm for unbundling by private practitioners.[1]

[1] See Broderick, John Jr. and Ronald M. George, "A Nation of Do-It-Yourself Lawyers", *The New York Times*, January 2, 2010.

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There are benefits for the professional as well as the public in unbundling legal services. Unbundling may be seen primarily as a service to be handled pro bono or "low" bono. However, private practitioners may also provide limited scope representation to serve another segment of the population in need of basic legal services while making it cost-effective for their firm. Adding unbundled legal services to a traditional law firm structure can be used to market a law practice to an entirely new client base and give the firm a competitive advantage.

"As efficient, consumer-friendly, court-based, and court-supported self-help centers expand, they are likely to draw more middle-income users who will opt to self-represent or, more likely, will purchase lawyer assistance on a discrete-task basis. Thus, the private bar's unbundled legal services innovations will prosper concurrently with court reforms that welcome prepared, self represented parties."

--Jeanne Charn, Senior Lecturer on Law, Harvard Law School, in "Legal Services for All: Is the Profession Ready?" Loyola of Los Angeles Law Review (Summer 2009) at 1021.

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The ABA Standing Committee on the Delivery of Legal Services has created a well-stocked library of resources on unbundling on its Pro Se/Unbundled Resource page.[2] In November 2009, the Delivery Committee published its white paper entitled "An Analysis of Rules that Enable Lawyers to Serve Pro Se Litigants."

This ebook will refer to these resources while focusing on providing a basic, easy-to-digest introduction to unbundling for private practice lawyers. The ebook will cover ethics concerns and best practices for unbundling and provide practical suggestions for implementation. This ebook will not go into ethics issues involved in an attorney's participation in court-sponsored legal services programs. Instead, it will focus on solos and small firm's potential to provide limited scope services. As a side goal, this ebook will hopefully start a renewed dialogue between the private and public sectors of the legal profession about using unbundling as an alternative solution for chipping away at the nation's access to justice deficiencies.

[2] ABA Standing Committee on the Delivery of Legal Services Pro Se/Unbundled Resource page http://www.abanet.org/legalservices/delivery/ accessed December 30, 2010.

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I. What is Unbundling?

Unbundling legal services, also termed limited scope services or discrete task representation, is a form of delivering legal services where the lawyer breaks down the tasks associated with a legal matter and only provides representation to the client pertaining to a portion of their legal needs. The client accepts the responsibility for doing the footwork for the remainder of their legal matter until it is completed.

A few examples of unbundled legal services include:

- Ghostwriting
- Drafting pleadings, briefs, declarations or orders
- Document review
- Conducting legal research

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- Negotiating
- Making limited appearances
- Advising on court procedures and courtroom behavior
- Coaching on strategy or role playing
- Preparing exhibits
- Organizing discovery materials
- Drafting contracts and agreements
- Providing legal guidance or opinions
- Providing direction to resources such as local and state rules
- "Collaborative lawyering"[3]

Most law firms can fit some form of unbundling into the practice areas and services that it currently offers. Some law practices may offer only unbundled legal services to clients, either in-person or using web-based forms of delivery. Certain practice areas do not lend

[3] Collaborative law is a form of law practice where both parties and their attorneys elect to settle the case without adversarial court involvement and with the goal of settling their conflict by working together to create a solution. See Mosten, Forest. *Collaborative Divorce Handbook: Effectively Helping Divorcing Families Without Going to Court* (Jossey-Bass, 2009) and Pauline H. Tesler, *Collaborative Law: A New Paradigm for Divorce Lawyers*, 5 Psychology Public Policy and Law 967, 968 (1999).

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themselves well to unbundling. These might include criminal law, tax law, complex child custody matters, or any practice where the client's case requires continuous legal representation from start to finish in order to ensure the best outcome for the client. Transaction-based or document heavy practice areas, such as business law, estate planning, intellectual property, immigration law and family law, work well for a firm wanting to devote a portion of its practice to unbundling legal services. However, even firms whose practices are litigation-based may find ways to offer unbundled services to either existing, full-service clients or to a new base of pro se litigants seeking limited scope representation.

A. A Brief Background

Unbundling is nothing new. Limiting the scope of legal representation has been around in one form or another and was recognized by courts long before the drafting of the ABA Model Rule 1.2 (c).[4] However, for the states to formally accept unbundled legal services as an

[4] See, for example, some of the earlier court cases providing for limited legal representation: *Delta Equipment & Construction Co. v. Royal Indemnity Co.*, 186 So. 2d 454 (La. Ct. App. 1966);
Grand Isle Campsites v. Cheek, 249 So. 2d 268 (La. Ct. App. 1971), modified, 262 So. 2d 350 (La. 1972); *Young v. Bridwell*, 437 P.2d 686 (Utah 1968).

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alternative or complementary form of delivering legal services, it requires a clearer definition of the "practice of law."

In 2002, the ABA created a Task Force on the Model Definition of the Practice of Law.[5] This Task Force's role was to reevaluate the definition of "practice" in light of the changing legal landscape and to also focus on the unauthorized practice of law by non-licensed individuals, which included taking a look at legal service companies providing unbundled legal forms and documents to clients without attorney review.[6] As a result of the study, the Task Force recommended adoption of the ABA's model definition of the practice of law recognizing

[5] Witson, Lish, *Report of the ABA Task Force on the Model Definition of the Practice of Law* (2003) http://www.abanet.org/cpr/model-def/taskforce_rpt_803.pdf accessed December 31, 2010.

[6] *Id.* at 1, 13. From the report: "Many jurisdictions have left the determination as to what constitutes the practice of law to a case- by-case analysis. As a result, there are an increasing number of situations where nonlawyers, or lawyers licensed in a different jurisdiction, are providing services that are difficult to categorize under current state authority as being, or not being, the delivery of services that are included within the definition of the practice of law. The adoption of a definition of the practice of law is a necessary step in protecting the public from unqualified service providers and in eliminating qualified providers' uncertainty about the propriety of their conduct in any particular jurisdiction."
Separately, different states have filed complaints against companies offering unbundled legal services to members of the public without the involvement of a licensed professional in that state's jurisdiction citing unauthorized practice of law. *See, for example*, the 2010 settlement agreement entered into by LegalZoom and the Washington State Attorney General's Office, http://www.atg.wa.gov/pressrelease.aspx?&id=26466 as well as complaints in North Carolina and Missouri, http://ipwatchdog.com/2010/02/09/legalzoom-sued-in-class-action-for-unauthorized-law-practice/id=8816/ accessed December 31, 2010.

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that each state has created its own definition of the practice of law.[7] However, without uniformity in the definition of "practice of law", enforcement of regulations that pertain to multijurisdictional law practice and unauthorized practice of law remains difficult across the country. So far, fourteen states have adopted the model rule and twenty-nine have adopted a similar, but modified version.[8]

When the ABA's House of Delegates adopted several revisions to the Model Rules of Professional Conduct in 2002, they included provisions that support limited scope representation. Many states have since adopted these revisions in their own rules. See the resources list at the end of this ebook for a list of state bar ethics opinions supporting unbundled legal services.

[7] ABA Standing Committee on Client Protection, *Recommendation of the Task Force on the Model Definition of the Practice of Law*, http://www.abanet.org/cpr/model-def/recomm.pdf accessed December 31, 2010.
[8] Arthur F. Greenbaum, *Multijurisdictional Practice and the Influence of Model Rule of Professional Conduct 5.5 – An Interim Assessment*, 43 Akron Law Review 729, 735 (2010).

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In 2003, the ABA's Section of Litigation published its *Handbook on Limited Scope Assistance*, a Report of the Modest Means Task Force.[9] This handbook provides an extensive overview of the practice of unbundling legal services for lawyers, judges, legal aid organizations and others in the legal profession. The ABA's Standing Committee on the Delivery of Legal Services also maintains a website with additional resources related to the unbundling of legal services.[10]

[9] ABA's Section of Litigation published its *Report of the Modest Means Task Force Handbook on Limited Scope Assistance* (2003) http://www.abanet.org/litigation/taskforces/modest/report.pdf accessed December 31, 2010.
[10] ABA Standing Committee for the Delivery of Legal Services website http://www.abanet.org/legalservices/delivery/home.html accessed December 31, 2010.

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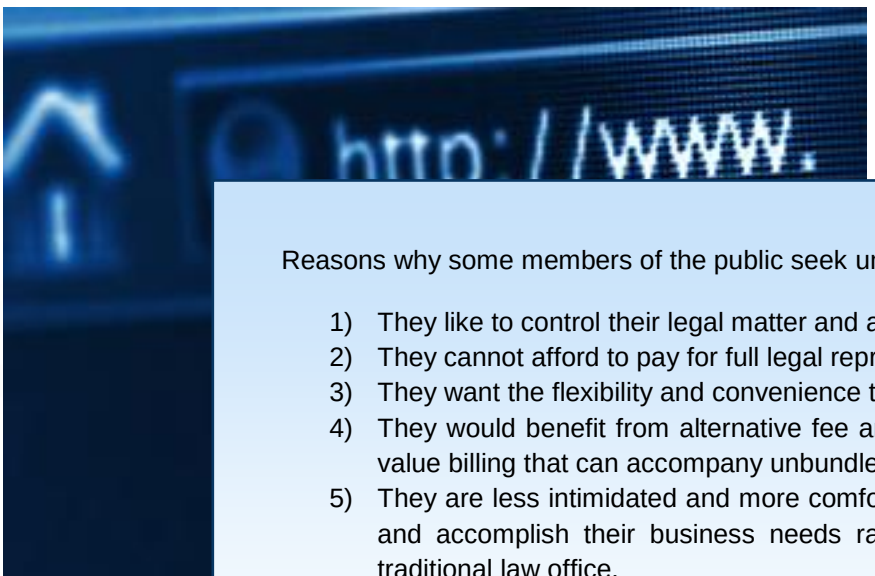
III. Why is unbundling growing in popularity?



Reasons why some members of the public seek unbundled legal services:

1) They like to control their legal matter and are the DIY-personality.
2) They cannot afford to pay for full legal representation.
3) They want the flexibility and convenience that unbundling may give them.
4) They would benefit from alternative fee arrangements, such as the fixed fees and value billing that can accompany unbundled services.
5) They are less intimidated and more comfortable using the Internet to communicate and accomplish their business needs rather than making an appointment at a traditional law office.
6) They live in remote areas or for other reasons do not have the means to travel to a larger city to visit a physical law office.

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A. The Market

There is a renewed interest in unbundling because of changes in the overall market for legal services. The public is actively going online to seek out legal services over the Internet for convenience and affordability.[11] Because many of these individuals are unable to find a licensed attorney who can provide online legal services, these members of the public turn to the online legal services companies, such as Legal Zoom, to provide limited scope legal services.

Most online legal services are delivered to the consumer as legal forms that are automatically generated after the customer has registered with a service and filled out the appropriate questions in an online form that then generates the requested legal document along with instructions for next steps. The customer pays a fixed fee that is most likely far less

[11] "Limited scope is a consumer driven movement, as middle class litigants are increasingly insisting on retaining control of their legal matter, and looking for a coach rather than a full service advocate. They may well type "unbundled attorney" into their search engine." M. Sue Talia (2005), *Roadmap for Implementing a Successful Unbundling Program*, published online at http://www.ajs.org/prose/South%20Central%20Notebook%20Contents/Tab%206/Roadmap%20for%20Implementing.pdf accessed January 5, 2010.

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costly than the time and money they would have spent going to a traditional law office to meet with an attorney in person. The number of consumers going online to search for DIY or unbundled legal solutions continues to soar.[12] The need for unbundled legal services provided by licensed attorneys becomes clear when you add this increase in the demand for online legal services to the continued overall growth of e-commerce.

Using technology may be the most efficient and popular way to delivery unbundled legal services for both attorneys and the public, but it is only one of several methods. Attorneys who provide unbundled services in a traditional law firm may meet with their unbundling clients in-person. To make the practice more cost-effective and to compete with firms operating virtual law offices, traditional firms unbundling may need to use document assembly and automation technologies behind the scenes. Or they may request that the client use digital methods of communicating with them during their limited representation. Whether or not technology is used to create and deliver unbundled legal services online, there is plenty of evidence of a large market for unbundled legal services, and it's a market that many legal professionals have yet to tap into.

[12] For example, from October 27, 2010 – November 25, 2010, an estimated 406,000 people in the US searched for online seeking legal solutions through the Legal Zoom website. See Quantcast audience statistics related to websites providing online legal services. The number of duplicate people searching is not quantified. http://www.quantcast.com accessed January 8, 2010.

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The Regulators: ABA & State Bar Endorsement of Unbundling

Revised in 2002, the ABA Model Rule 1.2(c) entitled "Scope of Representation" provides:

"(a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify. …

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent." [13]

[13] ABA Model Rule 1.2(c), http://www.abanet.org/cpr/mrpc/rule_1_2.html last accessed December 28, 2010. The pre-2002 wording of this rule read "[a] lawyer may limit the objectives of the representation if the client consents after consultation." Another rule that comes into play in unbundling is Model Rule 6.5 "Nonprofit And Court-Annexed Limited Legal Services Programs." This rule provides that "(a) A lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client without

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This rule has been either adopted or modified by forty-one states since its addition to the model rules.[14] A full list of state bars that have added this rule with the links to online copies can be found on the ABA's Standing Committee of the Delivery of Legal Services' Pro Se/Unbundling resource page. [15]

In 2007, the ABA published Formal Opinion 07-446 which permits ghostwriting.[16] This opinion provided that an attorney could provide limited assistance to a pro se litigant by helping them prepare written materials without disclosing their involvement in the preparation to the

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expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter: (1) is subject to Rules 1.7 and 1.9(a) only if the lawyer knows that the representation of the client involves a conflict of interest; and (2) is subject to Rule 1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by Rule 1.7 or 1.9(a) with respect to the matter." For the purposes of this ebook, we will focus on Rule 1.2(c).

[14] For an in-depth discussion of the different state's adoptions and modifications to the Model Rule 1.2(c), see the Standing Committee's White Paper, "An Analysis of Rules that Enable Lawyers to Serve Pro Se Litigants," http://www.abanet.org/legalservices/delivery/downloads/prose_white_paper.pdf accessed December 28, 2010. See also ABA/BNA Lawyer's Manual on Professional Conduct, Scope of Relationship Practice Guide, at 31:303. The following states made significant changes to the Model Rule 1.2(c) upon adoption: Florida, Iowa, Maine, Missouri and Wyoming.

[15] ABA Standing Committee on the Delivery of Legal Services, Pro Se/Unbundling Resource Page with links to the state bars that have adopted or modified Model Rule 1.2(c), http://www.abanet.org/legalservices/delivery/delunbundrules.html last accessed December 28, 2010.

[16] ABA Standing Committee on Ethics and Professional Responsibility, Formal Opinion 07-446, "Undisclosed Legal Assistance to Pro Se Litigants" (issued May 5, 2007) http://www.abanet.org/legalservices/delivery/downloads/aba_07_446_2007.pdf accessed December 28, 2010. The ABA Model Rule does not require that the lawyer reveal that he or she has provided assistance to the pro se litigant.

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court. State bars have addressed ghostwriting in different ways. Best practices for ghostwriting are discussed below in more detail.

Before adding unbundling to your practice, review your state bar's rules of professional conduct and any informal ethics or advisory opinions related to limited scope representation. While most bars are now encouraging unbundling, some state bars have added exceptions and requirements for delivery. There may be additional rules and ethics opinions that play into the practice of unbundling. There is a list of several state bars' ethics opinions on unbundling legal services at the end of this ebook.

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B. The Public: Access to Justice

Adding limited scope services to a law practice has the potential to provide a new source of client revenue for a law firm, especially with the untapped market potential for this form of delivery. Unbundling also provides a significant benefit to the public. The ABA and most state bars acknowledge that unbundling legal services is one important key to chipping away at our nation's access to justice problem.[17] As our court systems continue to be overburdened with pro se individuals, expecting the legal profession to come up with a full-service representation solution for each individual is a pipe dream.

The unfortunate truth is that in this down economy many individuals who need legal assistance are either postponing what they can, are going into the courthouse alone without any guidance, or are going online to cut and paste together their own legal documents. All of these reactions to legal needs are unacceptable in our society.

[17] See the ABA Standing Committee on the Delivery of Legal Services' Pro Se/Unbundling Resource Page, http://www.abanet.org/legalservices/delivery/delunbundbook.html, last accessed December 28, 2010.

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There is little chance that those involved in maintaining the complicated and archaic processes in the judicial system are going to become motivated to simplify the process for the benefit of our citizens any time soon. Instead, limited scope representation provides the pro se individual with a more affordable option of receiving assistance with their legal need rather than making a go at it completely alone. Legal professionals have an opportunity to meet a critical public need by considering adding some form of unbundled services to their law practice.

For attorneys who devote a percentage of their practice to providing pro bono and “low” bono services, unbundling is a great opportunity to assist more individuals by streamlining and possibly using technology to aid in the unbundling process. The increase of specialization in law firms over the past ten

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years has also made it more difficult for many private law firms to fit full-service pro bono work into their practice. This is particularly true with solo and small firm attorneys who may want to provide these services but cannot figure out how to do so in a cost-effective manner while trying to keep their own practices afloat in a crowded legal marketplace. Setting up a procedure and organizing a system that employs technology for unbundling specific legal matters may give the private practitioner greater flexibility to provide pro bono and low bono work.

Regarding the non-profit sector, legal services organizations need to recognize unbundling as an alternative to full-service representation where appropriate. Legal aid entities might adopt better procedures for referring potential limited scope clients to private practitioners who are able to provide these services either pro bono or for discounted legal fees. Some non-profit organizations have already created wonderful tools using technology that allow individuals seeking unbundled legal services to guide and navigate themselves through the legal system.[18] These two areas of the legal profession could find ways to use technology to merge interests for the benefit of the public.

[18] See Access to Justice Author (A2J) Guided Interviews, http://www.kentlaw.edu/cajt/A2JAuthor.html accessed December 28, 2010.

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Both private practitioners and non-profit legal aid entities should work together to add limited scope services to their training, routines and procedures in order for this form of legal services delivery to make a dent in the nation's lack of access to justice.

C. The Critics

As with any idea that crosses outside of mainstream law practice management, there are critics of unbundled legal services. One criticism questions the intelligence and capabilities of the client to follow instructions and to complete their legal matters on their own even with the guidance of the attorney to go on. Another criticism is that the clients who request DIY legal services are not really folks who can't afford an attorney; they just want to find a cheap way out of paying a law firm and see this as a way to avoid paying an attorney's fees. These critics worry that the limited scope client will not follow the attorney's advice and attempt to pick and choose the services they think they need without the benefit of an attorney's experience and legal education.

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But the primary criticism of unbundled legal services seems to be that the practice of unbundling leads to the "commoditization of the law" and more emphasis on the profession as a "business." If you hold this belief, I regret to inform you that this ship has long since left the port. Like any other service in almost every other profession, the work that attorneys do can be broken down into a packageable product that is delivered to a paying consumer. Basic laws of supply and demand dictate that as the public was provided with alternative and more affordable legal services in the form of legal document kits from office supply stores and online DIY divorce kits, this trend would turn into a market need for a considerable percentage of the public.

There will always be the need for the traditional law firm structure and perhaps even the billable hour pricing model with certain clients and cases. However, the public's demand for changes in the delivery of legal services has created other forms of alternative services, many that provide legal assistance without an attorney's involvement at all. Unbundling is not the source of this change. Unbundling should be viewed as a way for attorneys to take control over these trends and to meet a consumer need by adapting to this change in the market and the public's demand.

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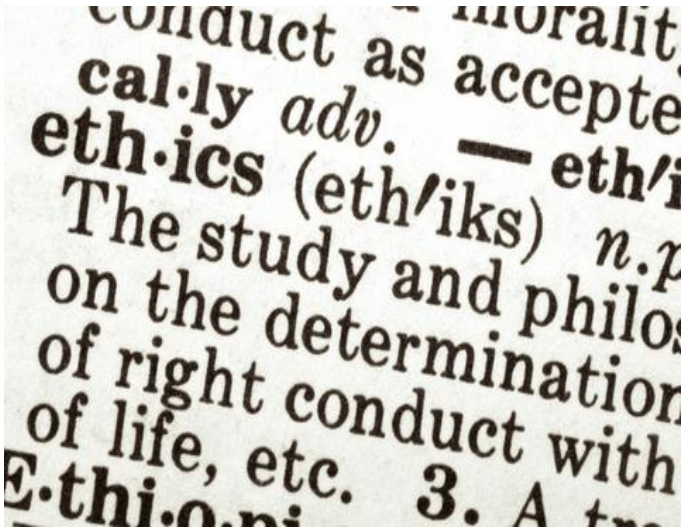
Ethics Concerns with Unbundling



A. Competent Representation: Defining What is "Reasonable"

For the practitioner wanting to unbundle legal services, he or she must make the determination on a case by case basis whether the prospective client's legal needs may be handled unbundled or whether the matter requires full-service representation. The requirement that clients be provided with "competent" representation is covered in Model Rule 1.1.[19] The attorney must decide if the limited scope representation is

[19] ABA Model Rules of Professional Conduct Rule 1.1 (2007).

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"reasonable" as required by Model Rule 1.2(c). The meaning of "reasonable" can be derived from a number of court cases where the court found limited scope representation to be acceptable when the client's rights and interests were not harmed from the practice and when the attorney was not committing any ethics violations from his or her limited representation of the client's matter.[20]

Unbundling is not appropriate for every legal need or for every client. Some factors to consider in determining whether the case may be unbundled or not include:

- The complexity of the matter: How much litigation is involved or is it a more clear-cut case? Has the client worked with another attorney before on the matter before seeking out limited scope assistance?
- The client's personality: Will this client be able to handle the remainder of the case following the firm's instructions and guidance? Does the client have the necessary education-level to complete the task?
- Would it be in the client's best interests in this particular circumstance if the representation were consistent from start to finish? For example, in a complex child

[20] See, for example, *Greenwich v. Markhoff*, 650 N.Y.S.2d 704 (App. Div. 1996); *Parents Against Drunk Drivers v. Graystone Pines Homeowners' Ass'n*, 789 P.2d 52 (Utah Ct. App. 1990); and *Hartford Accident & Indemnity Co. v. Foster*, 528 So. 2d 255 (Miss. 1988).

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custody matter or a criminal defense case, the client's best interests would most likely be served through continuous and consistent representation rather than unbundling. [21]

- Does the client take instruction well?
- Is the client going to be comfortable communicating with the firm using the methods that the firm has set up for limited scope cases, such as a virtual law office or web conferencing rather than in-person office visits?
- Will the client consent to the limited representation?

When determining the ability of the firm to handle the unbundled legal matter, the attorney must ask thorough questions of the client during the initial client intake process in order to identify any potential collateral issues that the client may not have brought up or even be aware of as potential issues. This also includes identifying all of the parties that might be involved in the matter. Identifying any collateral issues during this process and making sure that these are included in the limited scope agreement may limit the risk of malpractice claims from a client that may not understand the firm's lack of representation regarding unexpected

[21] See, for example, *In re Egwim*, 291 B.R. 559 (Bkrtcy.N.D.Ga. 2003) and *In re Castorena*, 270 B.R. 504 (Bankr. D. Idaho Nov. 28, 2001). In some states, the courts are still be considering whether or not unbundling or limited appearance may be allowed for certain matters, such as criminal defense cases.

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collateral issues that may arise further down the road in the process of completing their legal needs. If found, these potential collateral issues should be included in the list of the client's responsibilities if the firm does not intend to provide representation on these matters in the event they arise.

Unfortunately, some prospective unbundling clients may believe that because they are requesting limited scope representation, the law firm will do less to uncover malicious intent or fraud as it might in a full-service case. This is simply not true, but the firm should protect itself from such risks. It should go without saying that a firm should not file or assert frivolous pleadings on behalf of an unbundled client. If the firm detects during the client intake process that the client's claims are frivolous or their desire to start litigation is merely malicious rather than based on valid claims, the law firm should decline to represent the client and put this rejection in writing with a copy

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for the individual as well as for the firm's records.[22] Likewise, if the firm becomes aware that the matter it is being requested to handle is related to an illegal or fraudulent matter, the firm should decline the limited scope representation. This rejection of the unbundled matter should also be recorded in writing.[23]

Finally, the firm should not attempt to provide unbundled legal services in an area of the law in which the firm is not experienced. Although the representation may be limited to drafting a single legal document, assisting with part of the discovery process or making a limited hearing appearance, it is necessary for the attorney handling the limited scope case to understand the entire case in full. That attorney should be able to provide the client with the instruction and guidance needed to complete their legal needs following the firm's limited representation. The attorney must be able to explain to the client any of the potential issues that may come up as the case proceeds, identify collateral issues, and make sure that the client understands that the firm is not going to be handling specifically those other portions of the case.

[22] See ABA Model Rule 1.16 "Declining or Terminating Representation"
[23] Id.

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Therefore, the attorney should also have experience in the practice areas in which he or she is unbundling legal services. The limited representation must always be competent and diligent. Limited representation does not mean that the attorney's advocacy for the client's legal matter should be less than it would for a full-service client.

B. Defining the Scope of Representation

One of the most important components for unbundling is clearly defining the scope of representation for the client.[24] The client needs to understand the nature of the limited scope representation from the beginning of the attorney/client relationship.[25] Without this clarity, the client may misunderstand the scope of services that the attorney is providing and carry false expectations. Drafting a well-crafted limited scope engagement agreement can help avoid this ethics risk.

[24] Some states require a formal writing or standardized form that lays out the limited scope representation for the client. See Florida Rule 4-1.2(c); Missouri Rule 4-1.2(c); Iowa Rule 32:1.2(c); Wyoming Rule 1.2(c); and Maine Rule 3.4(i).

[25] See generally Model Rule 1.02 "Scope of Representation"; See for example the following cases where the client was required to consent to the clearly defined limitations of the representation provided by the attorney: *Indianapolis Podiatry PC v. Efroymson*, 720 N.E.2d 376 (Ind. Ct. App.1999); *In re Bancroft*, 204 B.R. 548 (Bankr. C.D. Ill. 1997); *Johnson v. Freemont County Board of Comm'rs,* 85 F.3d 489 (10th Cir. 1996).

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> Limited scope representation is not a second rate service, and is not limited liability. It is limited only in scope, and the standard of care for an attorney performing limited scope services is precisely the same as if those services were being provided in full service context."[1]
>
> - M. Sue Talia, *Roadmap for Implementing a Successful Unbundling Program*

Limited scope agreements should clearly define the nature of the services being provided by the firm to the client. If the firm is using technology to deliver unbundled services online, the agreement needs to explain the use of the technology and how the client can expect to receive services in digital format and communicate with the firm online.

It may be possible for the attorney to draft standard limited scope agreements for each type of unbundling service that the firm provides. However, in most cases, it may be necessary for the attorney to tweak the agreement on a case by cases basis to ensure that the scope is appropriately limited to the client's unique legal needs. In addition, to avoid misleading the client, the agreement should be written in plain language rather than legalese.

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Another concern is that the prospective unbundled client may not understand the difference between full-service representation and unbundled services. Most clients are focused on the end result of the legal services, the completion of their legal needs, and do not have a good understanding of the work involved in getting there. In order to ensure that the client fully grasps the limited scope of the representation, the attorney may want to consider providing the client with a handout that lists the steps typically involved in the process of the case. This handout might compare the full service representation to the limited scope services that the client will be receiving from the attorney.

In the agreement or in an attachment to the agreement, make sure the client is aware of the risks that may be involved in their case by not choosing full-service representation and help them to do a risk/benefit analysis for this decision. List exactly what services will not be provided to the client as well as listing their responsibilities. Providing this education to the client as part of the limited scope engagement process helps to ensure there will be no misunderstandings or false expectations as the case proceeds.

In some cases, the attorney may want to limit his or her interaction with the client to methods of communication that keep the practice of unbundling efficient for the firm. For example, the attorney may desire to only meet with a client once in person and have the

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remainder of the communication handled online through either secure email or a client portal where the client has access to his or her case file online. It is important that the client understands this restriction on communication as part of the limited scope representation and he or she does not have the mistaken expectation of being able to schedule multiple in-person office meetings or phone calls with the attorney during the course of the limited representation.

After the client has signed the limited scope agreement, the firm must be careful to stick with the agreed upon scope of the services. Even if it may be tempting to start working on the next step in the client's case, the attorney should not extend the firm's work into the tasks which it agreed would be the client's responsibility. For example, if the firm agreed

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to provide a limited appearance at a hearing to speak to a specific issue that the client needed assistance with, the attorney present at that limited appearance must resist speaking outside of the scope of what the firm had agreed to cover. The attorney at that hearing must allow the client to represent him or herself in the portions that the client agreed to handle. Furthermore, if the firm will be handling limited court appearances for unbundled cases, make sure that the court in the firm's jurisdiction will allow the attorney to withdraw after that limited appearance. The court may not be aware of the limited scope agreement or may not choose to honor it.

Some traditional law firms that have added unbundling to their practices have found that a number of their unbundling clients end up becoming full-service clients after the firm has provided a limited portion of the work for their case. After clients see the work the firm has done, have received an education on the complexity of their case and understand the responsibilities they will have, some clients may decide to turn over the entire matter to the firm. If the scope of the original limited services agreement changes, the firm must discuss this with the client first and put the terms for the expanded representation, whether full service or additional unbundled work, into a new agreement so that the change in scope is clear and on record.

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II. Best Practices for Unbundling

A. Check for Conflicts

Attorneys who provide unbundled legal services may work with a larger quantity of clients for shorter periods of time than a traditional firm. Often, in order to make the practice of unbundling profitable for a law firm, it is necessary to generate a higher quantity of prospective clients through leads from attorney referral services, directories or other marketing strategies. Accordingly, the firm will need a thorough system in place for checking for potential conflicts of interest with prospective limited scope clients and full-service clients.

It is also necessary to keep good records of prospective clients that the firm refused to represent. Maintaining records of prospective clients that have been declined unbundled services is easiest in digital format. There are many available solutions that a firm can use to meet this need, from importing contacts and recording new clients in a virtual law office application to using a cloud-based customer relations manager (CRM) program. The key is for the firm to find a reliable and consistent method of making the conflicts check the first step with each prospective unbundling case.

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B. Educate your client with checklists and instructions

Because the limited scope client will be handling a majority of their legal needs for themselves after you have provided a portion of the work, most of these individuals need guidance to complete the matter. It should be the responsibility of the attorney to explain to the client how the typical legal process works and what the client will need to follow through to the end. For example, with a no-contest divorce, the client should be given a chronology that explains what documents are filed and where, how long the waiting period typically will be, when there are hearings, what the client will have to provide at hearings, and so on through to the end of a typical no-contest divorce. The client then has a better

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understanding of how the limited scope representation will assist them in accomplishing their goals, and it prepares them to handle the footwork themselves.

When the attorney completes the agreed upon unbundled task, he or she should provide the client with detailed instructions for completing the remainder of the matter. This document should contain the caveat that the instructions are for a typical case and that the attorney can make no guarantees of any outcomes or changes in this procedure that may occur as a result of the client, court or opposing parties' actions or omissions. Using a checklist format for the instructions may be the easiest way for the client to follow through after the attorney has handed over the limited scope work. Placing these instructions online for the client in a secure digital case file ensures that the client can access that information 24/7 and refer back to it throughout their case.

C. Keep Digital Records of your Interactions with the Client

A law firm that is unbundling should keep good records of its interaction with limited scope clients from the beginning of their contact with the firm. Unbundling clients in particular may be more likely to contact the attorney after the services are complete to ask follow-up questions or to request additional services beyond the scope of the initial engagement

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agreement. To avoid malpractice claims, the attorney should record each of these conversations for the client's file and be careful to record when the client was provided with documents and instructions. Copies of all checklists, instructions and detailed information given to the client should be kept in this file with the date each was provided.

Using technology, such as providing the client with a client portal and online case file access, may facilitate this process because it allows the client to contact the attorney with additional questions while also recording that conversation for future reference. When the DIY client doesn't take instruction well, this record may serve to protect the law firm from claims that it did not provide adequate or prompt communication or the promised level of representation.

D. Consider Offering Fixed Fee or Value Billing

Unbundling is an ideal opportunity to provide alternative fee arrangements to clients, in particular, fixed fee or value billing. Payment plans that spread out the cost of the unbundled services may also be popular with clients and serve as another marketing point for the unbundling practice. Fixed fee billing may also help the client budget for their legal services and to understand the limited scope of the arrangement. There are several good resources

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out there that explain how to create and adjust fixed fee, value billing and other alternative fee arrangements to work for your practice. Here are a few:

Calloway, James A. and Sharon D. Nelson. *The Digital Edge Podcast*, "Alternative Fee Arrangements: Is it Finally Time?" (May 2010) http://www.abanet.org/lpm/lpt/articles/dgt05101.shtml

Glover, Sam. "The Hourly Billing Myth: Time is Not Value" Lawyerist Blog, December 10, 2010. http://lawyerist.com/hourly-billing-myth-time-value/

Poll, Ed. "How to Make Alternative Billing Part of Your Marketing Strategy," *Law Practice Today* (October, 2009)

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Robertson, Mark and James A. Calloway, *Winning Alternatives to the Billable Hour*, ABA Publishing (June 23, 2008)

Shields, Allison C. Three part series on "Value Billing – What is it, and how is it done?" *Legal Practice Pro* blog, (undated) http://www.legalpracticepro.com/value-billing-what-is-it-and-how-is-it-done/

E. Explaining Unbundled Services to Full-Service Clients

When a traditional law firm adds unbundling to its list of services, there may be some question by its full-service clients regarding the level of service and pricing that is provided to limited scope clients. This may occur if the firm operates a virtual law office where "packaged" or fixed fee services are offered for unbundled matters online. The website for the firm may include sample fixed fee prices and an explanation of the unbundled services. The firm should have a planned response to full-service clients who may question the lower fees or value billing arrangements offered to unbundled clients. This might include the same handout that the firm provides to unbundled clients providing a comparison of the firm's work process for full versus limited representation on specific cases.

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The firm may also choose to provide its full-service clients with unbundled legal services pertaining to matters outside of their primary legal need. For example, a firm that handles real estate transactions may also agree to draft the estate planning documents for a client who needs updated documents after purchasing a new home and moving to a new state. A separate limited scope engagement agreement should be executed with the existing full-service client in order to ensure that the client understands the scope of this unbundled work as separate from his or her full-service matter. This will protect the firm in the event that the client assumes that the billing methods and other terms of the representation used for the unbundled matter will carry over to the full-service case.

F. Ghostwriting - Assisting the Pro Se Litigant

Ghostwriting is the term used to describe when an attorney drafts a legal document, such as a complaint or response, for a client to use in the course of his or her case and the attorney does not sign his or her name to the legal document or make the court aware that the document was drafted by a licensed attorney rather than the pro se litigant. Many state bars have specific rules regarding the practice of ghostwriting, and attorneys need to be aware of how the local court where the client will be filing the document will handle ghostwritten documents.

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The safest practice for ghostwriting is for the attorney to include somewhere on the legal pleading being filed with the court that the document was written by the law firm. While many state bars do not require this step, this preserves fairness at court by providing notice to the judge and opposing counsel that the pro se litigant has received assistance with their case and may not require the same level of leniency or handholding as a pro se litigant who is proceeding without instruction or assistance.[26] In most cases, the court will be able to detect from reading the document that it was prepared by a licensed professional. However, the addition of the law firm's name to the document provides the court with this knowledge before the matter proceeds.

The attorney should discuss the need for disclosure of authorship with the client ahead of time. This is important so that the attorney does not run into problems later of having to protect client confidentiality while also complying with a court's potential request for notification of authorship.

[26] See generally, Robbins, Ira P., *Ghostwriting: Filling in the Gaps of Pro Se Prisoners' Access to the Courts*, Georgetown Journal of Legal Ethics, Spring 2010; Rothermich, *Ethical and Procedural Implications of "Ghostwriting" for Pro Se Litigants: Toward Increased Access to Civil Justice*, 67 Fordham L. Rev. 2687 (1999).

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Some critics of ghostwriting suggest that not requiring attorneys to provide notice of authorship on pleadings results in the creation of low-quality drafted legal documents that the attorney's themselves would not want to hand in at court with their own signature attached. If an attorney is not able to complete the ghostwritten pleadings in a manner that he or she would do for a full-service representation, it is the attorney's responsibility to decline the limited scope arrangement and refer the client to a full-service firm or other attorney who may provide high-quality limited scope representation.

G. Malpractice Insurance: Making Sure Unbundled Services are Covered

Limited representation does not mean limited malpractice liability risk. Attorneys who unbundle legal services need to be extra careful to record each step of the delivery process. Most standard malpractice insurance policies cover unbundling.

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However, the carrier may wish to review the firm's limited scope agreement and ensure that there is a solid process in place for the firm to ensure that there is informed client consent and acceptance of the limited scope of representation. If the firm will be using technology to provide unbundled legal services, such as the use of software as a service (SaaS) applications or other third-party hosting of law office data, the firm may want to check with its insurance carrier regarding any exclusion in its policy that may relate to this aspect of the delivery process.

H. Good Customer Service

DIY clients research their options ahead of time. Most expect a level of service and respect from the business that they choose to patronize. If these individuals select your law firm over a generic online legal services company, they will take note when the firm goes above and beyond in providing educational content, checklists and guidance for them to handle the remainder of their legal matter. Maintaining good communication with these clients at all stages in the relationship is important to guarantee their satisfaction with the unbundled services. Implement tools, such as a client portal, to keep the client in the loop about the status of their matter and to record your communications for their later reference.

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Setting up technology to automate reminders and streamline the unbundling process for specific matters makes customer service much easier for the law firm. Virtual assistants and paralegals may be added to the practice to handle some of the relationship building aspects of the practice, such as making sure that the clients have all of the necessary instructions and handouts that relate to their legal matter or for following up to give clients gentle reminders of deadlines they are responsible for meeting. In some cases, the firm may provide its virtual assistants or paralegals with online access to the clients' case files and the firm's online backend law office.

Finally, when the limited scope of the representation for the client has been completed, the firm should check back in with the client to make sure he or she was able to complete the legal matter. Good customer service practices helps build the firm's reputation for quality legal services, and may also prevent malpractice claims against the firm's members.

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III. Using Technology to Unbundle Legal Services

New developments in technology have made it even more efficient for a law firm to offer unbundled legal services. Attorneys are creating entire web-based practices that focus completely on delivering unbundled services online. These law firms provide the services of a licensed professional to the many members of the public seeking online legal services. These firms are not in direct competition with online legal service companies providing auto-generated legal forms, but instead offer an alternative to the traditional law firm model.

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There are different levels of technology that a law firm can employ depending on how far it wants to automate the unbundling process for greater efficiency in delivery. Each of these different methods of applying technology to unbundling will be discussed separately below. The use of technology to unbundle may be implemented in any firm from a solo practice to a larger, multijurisdictional law firm.

Many of these technologies operate using software as a service (SaaS), one form of cloud computing.[27] With SaaS, the tools and law office data are hosted by a third-party service. The technology provider most likely has a relationship with a hosting company that owns the data center that houses the servers storing the firm's law office data. The benefit of this form of technology is that the cost of developing and maintaining a single software application for unbundling may be spread out over a larger number of users, making it accessible for any practitioner to afford and add to his or her law practice.

[27] As with any form of law office technology, an attorney needs to carefully do his or her due diligence in researching the chosen technology solution and understanding the terms of the service level agreement (SLA). See generally, Kennaday, Courtney. "Sample Questions to Ask Online Storage Vendors", South Carolina Bar (2006) http://www.scbar.org/public/files/docs/VendorQ.pdf accessed January 8, 2010, and the proposed North Carolina State Bar Ethics Opinion 7 (2010) (providing sample questions for attorneys to ask of third-party software vendors before subscribing to services).

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Because of this flexibility, cloud computing will most likely continue to facilitate the delivery of unbundled legal services online for years to come. New innovations in the delivery of unbundled legal services are on the horizon as more attorneys realize the potential of this technology. It may be used to create an unbundled client base and to deliver services in a more efficient and cost-effective manner that gives the attorney a competitive advantage over traditional firms that are not using these methods or meeting the consumer's need for unbundled legal services.[28] (1) (2)

A. **Document Assembly and Automation**

Document assembly and automation tools have been used by law firms for many years and are probably the first legal technology developed which greatly facilitated the unbundling of legal services. Some of the more well-known products used by law firms include Hotdocs, Rapidocs, DealBuilder and Exari. These programs often use "intuitive" forms to collect

[28] See generally, Hornsby, William. *Improving the Delivery of Affordable Legal Services Through the Internet: A Blueprint for the Shift to a Digital Paradigm* http://www.abanet.org/legalservices/delivery/deltech.html (updated June 10, 2009) accessed December 30, 2010; and Staudt, Ronald W. *All the Wild Possibilities: Technology that Attacks Barriers to Access to Justice*. Loyola of Los Angeles Law Review, Vol. 42: 1117 (Summer 2009), http://llr.lls.edu/docs/42-4staudt.pdf accessed December 30, 2010; and Susskind, Richard E. *The Future of Law: Facing the Challenges of Information Technology*, Oxford University Press (1996); and Susskind, Richard E. *The End of Lawyers?: Rethinking the Nature of Legal Services*, Oxford University Press (2008).

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information from clients. The client responds to the questions provided by the program, it prompts him or her with the next appropriate questions based on the previous response. The responses are then pulled into a template document for review and edit by the attorney.

Some virtual law office technology platforms have integrated document assembly and automation programs. Rather than making an appointment to meet with the firm's paralegal or junior associate for an hour or more to handle the client intake process, clients may complete this information online for the firm at their own convenience. The data from the form is then available for the firm to use with a document automation program which takes the data, adds it to the template of the requested legal document and creates a completed document for review by the firm. If the firm does not use a document assembly program, the data may be stored digitally by the firm for an attorney to use to draft a legal document or as a client intake information sheet for the firm to keep in the client's file. If the information that was recorded in the program changes or the firm needs to change the form or document template to reflect changes in the law or to update, these programs allow for the user to alter the finished product if necessary to reflect these changes.

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New models of this solution are turning to cloud computing to reach a larger market of attorneys looking for automation and assembly solutions.[29] These systems may be less robust and complex in nature than the more established document automation and assembly solutions, but are also either free or low cost and require little training to use. They may require that the attorney create templates of forms that are unique to the firm's practice rather than supplying state-specific forms that are ready to use. Future document assembly and automation features may have the ability to learn from use so that the questions and forms are revised automatically or make suggested changes to the formation based on data collected from a large body of users and the record of consistent and frequent

[29] See for example, WhichDraft at http://www.whichdraft.com/, the company provides a product that includes free legal forms, a document assembly application for drafting legal documents and online collaboration tools.

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edits made by the attorney using the program.

B. **Online Case and Client Management**

Providing a secure client portal with case access for your unbundled clients is an excellent way to keep a digital record of the legal documents and/or guidance and instruction that you have provided to the client. If clients have their own secure homepage online, the clients may log in at any time to access the information that they need to complete the legal matter on their own.

Online case and client management may be used to streamline the process of working with unbundled clients. The attorney may also use the system as a way to set up reminders for clients or to check back in with clients at a later date to ensure that they were able to complete the process. This form of digital communication may especially appeal to the DIY clients who would appreciate the convenience and easy accessibility of their own case file and documents.

Even after the scope of the legal matter is completed by the attorney, the termination of the limited representation may be noted in the client's online case file. The clients would still

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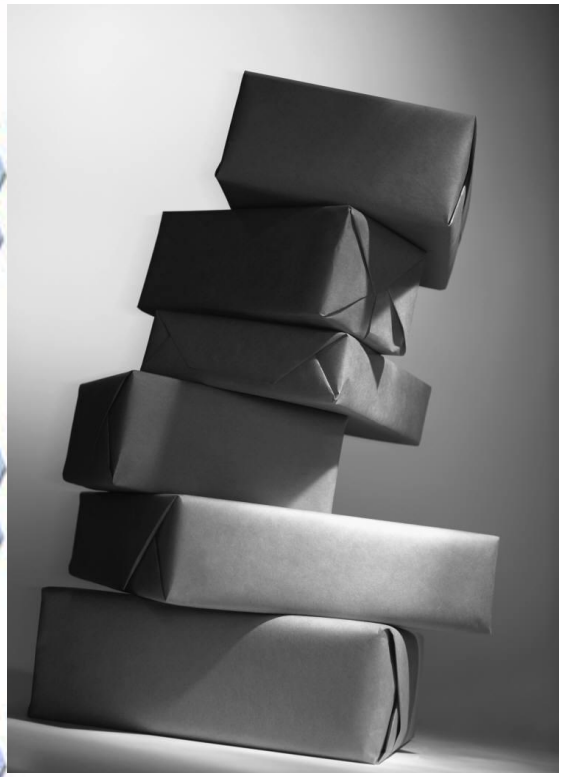

retain access to their homepage and the ability to download and review the assistance provided by the attorney during the representation. In terms of converting unbundled clients into full-service clients, providing clients with online access to their legal matter shows clients that the firm is willing to use technology to provide efficiency and help cut the cost of traditional in-person legal services.

C. Streamlining the Workflow – Creating Automated Packages

Virtual law offices are becoming more popular with law firms that are interested in creating a substantial unbundled client base. Depending on the selected technology, these systems may be used to set up client libraries of legal forms, instructions and other documents that the attorney may store online for use

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with multiple clients. Document assembly and automation technology may be integrated into a virtual law office to use within these libraries. Online limited scope agreements may be created and the client's consent collected online and recorded within the client's file.

The attorney may set up unbundled "packages" of services that a prospective client may select from on the firm's website when shopping for online legal assistance. The prospective client would then click on the desired legal service and the link would send the client through an automated process on the attorney's virtual law office from registration through a conflict of interest and jurisdiction check, and provide the specific client intake forms and automated responses required of that specific unbundled package.

There are currently two primary virtual law office platforms on the market: DirectLaw and Total Attorneys' VLO product.[30] While each of these products take a different focus in providing a firm with services to unbundle legal services, both companies focus on facilitating the secure, online delivery of legal services.

[30] DirectLaw, http://www.directlaw.com; Total Attorney's VLO, http://www.totalattorneys.com (Disclaimer: the author of this ebook is the co-founder of VLOTech, the company and SaaS product acquired by Total Attorneys in the Fall of 2009.)

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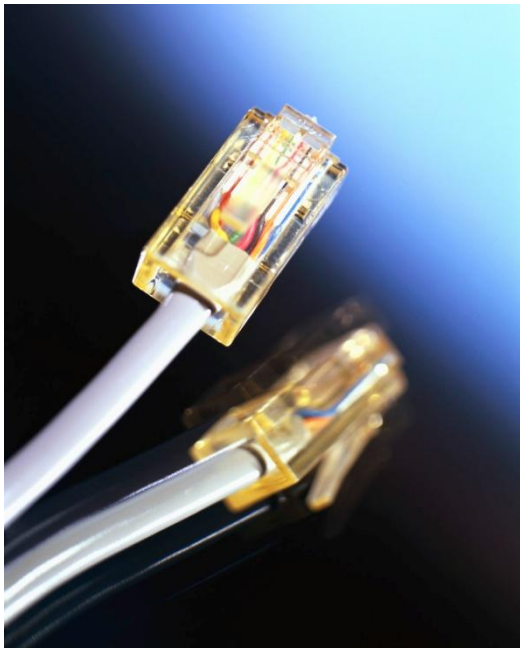

D. **Delivering Unbundled Services Online**

Security is paramount to delivering legal services online. Regardless of what technology the attorney chooses, he or she needs to be aware of security risks involved in using cloud-based systems to deliver legal services online.[31] Many of the legal service companies and other free to low-cost legal forms found online may not involve the communication of a licensed attorney with the client. These services are unfortunately not held to the same standards as an attorney who must protect the confidentiality of the client's data.

[31] See "Suggested Minimum Requirements for Law Firms Delivering Legal Services Online," ABA LPM eLawyering Task Force (October 15, 2009), http://meetings.abanet.org/webupload/commupload/EP024500/relatedresources/Minimum_Requirements_for_Lawyers_2009_10_24.pdf, accessed January 8, 2010.

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Other technology services are emerging that assist attorneys in delivering legal service online rather than giving them the tools to create their own unique virtual law offices. For example, Rocket Lawyer provides a product that is marketed to consumers who can subscribe for different levels of access to the service's libraries of legal forms to create their own legal documents online.[32] The consumer may then request to be matched with an attorney within their jurisdiction for review of the document and additional assistance at a "discounted rate."[33] The attorney who pays to join this lead generation service may then be matched with the consumer who continues the relationship where unbundled assistance is provided or it may change to full-service depending on the client's needs. The information and pre-filled forms that the client completed online are transferred to the attorney when the client begins working with them. This legal services model does not provide the same case or client management features or the functionality of a backend virtual law office for the attorney, but it does generate leads to online clients who are interested in unbundled legal services. Other online legal services companies may be considering similar lead generation marketing models that will also encourage the practice of using technology and the Internet to deliver legal services online.

[32] Rocket Lawyer, http://www.rocketlawyer.com accessed January 8, 2010.
[33] Id.

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Regardless of the chosen method of delivery, attorneys using technology to deliver legal services online must comply with Model Rule 1.6(a) which requires that the attorney use reasonable care to ensure that the client's information is protected.[34] There is some dispute within the legal profession as to what level of security a law firm should be required to use when it comes to the use of technology to communicate with clients. Some attorneys argue that email should be the standard because most state bar ethics opinions specifically permit unencrypted email as a safe way to communicate with clients.

However, today most practitioners are well aware that there are more secure methods of digital communication that include encryption. Recent data privacy laws were

[34] See comments for ABA Model Rule 1.6 "Confidentiality Of Information" http://www.abanet.org/cpr/mrpc/rule_1_6_comm.html accessed December 30, 2010.

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passed in Nevada and Massachusetts requiring encryption in the collection of personal data.[35] Considering the confidential nature of the attorney/client relationship, one might predict that in the near future this higher standard of security will also be a requirement of legal professionals.

Some state bars have published ethics opinions regarding third-party hosting of law office data, the use of virtual law offices, and cloud computing in practice management.[36] A law firm considering delivering unbundled legal services online should refer to these opinions for guidance. It is the attorney's individual responsibility to conduct due diligence to determine the security of the technology and then to implement best practices for the use of that technology to deliver legal services online.

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[35] See the General Law of Massachusetts, Chapter 93A, Regulation of Business Practices for Consumers Protection, http://www.mass.gov/legis/laws/mgl/gl-93a-toc.htm accessed December 30, 2010; and Nevada Revised Statute Chapter 603A – Security of Personal Information, (2009) http://search.leg.state.nv.us/isysquery/irl5021/1/doc accessed December 30, 2010.

[36] See, for example, Florida State Bar Opinion 00-4, FL Eth. Op. 00-4, 2000 WL 1505453, (Fla.St.Bar Assn.), (July 15, 2000); North Carolina Bar 2005 Formal Ethics Opinion 10, "Virtual Law Practice and Unbundled Legal Services", 2005 NC Eth. Op 10, 2006 WL 980309, (N.C.St.Bar.) (January 20, 2006); New York State Bar Association Committee on Professional Ethics Opinion 709 (September 16, 1998), "Use of Internet to Advertise and to Conduct Law Practice Focusing on Trademarks; Use of Internet E-Mail; Use of Trade Names," NY Eth. Op. 709, 1998 WL 957924, (N.Y.St.Bar.Assn.Comm.Prof.Eth.) (September 16, 1998), Washington State Bar Informal Opinion 1916 (issued 2000); and Pennsylvania State Bar Formal Ethics Opinion 2010-200 (issued 2010).

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Checklist for the Unbundling Practitioner

- ☐ Research your state bar's rules and regulations regarding unbundled legal services. The following keywords may be useful in researching these rules: unbundled, unbundling, discrete task representation, limited scope, limited representation, or assisting the pro se litigant.
- ☐ What services do we provide that can be unbundled?
- ☐ Where do we want to draw the line when issues become too complex to unbundle? For example, the firm might provide unbundled divorces, but draw the line when complex child custody disputes are involved.
- ☐ What is our target client base for unbundled services? What types of clients would we attract with these services and will it be cost-effective for the firm to work with them? Would these services be something that our existing clients would find useful?
- ☐ Determine billing options and pricing for unbundled services.
    - Do we want to offer alternative fee arrangements for our unbundled services?
    - Set fixed prices or determine value billing for specific unbundled tasks.

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- Will the firm require a retainer with unbundled services? Will it be a smaller amount that the firm's requested retainer for traditional, full-service clients?
- Decide whether to publicize sample or actual prices for services on the firm's website.
- Decide how to respond to existing full-service clients about questions including the differences in pricing for your unbundled services.
- Consider providing clients with the ability to pay their legal fees by credit card. Locate a third-party credit card processing company for online and/or in-office credit card services. Make sure the services are consistent with any state bar trust accounting and IOLTA rules and regulations.

☐ What percentage of our unbundling work will be pro bono or "low" bono services? Do we want to pursue a relationship with our local legal aid to receive referrals for unbundling cases?

☐ What is the startup cost to integrate a technology to assist us in streamlining the unbundling process? Do we want to operate a virtual law office, focus on document assembly programs, online case and client management or a combination of methods to generate these services? Can these technologies be used in our firm for existing in-

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person client matters as well as new unbundled cases or do we want to keep these processes separate?

- ☐ How will we integrate unbundling legal services into our firm's existing marketing strategy? Do we want to market our unbundled services separately to new prospective clients or provide unbundled services for existing clients only?
- ☐ Does the firm want to appoint a firm member who will be responsible for following up with unbundled clients to ensure that they have followed instructions and completed their legal matter?
- ☐ Create the firm's process for unbundling for each service the firm intends to offer:
    - Draft the standard limited scope agreement that may be modified on a case by case basis.
    - Set up educational comparison charts for prospective unbundling clients that compares the tasks associated with full-service representation to the unbundled.
    - Create checklists and instructions for the unbundled client to complete their legal matter following the firm's completion of its services.
    - Set up the document assembly and automation tools for gathering client data and generating it into legal documents. If you are operating a virtual law office, draft

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the automated messages and legal advice that will walk the prospective online client through the process.

- Draft the termination or completion letter to provide to the client after the firm has completed its scope of the representation to ensure that there are no continuing expectations.
- Draft a standard letter declining to represent an individual requesting unbundled services if the firm determines that full-service representation is necessary or for any other reason declines to work with the individual.

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A Few Case Studies:

Axiom Legal

http://www.axiomlegal.com/unbundle.html

Axiom Law Firm is an example of a larger law firm using unbundling and alternative fee arrangements to provide unique services to clients with more complex legal matters. You can read their case study example on unbundling litigation here: http://www.axiomlegal.com/casestudies/cs_litigation_unbundling.html

Finkelstein & Partners LLP

http://web.lawampm.com/

This New York based law firm focuses its practice on personal injury law, but also provides unbundled legal services on the side of its main practice for individuals and businesses.

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Richard Granat, Granat Legal Services, PC

http://www.mdfamilylawyer.com

Richard is a member of the Maryland and District of Columbia Bar Associations and owner of Granat Legal Services, PC, a virtual law office at http://www.mdfamilylawyer.com. Mr. Granat is also President of DirectLaw which provides a virtual law office platform for attorneys to use in unbundling legal services online. Mr. Granat is a Co-Chair of the ABA LPM's ELawyering Task Force and serves on the Standing Committee on the Delivery of Legal Services of the ABA. Mr. Granat lives in Florida while providing unbundled family law services pertaining to Maryland law through his virtual law office. Granat is the author of *eLawyering for a Competitive Advantage – How to Earn Legal Fees While You Sleep*, http://meetings.abanet.org/webupload/commupload/EP024500/relatedresources/eLawyering_for_Competitive_Advantage.pdf and authors an elawyering blog at http://www.elawyeringredux.com/

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Harrington, Brewster & Clein, LLP

http://www.harringtonbrewsterclein.com/Practice-Areas-Overview/LimitedRepresentation.shtml

This Denver Colorado firm provides unbundled family law legal services out of its brick & mortar law office. The firm invites prospective clients to contact them about the possibility of unbundling legal assistance and cites sample limited scope services on its website including "talking with witnesses or experts, attending mediation, and drafting documents such as pleadings, child support worksheets, and financial affidavits. The lawyer can also negotiate issues with the other party or lawyer as well as advise the client when needed."

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Stephanie Kimbro, Kimbro Legal Services, LLC

http://www.kimbrolaw.com

Stephanie Kimbro, the author of this ebook and author of *Virtual Law Practice: Delivering Legal Services Online*, operates a web-based unbundling practice. She unbundles estate planning and small business services pertaining to North Carolina law for clients through her secure virtual law office. She is also the co-founder of Virtual Law Office Technology (VLOTech) which was acquired by Total Attorneys in the fall of 2009.

McGrath Law, PLLC

http://www.civillawyeronline.com/

Jason McGrath provides unbundled legal services online through a virtual law office platform that incorporates document assembly and automation features. His physical law office is based in North Carolina, but the firm delivers unbundled legal services in Florida and North Carolina. He provides the following services unbundled: general legal advice, court advice, mediation advice, deposition advice, document preparation, document analysis, document editing, legal research and legal analysis and opinions.

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Forrest “Woody” Mosten, “Father of Unbundling”, Mediator and Collaborative Attorney

http://www.mostenmediation.com/

Mr. Mosten wrote the book *Unbundling Legal Services: A Guide to Delivering Legal Services a la Carte* for ABA publishing in 2000 and is also the author of the *Collaborative Divorce Handbook: Effectively Helping Divorcing Families Without Going to Court* published by Jossey-Bass in 2009. He has been a mediator since 1979 and is an Advanced Practitioner Member of the Association for Conflict Resolution. He also received the Lifetime Achievement Award for Innovations in Legal Access from the ABA Section of Delivery of Legal Services. Mr. Mosten is a Certified Family Law Specialist and member of the California State Bar. His private practice focuses on divorce, pre-marital agreements, complex property issues, support, and parenting issues following divorce.

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Rice Law, PLLC

www.ricefamilylaw.com

Rice Law, PLLC is a full-service family law firm located in North Carolina that provides unbundled family law services online through its virtual law office. The firm identified a market of legal services for individuals stationed in the military overseas who need secure access to unbundled legal services.

M. Sue Talia, Private Family Law Judge

http://www.privatefamilylawjudge.com/about-mst.html

M. Sue Talia is a private family law judge who has presented a number of speeches and published papers on unbundled legal services. She is a certified Family Law Specialist and member of the State Bar of California. Ms. Talia is a member of the Limited Representation Committee of the California Commission on Access to Justice. Ms. Talia chaired and presented a CLE web program for the Practicing Law Institute (PLI) entitled “Expanding Your

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Practice Using Limited Scope Representation" recorded on April 1, 2009. You can view it for free here: http://www.pli.edu/Content.aspx?dsNav=Rpp:1,N:4294964525-167&=&ID=54234

Additional Resources

ABA and Other Guides on Unbundling

ABA's Unbundling Resource Center:
http://www.abanet.org/legalservices/delivery/delunbundrules.html

ABA Standing Committee on the Delivery of Legal Services white paper, "An Analysis of Rules That Enable Lawyers to Serve Pro Se Litigants,"
http://www.abanet.org/legalservices/delivery/downloads/prose_white_paper.pdf

ABA's Section of Litigation published its *Handbook on Limited Scope Assistance*, a Report of the Modest Means Task Force (2003) http://www.abanet.org/litigation/taskforces/modest/report.pdf

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Unbundled Legal Services, a Risk Management Handout from Lawyers Mutual of North Carolina (2010), http://www.lawyersmutualnc.com/documents/risk-management/Unbundling_Legal_Services.pdf

Levin, David P. "ADR and Unbundled Legal Services: Economic Crisis Creates New Opportunities", 2010 ABA Young Lawyers Division Fall Conference, Ethical Dilemmas in ADR (October 16, 2010).

Mosten, Forrest S. *Unbundling Legal Services: A Guide to Delivering Legal Services a la Carte*, ABA publishing 2000.

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Alaska Bar Association, Ethics Opinion No. 93-1, "Preparation of a Client's Legal Pleadings in a Civil Action without Filing an Entry of Appearance, AK Eth. Op. 93-1, 1993 WL 849636, (Alaska Bar.Assn.Eth.Comm.) (March 19, 1993), https://www.alaskabar.org/servlet/content/indexes_aeot__93_1.html

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Alabama State Bar Ethics Op 2010-01 “The Unbundling of Legal Services and “Ghostwriting” (Fall 2010) http://www.alabar.org/ogc/fopDisplay.cfm?oneId=424

Arizona State Bar, Opinion 05-06, “Limited Scope Representation; Candor to Tribunal; Fees” (July 2005), http://www.myazbar.org/Ethics/opinionview.cfm?id=525

California State Bar, “Statement in Support of Limited Scope Legal Assistance (Unbundling)”, (issued 2009), http://calbar.ca.gov/calbar/pdfs/public-comment/2009/Limited-Scope-Statement.pdf

Colorado State Bar, Opinion 101, “Unbundled Legal Services,” (January 17, 1998; addendum added December 16, 2006), http://www.cobar.org/index.cfm/ID/386/subID/1822/CETH/Ethics-Opinion-101:-Unbundled-Legal-Services,-01/17/98;-Addendum-Issued-2006/

District of Columbia Bar Opinion 330, “Unbundling Legal Services,” (July 2005), http://www.dcbar.org/for_lawyers/ethics/legal_ethics/opinions/opinion330.cfm

Massachusetts Bar Ethics Opinion No. 98-1 (May, 1998), http://www.massbar.org/for-attorneys/publications/ethics-opinions/1990-1999/1998/opinion-no-98-1

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Michigan State Bar Ethics Opinion RI-347 (April 23, 2010)
http://www.michbar.org/opinions/ethics/numbered_opinions/ri-347.htm

Supreme Court of Mississippi amends Rules 1.1, 1.2, and 1.16 and 6.5 to allow for the unbundling of legal services (January 28, 2011)
http://www.mssc.state.ms.us/Images/Opinions/167564.pdf

Missouri State Bar Ethics Opinion No. 2011-183 (February 2011)
http://www.osbar.org/_docs/ethics/2011-183.pdf

Montana State Bar Ethics Opinion No. 900409, "do it yourself" divorce kits
http://www.montanabar.org/displaycommon.cfm?an=1&subarticlenbr=103

Montana State Bar Ethics Opinion No. 080711, fixed fees for legal services,
http://www.montanabar.org/displaycommon.cfm?an=1&subarticlenbr=256

New Hampshire Bar Association Ethics Committee Practice Ethics article, “Unbundled Services—Assisting the Pro Se Litigant” (May 12, 1999), http://www.nhbar.org/pdfs/PEA5-99.pdf

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New Jersey Committee on the Unauthorized Practice of Law Opinion 40 (13 New Jersey Lawyer, N.J.L 1311, June 21, 2004), http://lawlibrary.rutgers.edu/ethics/cuap/cua40_1.html

New Jersey Advisory Committee on Professional Ethics Opinion 713, "Duties of Attorneys Providing Limited Legal Assistance or 'Unbundled' Legal Services to Pro Se Litigants" (191 N.J.L.J. 302, January 28, 2008) (17 New Jersey Lawyer, N.J.L. 166, January 28, 2008),http://lawlibrary.rutgers.edu/ethics/acpe/acp713_1.html

North Carolina 2008 Formal Ethics Opinion 3, "Assisting a Pro Se Litigant" (January 23, 2009), http://www.ncbar.com/ethics/ethics.asp?page=2&keywords=unbundled

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http://www.ncbar.com/ethics/ethics.asp?page=3&from=1/2006&to=6/2006

Utah State Bar Ethics Opinion No. 08-01 (April 8, 2008), UT Eth. Op. 08-01, 2008 WL 2110962, (Utah St.Bar.) (April 08, 2008)
http://www.utahbar.org/rules_ops_pols/ethics_opinions/op_08_01.html

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Virginia State Bar, LE Op. 1193, “Attorney/Client Relationship — Zealous Representation: Propriety of Placing Limitations on the Scope of Legal Services” (February 13, 1989)
http://www.vacle.org/opinions/1193.htm

Washington State Bar Informal Opinion 1763 “Unbundled legal services; limited representation; subsequent representation of former client” (issued 1997),
http://mcle.mywsba.org/IO/print.aspx?ID=827

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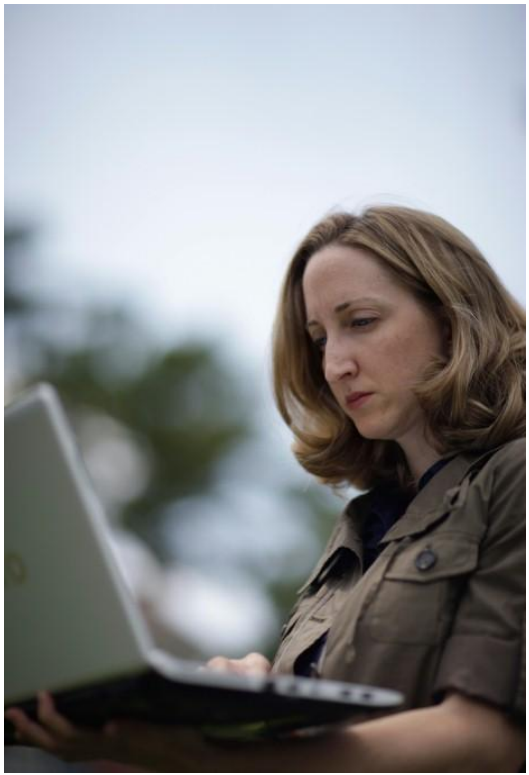

About the Author

Stephanie Kimbro, Esq., MA, JD, has operated a Web-based virtual law office in North Carolina since 2006 and delivers estate planning and small-business law to clients online. She is the recipient of the 2009 ABA Keane Award for Excellence in eLawyering and the author of Virtual Law Practice: How to Deliver Legal Services Online, published by the ABA/LPM in October, 2010. She is also the co-founder of Virtual Law Office Technology, LLC (VLOTech), which was acquired by Total Attorneys in the fall of 2009.

In addition to her virtual law practice, Kimbro is a consultant and technology evangelist providing assistance to other legal professionals interested in the online delivery of legal services. Kimbro writes about the ethics and technology issues of delivering legal services online and is interested in the use of

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technology by legal professionals to increase access to justice. She has presented continuing legal education (CLE) courses on virtual law practice for the American Bar Association (ABA) and various law schools and state bar groups, and she teaches a course on virtual law practice as a faculty member of Solo Practice University, a web-based legal education community.

Kimbro serves on the board of the Legal Services National Technology Assistance Project (NTAP) and is a member of the ABA eLawyering Task Force, the North Carolina Bar Association (NCBA) Law Practice Management (LPM) Council, the NCBA Tech Advisory Committee and the NCBA YLD Internet Committee.

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