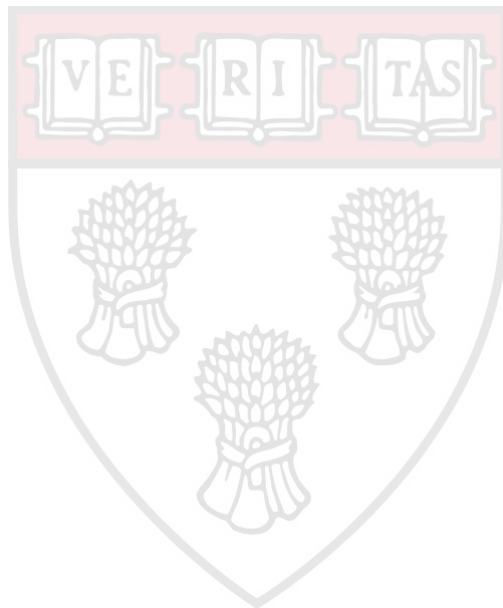


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Using Technology to Unbundle in the Legal Services Community

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I. Introduction

Unbundling legal services, also termed limited-scope services, a la carte legal services, discrete task representation, or disaggregated legal services, is a form of delivering legal services in which the lawyer breaks down the tasks associated with a legal matter and provides representation to the client only pertaining to a clearly defined portion of the client's legal needs. The client accepts the responsibility for doing the footwork for the remainder of the legal matter until reaching the desired resolution. Providing unbundled legal services may be considered as one solution to the access to justice problem in our country.

The number of unmet legal needs continues to increase in the United States as does the number of self-help individuals.¹ The factors leading to this large unmet need in legal assistance could stem from any number of economic and political circumstances. While the scope of this article cannot address the causes for this lack of access to justice, the article will focus on potential methods of unbundling with technology to provide greater access to legal services for the public regardless of income level or societal status.

In February of 2011, the American Bar Association's Standing Committee on the Delivery of Legal Services published the results of a public opinion poll that included statistics regarding the public's opinion on unbundled legal services.² The report noted that the primary method of locating a lawyer was handled by asking "a friend, family member or colleague" for a referral.³ Only seven percent of individuals who responded to the poll reported searching online to find a lawyer.⁴

Regarding unbundling, the report found that seventy percent of respondents were not familiar at all with the concept of unbundled legal services and only eighteen percent were "somewhat familiar."⁵ However, after having unbundled legal services explained to them, 34% of respondents were "very likely" and 32% of respondents were "somewhat likely" to speak with a lawyer about receiving unbundled representation.⁶ The Report cites the ABA 2010 Legal Technology Survey Report which stated that 54% of solo practitioners and 45% of those in firms of two to nine lawyers claimed to provide unbundled services.⁷

The Report indicates a lack of public education and awareness about the concept of unbundled services. These numbers may be interpreted to show that there is a lack of education among the public regarding the availability of unbundled services as well as a gap in the number

¹ See generally, ABA Standing Committee on Delivery of Legal Services, "Perspectives on Finding Personal Legal Services,"

http://www.americanbar.org/content/dam/aba/administrative/delivery_legal_services/20110228_aba_harris_survey_report.authcheckdam.pdf (February 2011).

² *Id.*

³ *Id.* at 8.

⁴ *Id.*

⁵ *Id.* at 19.

⁶ *Id.* at 19.

⁷ *Id.* at 17, citing the 2010 American Bar Association Legal Technology Survey Report: Web and Communication Technology, Vol. IV, 2010, at 21.

of lawyers providing these services and members of the public choosing unbundling as a form of legal assistance.⁸ Because the numbers also suggest that searching online is not the primary method of selecting legal representation, unbundled options delivered online through the use of technology would appear to be off the radar for many in the public seeking legal services.

While unbundling is not a new concept in legal service delivery, the author would like to suggest that based on the statistics from the Standing Committee's Report and the emergence of new forms of technology that facilitate the online delivery of unbundled services, that the legal profession is on the brink of a fundamental change in the way that both professionals and the public evaluate how legal assistance is provided.⁹ Unbundling as a complimentary or alternative form of service delivery handled through the use of cloud-based technology seems ripe for expansion in the profession. Accordingly, it is critical that legal services organizations move forward quickly to accept unbundling as a standard delivery method and find ways to integrate technology into their delivery process.

Unbundling is one solution to provide greater access to justice across the board. Rather than wasting precious time hunting for dwindling government and state funding for full-service representation for qualifying individuals, the legal services community should instead begin to integrate unbundling as a default method of legal service delivery. Limited scope representation may be provided where it is appropriate to meet the legal needs of the client, reserving valuable full-service resources for legal cases that truly require the continuous, full attention of a licensed lawyer. Collaboration with volunteer private practitioners, technology providers, law schools, law clinics and others with an interest in promoting access to justice will make this default standard of legal service delivery a viable shift nationwide.

This article provides an overview of the different forms of unbundling and examines the use of technology to unbundle legal services and deliver the unbundled services to clients. Case studies are provided that examine legal services organizations already using technology to unbundle as well as specific examples of the technology building blocks already in place for adoption by the legal services community. This article will also propose several pathways for the use of technology to unbundle that could be implemented within various legal services organizations in the United States.

II. Background on Unbundling

Revised in 2002, ABA Model Rule 1.2(c), titled "Scope of Representation," formally allows for the unbundling of legal services by stating "(c) [a] lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives

⁸ *Id.* at 21.

⁹ See also Marsha M. Mansfield and Louise G. Trubek, *New Roles to Solve Old Problems: Lawyering for Ordinary People in Today's Context*, 56 N.Y.L. Sch. L. Rev. 367, 371 (suggesting that limited scope representation should be considered by the profession as an alternative method to traditional lawyering to assist lower to moderate income families).

informed consent.”¹⁰ Rule 1.2(c) has been adopted verbatim or with some modification by 41 jurisdictions (including the District of Columbia); ten jurisdictions have not adopted it since its addition to the Model Rules.¹¹ 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.¹² Some states have modified Rule 1.2(c) to limit unbundling to only noncriminal law matters.¹³

Unbundling and self-representation are not new phenomena. 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).¹⁴ Unbundling is closely linked to the right to self-representation, which goes back to the Judiciary Act of 1789 when Congress first recognized the right.¹⁵ Self-representation is linked to access to the courts, which is grounded in the U.S. Constitutional rights found in the First Amendment,¹⁶ Privileges and Immunities clause,¹⁷ and Due Process clauses in the Fifth, Fourteenth, and Sixth Amendments.¹⁸

¹⁰ ABA Model Rule 1.2(c), http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_2_scope_of_representation_allocation_of_authority_between_client_lawyer.html (accessed July 28, 2012). 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 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.”

¹¹ For an in-depth discussion of the different states’ adoptions and modifications to Model Rule 1.2(c), see the Standing Committee’s White Paper, “An Analysis of Rules that Enable Lawyers to Serve Pro Se Litigants,” at http://www.americanbar.org/content/dam/aba/migrated/legalservices/delivery/downloads/prose_white_paper.authcheckdam.pdf (November 2009). 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 Model Rule 1.2(c) upon adoption: Florida, Iowa, Maine, Missouri, and Wyoming.

¹² 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.americanbar.org/groups/delivery_legal_services/resources/pro_se_unbundling_resource_center/court_rules.html (accessed July 28, 2012).

¹³ For example, Alaska and New Hampshire’s Rules specifically state that limited appearance are possible, but only in “non-criminal cases,” *Alaska Rule of Civil Procedure Rule 81(d)*, <http://www.courts.alaska.gov/civ2.htm#81>; and New Hampshire Rule of Civil Procedure *Rule 17(c)*.

¹⁴ See, e.g., some of the earlier court cases providing for limited legal representation: *Delta Equip. & Constr. 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).

¹⁵ See 28 U.S.C. § 1654 (1994), <http://www.law.cornell.edu/uscode/text/28/1654> (accessed July 28, 2012).

¹⁶ See, e.g., *Eastern R.R. Presidents Conf. v. Noerr Motor Freight, Inc.*, 365 U.S. 127, 138 (1961) and *Cal. Transport Co. v. Trucking Unltd.*, 404 U.S. 508, 513 (1972).

¹⁷ See U.S. CONSTITUTION Art 4, § 2; see generally *Corfield v. Coryell*, 6 F. Cas. 546, 551-552, No. 3, 230 (1823) and *Chambers v. Baltimore & Ohio Ry. Co.*, 207 U.S. 142 (1907).

¹⁸ See, e.g., *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950); *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 428 (U.S. 1982); *Boddie v. Connecticut*, 401 U.S. 371 (1971); and *Faretta v. California*, 422 U.S. 806 (1975).

In 2002, the ABA created a Task Force on the Model Definition of the Practice of Law.¹⁹ This task force's role was to reevaluate the definition of "practice" in light of the changing legal landscape and also to focus on the unauthorized practice of law by nonlicensed individuals, which included taking a look at legal service companies providing unbundled legal forms and documents to clients without lawyer review.²⁰ During the course of its review, the Task Force received a letter from the Federal Trade Commission urging the ABA not to adopt a revised definition of the practice of law that was too broad or that might constrain competition between lawyers and nonlawyer legal service providers which they felt would raise costs for consumers and limit their choices.²¹ As a result of the study, the task force did not recommend a single model definition but rather recommended that every state and jurisdiction adopt a definition of the practice of law.²² 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.²³ One may draw the conclusion that the popularity of nonlawyer legal service providers will continue to increase as a result of this lack of uniformity. This could create additional competition for the legal profession unless the profession is able to adapt to changes in consumer demand for legal services and increase its adoption of limited scope representation.

Perhaps in recognition of this, 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.²⁴ So far, 14 states have adopted the model rule and 29 have adopted a similar but modified version.²⁵ In 2003, the ABA's Section of Litigation published its

¹⁹ Lish Whitson, *Report of the ABA Task Force on the Model Definition of the Practice of Law*, http://www.americanbar.org/content/dam/aba/migrated/cpr/model-def/taskforce_rpt_803.authcheckdam.pdf (August 2003).

²⁰ *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, e.g.*, 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-actionfor-unauthorized-law-practice/id=8816/> (accessed July 28, 2012).

²¹ Letter from the Federal Trade Commission and the Department of Justice to the ABA Task Force on the Model Definition of the Practice of Law (December 20, 2002).

²² ABA Task Force on the Model Definition of the Practice of Law, *Recommendation of the Task Force on the Model Definition of the Practice of Law*, <http://www.americanbar.org/content/dam/aba/migrated/cpr/model-def/recomm.authcheckdam.pdf> (accessed July 28, 2012).

²³ Sara J. Lewis, *Charting the "Middle Way": Liberalizing Multijurisdictional Practice Rules for Lawyers Representing Sophisticated Clients*, 22 Geo J. Legal Ethics 631, 639-640.

²⁴ Alicia M. Farley, *An Important Piece of the Bundle: How Limited Appearances Can Provide an Ethically Sound Way to Increase Access to Justice for Pro Se Litigants*, 20 Geo. J. Legal Ethics 563, (Summer 2007), 568.

²⁵ Arthur F. Greenbaum, *Multijurisdictional Practice and the Influence of Model Rule of Professional Conduct 5.5—An Interim Assessment*, 43 Akron L. Rev. (2010), 729, 735.

Handbook on Limited Scope Assistance, a Report of the Modest Means Task Force.²⁶ 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.²⁷ In November of 2009, this committee published its white paper, "An Analysis of Rules that Enable Lawyers to Serve Pro Se Litigants."²⁸ This white paper studies the ways that different states have constructed their rules of professional conduct or other rules and laws to enable lawyers to provide limited-scope services to pro se individuals. The white paper is intended for use by policymakers but is also good background reading for lawyers interested in understanding the national status of unbundling practices.

In October of 2011, the American Bar Foundation released a report mapping the civil justice infrastructure, which includes a look at how services are unbundled across the states.²⁹ The report states, "[t]he 'unbundling' of legal services has opened up opportunities for innovations in both fully subsidized and market-based delivery models."³⁰ The authors of the report specifically studied limited-scope representation because "such services are an important element of how civil legal assistance is currently delivered and are often suggested as one way of making market-based civil legal services more affordable to the public."³¹

III. Forms of Unbundling

Unbundling is not limited to transactions-based legal services. Lawyers are able to provide limited representation in compliance with Model Rule 1.2(c) on legal matters ranging from limited appearances at the courthouse on behalf of a client to providing legal coaching and strategy. With any one of these forms of unbundling, the lawyer must make the determination on a case-by-case basis whether the matter is appropriate for unbundling or requires full service representation. Certain practice areas do not lend themselves well to unbundling. These might include criminal law, tax law, complex child-custody matters, or any practice where the client's

²⁶ ABA Section of Litigation published its *Report of the Modest Means Task Force Handbook on Limited Scope Assistance*, <http://apps.americanbar.org/litigation/taskforces/modest/report.pdf> (2003).

²⁷ ABA Standing Committee on the Delivery of Legal Services, http://www.americanbar.org/groups/delivery_legal_services.html (accessed July 28, 2012).

²⁸ http://www.americanbar.org/content/dam/aba/migrated/legal services/delivery/downloads/prose_white_paper.authcheckdam.pdf.

²⁹ Rebecca L. Sandfur and Aaron C. Smith, *Access Across America: First Report of the Civil Justice Infrastructure Mapping Project*, American Bar Foundation, http://www.americanbarfoundation.org/uploads/cms/documents/access_across_america_first_report_of_the_civil_justice_infrastructure_mapping_project.pdf (October 7, 2011).

³⁰ *Id.* at 2.

³¹ *Id.* at 27.

case requires continuous legal representation from start to finish ensuring the best outcome for the client.³²

A. Document Drafting and Legal Form Preparation

Document drafting and legal form preparation are common forms of unbundling legal services for clients. The use of technology to handle document drafting is becoming more prevalent.³³ These technologies are the primary methods used by companies selling legal forms to the consumer online.³⁴ In some cases, the lawyer may outsource the document drafting or form preparation to another service and then add his or her legal guidance to that final product when meeting with the client.³⁵

With most document drafting or form preparation for basic legal situations, the lawyer is reusing an existing template for consistency and replacing certain provisions to customize them to meet the client's needs. This form of work is going to be more common in unbundling because the lawyer usually is being retained for the limited purpose of the document drafting and is not involved in other procedures in the resolution of the legal matter. The ABA Law Practice Management Section's eLawyering Task Force is currently in the process of drafting a set of Best Practice Guidelines for Legal Document Service Providers which will provide assistance to practitioners and organizations providing such unbundled services online.³⁶

B. Ghostwriting

Ghostwriting is the term used to describe when a lawyer drafts a legal document, such as a complaint or response, for a client to use in the course of a case and the lawyer does not sign his or her name to the legal document or make the court aware that the document was drafted by a licensed lawyer rather than the pro se litigant.³⁷ In 2007, the ABA published Formal Opinion 07-446, which permits ghostwriting.³⁸ This opinion states that a lawyer may provide limited

³² See Forrest S. Mosten, *Unbundling Legal Services: A Guide to Delivering Legal Services a la carte* (ABA LPM Publishing, 2000) at 24-28, explaining the process for assessing whether a legal case may be unbundled or if it requires full service representation.

³³ See generally, Darryl R. Mountain, *Disrupting Conventional Law Firm Business Models Using Document Assembly*, 15 INT'L J.L. & INFO. TECH., (Summer 2007), 170.

³⁴ Examples of technologies used for document automation and assembly include WhichDraft, www.whichdraft.com; HotDocs, www.hotdocs.com; Rapidocs, www.rapidocs.com; and Exari, www.exari.com; among others (accessed July 28, 2012).

³⁵ Find a list of vendors providing offshore or outsourced legal services compiled by Joy London, co-editor of "Law Librarian News," a global electronic newsletter for law librarians and legal knowledge managers, and Ron Friedmann, president of Prism Legal Consulting, Inc., and author of *Strategic Legal Technology*, <http://www.prismlegal.com/index.php?option=content&task=view&id=88&Itemid=70> (February 2008).

³⁶ See the eLawyering Task Force website, <http://www.elawyering.com> (accessed July 28, 2012). The author of this article is a member of this Task Force and has provided feedback on the drafting process for these Best Practice Guidelines.

³⁷ Mosten, 98-100.

³⁸ ABA Standing Committee on Ethics and Professional Responsibility, Formal Opinion 07-446, Undisclosed Legal Assistance to Pro Se Litigants, http://www.abanet.org/legalservices/delivery/downloads/aba_07_446_2007.pdf

assistance to a pro se litigant by helping him or her prepare written materials without disclosing the lawyer's involvement in the preparation to the court.³⁹

State bars have addressed ghostwriting in different ways.⁴⁰ Many state bars have specific rules regarding the practice of ghostwriting, and a lawyer must be aware of how the local court where the client will be filing the document will handle ghostwritten documents.⁴¹ States that require disclosure of lawyer authorship are concerned that both the court and opposing counsel will be misled.⁴² They also may feel that failure to require disclosure of authorship removes accountability from the practicing lawyer and, therefore, encourages the filing of a frivolous lawsuit where the lawyer who drafted the complaint is able to shirk responsibility for lack of identification.⁴³ Some state bars and other critics of ghostwriting suggest that not requiring lawyer authorship on pleadings results in the creation of low-quality drafted legal documents that the lawyers themselves would not want to hand in at court with their own signatures attached.

Other state bars that require lawyer authorship argue that, in order to provide adequate justice, the courts and opposing counsel will provide a pro se litigant with a certain amount of leeway and patience that would not be provided to an experienced licensed lawyer in the courtroom.⁴⁴ According to an article in *The Judge's Journal*, "[a]ll federal and virtually all state courts have precedents that papers submitted by pro se litigants will face a different standard of judicial review than those submitted by lawyers."⁴⁵

(May 5, 2007). The ABA Model Rule does not require that the lawyer reveal that he or she has provided assistance to the pro se litigant.

³⁹ *Id.*

⁴⁰ For a review of state ethics opinions related to ghostwriting, see Jona Goldschmidt, *An Analysis of Ghostwriting Decisions: Still Searching for the Elusive Harm*, 95 *Judicature* 78 (September-October 2011), 81. For examples of states' ethics opinions related to ghostwriting, see Alaska Bar Association Ethics Op. 93-1, https://www.alaskabar.org/servlet/content/11_3.html (1993); Committee on Professional and Judicial Ethics, Association of the Bar of the City of New York, Formal Op. 1987-2, <http://www2.nycbar.org/Ethics/eth1987-2.htm>, (1987); Committee on Professional Ethics, New York State Bar Association Opinion 613 (1990); Delaware State Bar Association Committee on Professional Ethics Opinion 1994-2 (requiring the duty to disclose authorship), <http://www.dsba.org/pdfs/1994-2.pdf> (1994); Florida State Bar Association Committee on Professional Ethics Opinion 79-7 Duty to Disclose, <http://www.floridabar.org/tfb/tfbetopin.nsf/SearchView/ETHICS,+OPINION+79-7+Reconsideration?opendocument> (2000); Massachusetts Bar Association Committee on Professional Ethics Opinion 98-1 (requiring a duty to disclose), Supreme Judicial Court Order In Re: Limited Assistance Representation, http://www.mass.gov/courts/sjc/docs/Rules/Limited_Assistance_Representation_order1_04-09.pdf (1998).

⁴¹ For example, New York's version of Rule 1.2 (c) allowing for limited-scope representation includes the statement "... and where necessary notice is provided to the tribunal and/or opposing counsel." See New York Rules of Professional Conduct Rule 1.2(c), http://www.nycla.org/siteFiles/NYRulesofProfessionalConduct4109_362.pdf (accessed July 28, 2012).

⁴² See generally, John C. Rothermich, *Ethical and Procedural Implications of "Ghostwriting" for Pro Se Litigants: Toward Increased Access to Civil Justice*, 67 *Fordham L. Rev.* 2687, <http://ir.lawnet.fordham.edu/flr/vol67/iss5/37> (1999).

⁴³ See, e.g., the following state bar ethics opinions: Ct. Inf. Ethics Op. 98-5 (Jan. 30, 1998); Ky. Bar Association Ethics Op. E-343 (Jan. 1991); Colo. Bar Association Ethics Op. 101 (Jan. 17, 1998) and the Addendum to this opinion added Dec. 16, 2006; Del. State Bar Association Committee on Professional Ethics Op. 1994-2 (May 6, 1994); and N.Y. State Bar Association Committee on Professional Ethics Op. 613 (Sept. 24, 1990).

⁴⁴ For more information on how judges can work with pro se litigants, see Rebecca A. Albrecht, John M. Greacen, Bonnie Rose Hough, Richard Zorza, "Judicial Techniques in Cases Involving Self-Represented Litigants," *The Judges' Journal*, ABA, vol. 42:1, <http://www.zorza.net/JudicalTech.JJWi03.pdf> (Winter 2003).

⁴⁵ *Id.*

However, there is still scholarship indicating that ghostwriting as a form of unbundling may make a significant impact on pro se litigants.⁴⁶ Additionally, if ghostwriting is allowed by their state, there are best practices for lawyers to follow to avoid the potential ethical pitfalls. As a basic rule, if the lawyer is unable to complete the ghostwritten pleadings in a manner that he or she would do for a full-service representation, it is his or her responsibility to decline the limited-scope arrangement and refer the client to a full-service firm or other lawyer who may provide limited-scope representation with the competency level required by the client's legal need.⁴⁷

C. Limited Appearances

Appearing before the court presents a significant problem to self-represented litigants that is not as easily overcome as finding unbundled assistance to draft legal documents or obtaining legal guidance.⁴⁸ Pro se litigants may be intimidated by the court, the unfamiliar procedures, and the rules, and for any number of other reasons, including cultural or language barriers, they may not be able to adequately articulate their positions at hearings or trials.

Limited appearances are another area of unbundling considered by some to be a high-risk practice.⁴⁹ When a lawyer enters an appearance on behalf of a client for the purpose of full-service representation, he or she is listed as the responsible party on the client's case who receives notices of the status and moves the process forward. To withdraw from representation, the lawyer must file a motion to withdraw and go through a hearing to obtain permission from the court.⁵⁰ The concern with limited appearances is that they may cause confusion with the court as to who the responsible party is for the case and for which part the client is represented.⁵¹ One ethics issue that arises in limited appearances is the interpretation of Model Rules 4.2 and 4.3 regarding the proper communication between parties to a case.⁵² These rules cover pro se

⁴⁶ For example see Ira P. Robbins, *Ghostwriting: Filling in the Gaps of Pro Se Prisoners' Access to the Courts*, 23 Geo. J. Legal Ethics 271 (Spring 2010), suggesting that ghostwriting has significant benefits for pro se prisoners.

⁴⁷ See generally, Mosten, 98-100, for best practices to determine whether ghostwriting is appropriate based on the client's circumstances.

⁴⁸ See generally, Farley.

⁴⁹ *Id.* at 570.

⁵⁰ For a full list of updated rules including those related to withdrawing from a limited scope matter, see the ABA Standing Committee on the Delivery of Legal Services Pro Se/Unbundling Resource Center, http://www.americanbar.org/groups/delivery_legal_services/resources/pro_se_unbundling_resource_center/court_rules.html (accessed July 28, 2012).

⁵¹ See for example, Laura K. Abel, *The Role of Speech Regarding Constraints on Attorney Performance: An Institutional Design Analysis*, 19 GeoJlp 181, (Spring 2012), 225, (discussing the benefits lawyer may have from limited appearances as well as the court's reaction).

⁵² Model Rule 4.2, Communication with Person Represented by Counsel: "In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order," http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_4_2_communication_with_person_represented_by_counsel.html (accessed July 28, 2012). Model Rule 4.3, Dealing with Unrepresented Person: "In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding. The lawyer shall not give legal advice to an unrepresented

litigants or fully represented parties, but do not address how the other side should handle communications in the case when the party has representation for a portion of the process but is proceeding pro se otherwise. Some states, such as Colorado, Washington, Florida, and Maine, have provided guidance for their lawyers on how to communicate when there is a limited appearance in a case.⁵³ If more states provide this form of guidance or amendments to their rules, it might facilitate the ability of more practitioners to unbundle limited appearances.

Critics of limited appearances cite a comment to Model Rule 1.16, which states, “[a] lawyer should not accept representation in a matter unless it can be performed competently, promptly, without improper conflict of interest *and to completion*. Ordinarily, a representation in a matter is completed when the agreed-upon assistance has been concluded. See Rules 1.2(c) and 6.5.”⁵⁴ (Emphasis added.) However, Rule 1.16 leaves the interpretation of the process up to the local and state courts, stating “[a] lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation.”⁵⁵ Because of the confusion that it may cause for the court and opposing counsel, some states have added guidance to their versions of Model Rule 1.2(c) as it pertains to limited appearances.⁵⁶ Most of this guidance merely provides clarification to the lawyer about how to file the appearance, how to withdraw, and how the other parties and the courts must be notified of the limited appearance. Clear procedures for this process are lacking in most states’ rules and may depend more on the lawyer’s local court procedures. However, in most cases, even if the lawyer provides the court with a copy of the limited-scope engagement agreement with the client, the court may not allow withdrawal.⁵⁷ This risk alone deters most lawyers from offering limited appearances as a form of unbundled legal services. Some states have even found ways to integrate unbundled services into their legal services programs.⁵⁸

D. Legal Coaching and Strategy

Legal coaching and strategy is most often a method of unbundling that is coupled with another service, such as drafting legal documents, ghostwriting pleadings, negotiating, or making

person, other than the advice to secure counsel, if the lawyer knows or reasonably should know that the interests of such a person are or have a reasonable possibility of being in conflict with the interests of the client,”

http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_4_3_dealing_with_unrepresented_person.html (accessed July 28, 2012).

⁵³ ABA Standing Committee, *An Analysis of Rules that Enable Lawyers to Serve Pro Se Litigants*, 13. For a description of these states’ procedures for limited appearances, see Farley. See also the Appendix for links to these states’ rules related to limited appearances.

⁵⁴ Comment 1 to Rule 1.16,

http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_16_declining_or_terminating_representation/comment_on_rule_1_16_declining_or_terminating_representation.html

(accessed May 27, 2012); see also Farley, 574-579.

⁵⁵ Rule 1.16, http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_16_declining_or_terminating_representation.html, (accessed July 28, 2012).

⁵⁶ Farley, 579-583.

⁵⁷ *Id.* at 577.

⁵⁸ *Id.* at 579-583, citing state-based legal services programs with limited appearance components in Massachusetts, District of Columbia and California.

limited appearances.⁵⁹ However, some law firms will add coaching and strategy as a separate a la carte legal service.⁶⁰ For example, a law firm that chooses to provide coaching may set up a detailed plan with the client that would include the following items: an initial interview and gathering of information related to the legal matter is conducted by the lawyer and client, the lawyer researches and thinks through solutions, and, finally, the lawyer meets with the client for one or two scheduled meetings to lay out a plan of action. After this plan is created, the lawyer terminates the limited-scope representation by providing a termination letter and checklist to the client that lays out the strategy that was created.⁶¹ The client then must proceed on his or her own to handle the legal matter based on that coaching and strategy. In the past, a popular form of legal coaching included legal telephone hotlines where lawyers would advertise an 800 number for clients to call for coaching by phone.⁶² The client would pay a minimal fee per minute or by the hour with a credit card to discuss his or her legal matter and hopefully receive the legal guidance necessary to proceed on his or her own.

The updated form of unbundled coaching is handled online with web conferencing tools or real-time chat technologies.⁶³ The clients pay for these services online ahead of time and communicate via the Internet. Web-based forms of legal coaching and strategy also allow the law firm to create an online resource center and library where the client may have access to either free self-help information on the legal matter to add to the legal strategy and coaching the firm provides or the client library itself may be populated with state-specific legal forms or documents and guidance that the client will pay a monthly or annual fee to access.⁶⁴

E. Collaborative Law

Collaborative law is a form of unbundling where both parties and their lawyers elect to resolve the case without adversarial court involvement and with the goal of settling their conflict by working together outside of the courtroom to create a solution.⁶⁵ The process is initiated by an

⁵⁹ For a description of offline unbundled coaching and strategy, see Mosten, 22-24.

⁶⁰ See for example, Susan Wakefield's law practice, Connecticut Legal Coaching, LLC, <http://www.ctlegalcoaching.com>. Wakefield has been a divorce attorney and mediator for over 23 years. Her practice provides "legal coaching" to individuals who are self-represented or who are contemplating self-representation in their divorce action. She also provides unbundled services to divorcing individuals and unbundling divorce medication services as an alternative to her full-service delivery to reduce costs and maximize their control over the outcome of their legal matter.

⁶¹ For general unbundling best practices, see Mosten or Kimbro, providing checklists and sample limited scope engagement agreements.

⁶² See for example, an explanation of how legal hotlines may assist the elderly in resolving many of their legal needs over the phone, Wayne Moore, *Improving the Delivery of Legal Services for the Elderly: A Comprehensive Approach*, 41 Emory L. J. (1992), 805, 823. See also a memo from the Legal Services Corporation entitled, "Characteristics of a Telephone Intake, Advice and Referral System" by Randi Youells, http://www.legalhotlines.org/dir_listing/lsc/LSC%20Program%20Letter%2002-4,%20Characteristics%20of%20a%20Telephone%20Intake,%20Advice%20and%20Referral%20System.pdf (April 25, 2002), (providing a brief background on the use of telephone hotlines by LSC and discussing best practices and other characteristics for existing and future systems).

⁶³ Examples of these specific technologies are discussed herein at page 22.

⁶⁴ See for example, Rosen Divorce Law Firm, www.rosen.com which provides several of these online, unbundled methods both free and for different fee structures.

⁶⁵ See generally, Mosten, 112-113.

agreement that is signed by both parties as well as each party's lawyer. This is sometimes called a "four-way" or "participation" agreement.⁶⁶ The lawyers signing agree that if no solution is met, they will withdraw from the representation and not be involved in any further court proceedings that may ensue with regard to the matter. When a final decision successfully results from the process, it is filed as a final decree with the court. Collaborative law encourages clients to work through their disputes in a less adversarial environment and to find solutions that meet the needs of both parties. Collaborative law has become more popular in family law practices but also may be used as a form of alternative dispute resolution in other practice areas.⁶⁷

On August 9, 2007, the ABA Standing Committee on Ethics and Professional Responsibility published Formal Ethics Opinion 07-447, "Ethical Considerations in Collaborative Law Practice."⁶⁸ This opinion states that collaborative law is an acceptable form of limited-scope representation under Model Rule 1.2(c).⁶⁹ A handful of state bars have published ethics opinions that support collaborative law and several collaborative law organizations have emerged to educate lawyers and clients on the practice.⁷⁰

F. Unbundling Criminal Law

A solid rule in unbundling is that if the legal case requires ongoing and continuous representation, it needs full-service representation.⁷¹ Criminal law is one of those areas of legal practice in which unbundling is not recommended and may even be prohibited by state ethics

⁶⁶ Collaborative law should not be confused with "cooperative law," which is another method of dispute resolution that removes the four-way agreement from the process and poses potentially more ethics risks. *See generally* John Lande, *Possibilities for Collaborative Law: Ethics and Practice of Lawyer Disqualification and Process Control in a New Model of Lawyering*, Ohio State L.J., Vol. 64:1315 (2003)

<http://www.law.missouri.edu/lande/publications/lande%20collab%20law.pdf> (accessed May 27, 2012).

⁶⁷ *See generally* Forrest Mosten, *Collaborative Divorce Handbook: Effectively Helping Divorcing Families Without Going to Court* (Jossey-Bass, 2009), and Pauline H. Tesler, *Collaborative Law: Achieving Effective Resolution in Divorce Without Litigation* (ABA, 2001, 2008). Regarding the use of unbundling in ADR, *see generally* Tina Drake Zimmerman, *Representation in ADR and Access to Justice for Legal Services Clients*, 10 Geo. J. on Poverty L. and Pol'y 181 (Summer 2003).

⁶⁸ Opinion at http://www.collaborativelaw.us/articles/Ethics_Opinion_ABA.pdf (accessed July 28, 2012).

⁶⁹ *Id.*

⁷⁰ *See* Ky. Bar Association Op. E-425 (June 2005), *Participation in the "Collaborative Law" Process*, http://www.kybar.org/documents/ethics_opinions/kba_e-425.pdf, (accessed July 28, 2012); N.J. Advisory Committee on Professional Ethics, Collaborative Law, Op. 699 (Dec. 12, 2005) (not available online); N.C. State Bar Association 2002 Formal Ethics Op. 1 (Apr. 19, 2002), *Participation in Collaborative Resolution Process Requiring Lawyer to Agree to Limit Future Court Representation*, <http://www.ncbar.com/ethics/ethics.asp?page=2&from=4/2002&to=4/2002> (accessed July 28, 2012); and Pa. Bar Association Committee on Legal Ethics and Professional Responsibility Inf. Op. 2004- 24 (May 11, 2004), http://www.collaborativelaw.us/articles/Ethics_Opinion_Penn_CL_2004.pdf (accessed July 28, 2012). *See, e.g.*, International Academy of Collaborative Professionals, <http://www.collaborativepractice.com/> (accessed July 28, 2012).

⁷¹ *See generally* ABA Model Rule 1.1, "A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation,"

http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_1_competence.html.

rules. For example, Alaska's and New Hampshire's rules specifically state that limited appearances are possible but only in "non-criminal cases."⁷²

Unlike most forms of unbundling, criminal defense is one practice area where there are far more outspoken critics than supporters.⁷³ If criminal law matters are unbundled at all then it most likely should be at the very beginning of a legal matter, for example, before a plea is entered, and should be in the form of guidance or strategy without the lawyer making an appearance on behalf of the client. The general belief is that in these cases it is in the best interest of the client to have defense counsel present throughout the entire matter. Some would argue that unbundling of legal services in criminal defense matters might be useful where the client has been assigned a lawyer who is either not competent, lacks experience in defense work, or who was appointed to the position and is not particularly enthusiastic about handling the case.⁷⁴

Defense counsel may be provided for the defendant who cannot afford counsel, but increasingly the individual who qualifies for this service based on income levels may not adequately reflect an individual's financial ability to add full-service representation to his or her budget. Those individuals who do not qualify must proceed pro se and without any guidance. In this instance, if the client wishes to retain the unbundled services of another lawyer for guidance or as a second opinion to the court-ordered lawyer, then this might be one area of unbundling that would give defendants an affordable alternative to either relying on the free counsel that was appointed by the court or going it alone. This concept has been called "hybrid representation" in the context of criminal law matters and has been rejected by most courts, which have adhered to an "all or nothing" approach.⁷⁵

⁷² See Alaska R. Civ. P. 81(d), <http://www.courts.alaska.gov/civ2.htm#81>, (accessed July 28, 2012); and N.H. R. CIV. P. 17(c).

⁷³ See for example, *Limited Scope Legal Representation Final Report, Findings & Recommendations*, prepared by the Joint Task Force on Limited Scope Legal Representation (May 19, 2011), 25, expressing strong opposition to the use of unbundling in criminal defense matters, <http://www.isba.org/sites/default/files/committees/limitedscopelegalrepresentation/limitedscopelegalrepfinalreport.pdf> (accessed July 28, 2012).

⁷⁴ "The Supreme Court . . . established special rules and principles governing access to justice for prisoners in order to maintain a fair and accessible justice system. So, too, should the Court recognize the reasonableness and necessity of establishing a judicial duty of reasonable assistance to "gray-area" pro se defendants, and permit the use of innovative forms of assistance and representation in lieu of unwanted counsel." Jona Goldschmidt, Associate Professor, Dep't of Criminal Justice, Loyola University, Chicago, J.D., DePaul University; Ph.D., Arizona State University, *Autonomy and "Gray- Area" Pro Se Defendants: Ensuring Competence to Guarantee Freedom*, NW J. L. and Soc. Pol'y 130 (Winter 2011). There was an interesting study conducted in 2004 in Nova Scotia, Canada, titled "The Unrepresented Defendant and the Unbundling of Legal Services," which was prepared for the Administration of Justice Sub-Committee, Nova Scotia Barristers' Society, by Don Clairmont of the Atlantic Institute of Criminology. This report considered a strategy for adding unbundled criminal legal services to the existing criminal court system to alleviate the phenomenon of pro se criminal litigants and increase access to justice. The report suggests that one solution might be a balance between appointed representation, unbundled guidance, and a more informed client. However, it is important to note that Canada supports judicial assistance to pro se litigants in both civil and criminal cases. http://sociologyandsocialanthropology.dal.ca/Files/the_unrepresented_defendant_and_the_unbundling_of_legal_services.pdf (accessed July 28, 2012).

⁷⁵ See *McKaskle v. Wiggins*, 465 U.S. 168, 178 (1984); *United States v. Washington*, 353 F.3d 42, 46 (D.C. Cir. 2004); *In re Lee Max Barnett*, 73 P.3d 1106, 1111 (Cal. 2003); *In re Sondley, Sr.*, 990 S.W.2d 361, 362 (Tex. Ct. App. 1999); *McCulloch v. Velez*, 364 F. 3d 1, 8 (1st Cir. 2004); *State v. Cook*, 821 P.2d 731, 739 (Ariz. 1991); see generally Goldschmidt. However, two states appear to allow a pro se criminal defendant to obtain some form of

G. Alternative and Online Dispute Resolution

Alternative dispute resolution (ADR) is a term that encompasses a number of different methods of resolving legal disputes outside of the traditional courtroom.⁷⁶ Sometimes it may be referred to as “appropriate dispute resolution” or simply dispute resolution. Regardless of the term used, the concept focuses on tools to resolve legal matters. There may be opportunities for lawyers to provide unbundled assistance in traditional forms of ADR, such as court-ordered ADR in the form of mediation or arbitration.

One form of ADR unbundling might include a situation where the lawyer could provide consultation to the self-help litigant prior to the start of the legal matter in the form of coaching, strategy, general education about the process, what will be expected of him or her, and what to expect from the other side. The lawyer could review the facts of the situation and, based on his or her years of experience in litigating and settling similar cases, provide the client with a reasonable settlement offer or starting point for the process.

Another form of ADR unbundling might be where without making an appearance in the case, the lawyer is contacted at other points in the process when the litigant has questions about how the matter is proceeding. Part of the lawyer’s representation might include providing education that the litigant’s process is not like a courtroom proceeding that the litigant has seen on television and how it differs, and providing a resolution to his or her case.

Online Dispute Resolution or ODR is a term that encompasses any methods of dispute resolution—arbitration, negotiations, mediation, and other methods of settlement—that are handled online. Most emerging methods of ODR are conducted by web-based, independent software systems created for the purpose of dispute resolution and involve only the parties to the dispute and the computer.⁷⁷ These highly automated systems are owned by for-profit companies that may contract the use of the software out to other companies that focus on e-commerce or other markets that experience a large number of smaller claims.⁷⁸

For example, one of the more familiar examples of separate web-based ODR systems is Cybersettle.⁷⁹ Used by trial lawyers, Cybersettle uses a double-blind bidding process that results in a faster resolution of the legal matter. According to the company’s website, using this system reduces the average time to settle a case by four to six months.⁸⁰ The cost savings from using this in place of full litigation are not insignificant and may allow a law firm to work with more clients by offering to use this form of settlement and reserve full-service litigation services for cases

limited-scope assistance: *See* in Mississippi: *Goff v. State*, 14 So. 3d 625, 642–43 (Miss. 2009); *Metcalf v. State*, 629 So. 2d 558, 565 (Miss. 1993); and in North Dakota: *City of Fargo v. McMorrow*, 367 N.W.2d 167 (N.D. 1985).

⁷⁶ *See generally*, Zimmerman.

⁷⁷ *See for example*, Cybersettle, <http://www.cybersettle.com/pub/home/about/users/attorneys.aspx> or SmartSettle, <http://www.smartsettle.com/> (accessed July 28, 2012). SmartSettle is a division of iCan Systems, Inc. and was founded by Dr. Ernest Thiessen, a pioneer in the field of eNegotiations.

⁷⁸ SquareTrade is the most well-known example of a company that has created an ODR system and licensed the use of this to the online trading website, eBay.

⁷⁹ <http://www.cybersettle.com/pub/home/about/users/attorneys.aspx>

⁸⁰ *Id.*

where full service is necessary.⁸¹ There is little danger from attempting to use this form of service because if the case does not settle through the process, the information provided by the client and the lawyer remains confidential, and the parties still may proceed through litigation.⁸²

IV. Use of Technology in Unbundling

New developments in technology have made it even more efficient for legal service providers to offer unbundled services. There are different forms of technology that a provider, whether a volunteer lawyer, legal aid office or law school clinic, may employ depending on how much it wants to automate the unbundling process for greater efficiency in delivery. These tools may be used to generate legal work product or to provide decision-making tools to guide and assist the lawyer working on a client's case. Thanks to the cost-effectiveness of cloud-based applications, technology to unbundle may be added to the budget of any provider from a volunteer practitioner to a state-wide legal service provider.

Many of the technologies used to unbundle legal services operate on software as a service (SaaS), one form of cloud computing.⁸³ 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 most legal services organizations to afford to integrate into practice.

Because of this flexibility, cloud computing will most likely continue to facilitate the delivery of unbundled legal services for years to come. New innovations in the delivery of unbundled legal services are on the horizon as the legal services community embraces the potential of this technology.⁸⁴ The technology may be combined with online self-help resources and guidance to supplement unbundled delivery of services as well as provide direct unbundled services from a lawyer.⁸⁵ The following section will review the different parties that may benefit

⁸¹ See David Allen Larson, *Brother, Can You Spare a Dime? Technology Can Reduce Dispute Resolution Costs When Times Are Tough and Improve Outcomes*, Nevada Law Journal, Vol. 11:2, (May 19, 2011): 523, 541, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1846723 (last accessed July 28, 2012), (discussing the economic benefits of using systems such as Cybersettle).

⁸³ 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). The separate ethics issues that may arise in the use of cloud computing in law practice are beyond the scope of this article. See generally, Nicole Black, *Cloud Computing for Lawyers*, (ABA/LPM Publishing, 2011).

⁸⁴ See generally, Marc Lauritsen, *Five Tips for Prospering in an Age of Legal Fee Deflation*, TechnoLawyer, <http://www.capstonepractice.com/deflation.pdf> (June 7, 2011).

⁸⁵ See generally, William Hornsby, *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> (June 10, 2009); and Ronald W. Staudt, *All the Wild Possibilities: Technology that Attacks Barriers to Access to Justice*, Loyola of Los Angeles Law Review, vol. 42: 1117, <http://llr.lls.edu/docs/42-4staudt.pdf> (Summer 2009); and Richard E. Susskind, *The Future of Law: Facing the Challenges of Information Technology*, Oxford University

from the use of technology to unbundle: legal services, volunteer lawyers, technology providers, and the public, and then review the building blocks and existing implementations of the technology that are being used in the legal services community.

A. Parties Using the Technology

1. Legal services

Legal services programs have built a delivery system that has unbundled legal services at its core.⁸⁶ Because of a funding level that cannot provide the full representation to all who qualify financially, legal services programs may use a combination of the methods of unbundling described above. The vast majority of cases closed by legal aid are for two categories of service levels, advice and brief service, both of which are often discrete tasks of a larger problem.

Starting in the early 1990's, legal aid programs began using technology to create hotlines to replace the inefficient method of doing intake in person by appointment during certain hours of certain days, a method that essentially created a legal services lottery.⁸⁷ Only those individuals fortunate enough to be selected by the lottery were able to request the limited services available. Advanced telephone routing systems that allow hotline staff to check into the system and designate for what legal problem areas and languages they are available has greatly improved the number of people who can at least get advice to help them with their legal problem. Callers who do not get through immediately are given the opportunity from the queue to hear recorded legal information or to go to the program's website.⁸⁸

Those callers who choose to remain on the line are able to talk with a legal aid staff person about their legal problem. If the call is for a legal problem that is handled by the program, the intake worker will check for conflicts, determine financial eligibility, and then assess the legal problem. Depending upon the program's intake guidelines, the caller will be provided with the highest level of service that resources permit. This may be limited to a single call giving the client advice on how he or she may proceed with their legal matter and directing him or her to online materials or to a court self-help center. For another caller, the limited scope assistance might be in the form of a phone call to the client's landlord or creditor to try to resolve the problem. Another form of unbundling might be to schedule the client for a clinic where he or she will be able to, using automated forms, prepare his or her own divorce papers, have these papers reviewed by a pro bono lawyer, then hear a presentation from the pro bono lawyer to the clinic attendees regarding what they will need to do to complete the divorce by themselves. Callers

Press (1996); and Richard E. Susskind, *The End of Lawyers?: Rethinking the Nature of Legal Services*, Oxford University Press (2008).

⁸⁶ Daniel C.W. Lang, *Utilizing Nonlawyer Advocates to Bridge the Justice Gap in America*, 17 Widener L. Rev. 289 (2011), 296.

⁸⁷ For a description of the history of LSC and state-based delivery systems, see generally, Jeanne Charn, *Legal Services for All: Is the Profession Ready?* 42 Loy. L.A. L. Rev. 1021, Summer 2009, 1044.

⁸⁸ There is now a statewide website for each state and territory that has legal information for the most commonly faced civil legal programs of low-income persons. These websites contain written materials, videos, and automated forms designed to assist the users to find representation or to help themselves.

who fit the program's criteria for full representation will be scheduled for an appointment with a staff or pro bono lawyer.

2. Volunteer lawyers

Most of the States have adopted ABA Model Rule 6.5, which was created in 2002.⁸⁹ This rule excuses the lawyer from conflicts searches when the lawyer provides short-term, limited-scope legal services to a client “without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter” under a program sponsored by the courts or a nonprofit organization.⁹⁰ The rule is intended to encourage lawyers to engage in pro bono service using a method that may be more convenient for them to volunteer their time and removes concerns that this form of volunteer unbundling would result in conflicts of interest or disqualify their law firms from representing prospective clients.⁹¹ The rule does not remove compliance with any of a lawyer's other obligations and it only applies to nonprofit and court-annexed legal service programs, which means that the normal conflict of interest rules would apply if a law firm or other for-profit entity attempted to create a program offering pro bono limited-scope assistance. Some lawyers may first learn about limited-scope representation through volunteer work with a legal service or court-based program.

3. Technology providers

Technology companies are beginning to develop web-based applications for use by legal services for unbundling legal guidance.⁹² These companies may also choose to share access to the technology with the client to assist him or her in self-representation of the case. There is a challenge for for-profit start-up companies that are interested in developing systems to assist in increasing access to justice. By nature of the economic status and lack of purchasing power of the target user, the business model has a limited ability monetize a technology that will be used with legal services clients or self-help individuals. Some of this is due to the inability of the potential user base to pay for access and use, but some of it is also due to the restrictions placed on lawyers who wish to collaborate with technology vendors where a referral fee or other fee exchanges hands for access to the consumers coming through the company's website. For

⁸⁹ See Model Rule 6.5, http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_6_5_nonprofit_court_annexed_limited_legal_services_programs.html (accessed July 28, 2012). The following states have adopted Model Rule 6.5: Arizona, Arkansas, Delaware, District of Columbia, Idaho, Indiana, Iowa, Louisiana, Massachusetts, Montana, Nebraska, Nevada, New Jersey, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Utah, Virginia; see also *Nonprofit Limited-Services Programs*, ABA BNA Lawyers Manual on Professional Conduct, 91:6501.

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² For example, in November 2011, a company named Picture It Settled, LLC released an application for iPhones and iPads to help litigants analyze and develop negotiation strategies. The application reviews the settlement negotiations of “over thousands” of cases to help the lawyer plan a negotiation strategy. A simpler version of the software tracks the dollar moves in negotiation allowing users to calculate future offers based on the opponent's moves and the concession rates of both parties. A lawyer might use such software by assisting the client in entering the data into the application related to his or her case. The lawyer might then provide the client with legal guidance based on the returned analysis along with a strategy for negotiation for the self-help client to proceed.

example, if a startup company wanted to provide a technology that would attract both pro se individuals and “low” bono clients, they would have difficulty attracting lawyers to pay to be part of the network unless the lawyers were guaranteed a certain number of incoming client leads that would provide a decent return on investment. A venture capitalist or other investor is less likely to invest in a legal technology startup, even one with an access to justice mission, without the guarantee of a return on investment through some form of revenue stream from the monetization of the system.

A discussion of the restrictions on lawyer advertising found in ABA Model Rule 7.2 cannot be addressed in the scope of this article, but some groups, including the ABA Standing Committee on the Delivery of Legal Services, are beginning to question the effect of these rules on limiting access to justice and the development of innovations by technology providers which might increase unbundling of services and access.⁹³ Regardless, there are some for-profit and other nonprofit technology providers discussed in the below case studies that are pushing the envelope and finding ways to collaborate with legal service providers, volunteer lawyers and law school clinics interested in using their technology to increase access to justice.

4. The public

The largest user of technology to unbundle legal services is the self-help litigant.⁹⁴ Some Legal Services Corporation–funded offices and court systems offer online limited-scope services for self-help individuals.⁹⁵ Additionally, some states have existing web-based resources available for self help litigants.⁹⁶

Legal services clients are primarily individuals who qualify for full-service representation based on a qualification process during the client intake or triage interview. Individuals who do not qualify are instead directed to any available state or national-based self-help resources to proceed with solving their legal needs on their own. The use of technology to unbundle has the potential to impact both the quality and variety of services for qualifying members of the public seeking assistance at a legal aid office as well as increase access for those members of the public for whom legal aid services are not available due to a lack of need-based qualifications and/or funding restrictions. Unbundling with technology would provide legal aid offices with the

⁹³ See ABA Standing Committee on Delivery of Legal Services letter to the ABA Commission on Ethics 20/20 (January 19, 2012), http://www.americanbar.org/content/dam/aba/administrative/delivery_legal_services/ls_del_ethics_2020_memo.authcheckdam.pdf (accessed July 30, 2012).

⁹⁴ See Richard Zorza’s self-represented litigant network, <http://www.srln.org> (accessed July 28, 2012).

⁹⁵ See for example, the California Courts Self-Help Center, <http://www.courtinfo.ca.gov/selfhelp> (accessed July 28, 2012), or The Contra Costa County Virtual Self-Help Law Center, <http://www.cc-courthelp.org> (accessed July 28, 2012); for a discussion of web-based self-help resources see generally, Richard Zorza, *An Overview of Self-Represented Litigation Innovation, Its Impact, and An Approach for the Future: An Invitation to Dialogue*, 43 Fam. L.Q. 519 (Fall 2009), 525-526.

⁹⁶ *Id.* at 525-526. As another example, Illinois Legal Aid Online has created a web application for download on Apple’s iTunes Store that provides a guide to Illinois law to self-help individuals. The application covers divorce, custody, criminal records, small claims, eviction, foreclosure, unemployment, name change, guardianships, and more, and provides step-by-step guides and resources for further assistance. See the application at the Apple iTunes store, <http://itunes.apple.com/us/app/illinois-legal-aid-app/id466092937?mt=8&ign-mpt=uo%3D4> (accessed July 28, 2012).

opportunity to provide some limited scope services to those individuals for whom they are unable to provide full-service assistance. This “some help is better than no help at all” approach would increase access by providing minimum guidance to self-help individuals by connecting them with a lawyer who is using technology to deliver at least a portion of the needed legal work.

In the past, arguments were made against technology to deliver unbundled services to lower income individuals on the basis that these individuals did not have as much access to the Internet or the hardware necessary to make use of the technology.⁹⁷ The “digital divide” was used as a reason for legal services to invest in more human capital for their offices than in technology. However, in recent years, studies have indicated that mobile technology, in particular smartphones, is the primary way that American of all income levels are accessing the Internet.⁹⁸ The use of mobile technology is beyond the scope of this article, but clearly the ability to deliver technologies that unbundle legal services through these devices is an opportunity to increase access to the public.

B. Building Blocks Already in Place: Technology to Facilitate and Deliver Unbundled Legal Services

Several of the technology building blocks needed to deliver unbundled legal services online are already being implemented by the legal services community. This next section reviews specific technology tools as well as examples of legal services organizations and volunteer lawyers who are using them to deliver unbundled services to legal aid clients, self-represented litigants and “low” bono clients.

1. Document Assembly and Automation

Document-assembly and automation tools have been used by law firms for many years and probably are the first legal technology developed that greatly facilitated the unbundling of legal services.⁹⁹ These programs often use “intuitive” forms to collect information online directly from clients that are accessible through any web-browser. The client responds to the questions provided by the program, which prompts him or her with the next appropriate questions based on the previous response. The responses then are pulled into a template document which assembles the document instantly, creating a first draft for review and edit by the lawyer. The lawyer may use the same legal form or even the same provisions with another client with a similar legal fact pattern without having to reinvent the wheel each time that particular legal document is required

⁹⁷ For a discussion of the impact of the digital divide on the delivery of legal services, see Julia R. Gordon, *Legal Services and the Digital Divide*, 12 Alb. L.J. Sci. and Tech. 809 (2002) or Mark Lloyd, *The Digital Divide and Equal Access to Justice*, 24 Hastings Committee and Ent L.J. 505 (Summer 2002).

⁹⁸ See Survey: *New U.S. Smartphone Growth by Age and Income*, Nielsen Wire, February 2012, <http://blog.nielsen.com/nielsenwire/?p=30950> (accessed July 28, 2012).

⁹⁹ For a thorough review of document assembly software, see Mountain. Some of the more well known products used by law firms include the following: HotDocs, <http://www.hotdocs.com>; Rapidocs, <http://www.rapidocs.com>; DealBuilder, <http://www.dealbuilder.com>; Exari, <http://www.exari.com>; and WhichDraft, <http://www.whichdraft.com>.

for an unbundled project. Accordingly, this reduces the amount of time that the lawyer may produce unbundled legal documents and assists in streamlining the delivery process for the unbundled offerings. More customized systems are emerging that focus on a specific legal process or practice area.¹⁰⁰

Currently within the legal services community there is a National Legal Services Document Assembly Server which uses Hotdocs technology to provide automated forms that have been contributed by state legal aid programs.¹⁰¹ The site is operated by Pro Bono Net which then partners with other states' courts to provide the legal forms to self-help litigants.¹⁰² According to one statistic, as of 2009, there were 130,000 online forms assembled in a single year.¹⁰³

2. Decision-Making Tools and Artificial Intelligence

Technologies that assist in the decision making process for lawyers are beginning to emerge on the market and may be used to facilitate the unbundling of services for clients.¹⁰⁴ Lawyers may use these systems to generate reports to guide an unbundled client or the clients themselves may be provided with access to the technology to input the data and receive instruction for self-help representation. However, these systems remain highly customized for a single organization and are not as affordable to implement without significant time and collaboration with the technology provider. Artificial intelligence is slowly making its way into the legal profession, but it is most likely still a long way from being relied on as it is in other industries.

Neota Logic is one example of a company that has developed an artificial intelligence engine with user-friendly and power authoring tool.¹⁰⁵ This technology goes one step beyond basic document assembly by using decision trees, decision tables, if/then rules, calculations, weighted factors, spreadsheets, case-based reasoning and others tools to create customized systems for legal service providers. This technology may be used to assist in the decision making process for lawyers. As the expert system continues to be used by the lawyers, it learns and aggregates data to increase performance of its operations as well as to create valuable reports from its database for use by the legal service provider.¹⁰⁶

¹⁰⁰ See, e.g., Kiiac, <http://www.kiiac.com/> (accessed July 28, 2012). This company has document automation and assembly tools and creates document templates and clause libraries for legal documents. The software can analyze a group of contracts to create a "reference standard" that other contracts may be based on.

¹⁰¹ See National Legal Services Document Assembly Server, www.npado.org; Hotdocs, <http://www.hotdocs.com/> (accessed July 28, 2012).

¹⁰² ProBono.net, <http://www.probono.net> (accessed July 28, 2012).

¹⁰³ See Richard Zorza, *An Overview Of Self-Represented Litigation Innovation, Its Impact, And An Approach For The Future: An Invitation To Dialogue*, 43 Fam. L.Q. 519 (Fall 2009), 527.

¹⁰⁴ See generally "Swapping Decision Trees for River Logic" by Darryl Mountain on *Slaw.ca* blog, <http://www.slaw.ca/2011/09/14/swapping-decision-trees-for-riverlogic/> (accessed Sept. 14, 2011), discussing eGanges as a new legal expert system shell being developed by Dr. Pamela Gray, a legal knowledge engineer from Charles Stuart University. See also Neota Logic, <http://www.neotalogic.com/author> (accessed July 28, 2012), as an example of a company that develops customized legal AI systems for law firms.

¹⁰⁵ *Id.* Neota Logic.

¹⁰⁶ Neota Logic was recently used by law students at Georgetown University Law School and New York University Law School to create technologies that could be used to increase access to justice in different areas of the law. See

There are other decision-making tools that are available to a lawyer for the purpose of creating a proposed settlement for a legal matter based on the information available before engaging in the lengthy process of preparing to go down the road to litigation.¹⁰⁷ Even if the client does not choose to settle, the lawyer may provide this unbundled service as a way to inform the client strategically where to focus on the trial or in the discovery process.¹⁰⁸

3. Online Case and Client Management

Some lawyers provide a secure client portal with case access for unbundled clients as a way to keep a digital record of the legal documents and/or guidance and instruction that is provided to the client.¹⁰⁹ If clients have their own secure home pages online, the clients may log in at any time to access the information that they need to complete the legal matters on their own. Online case and client management may be used to streamline the process of working with unbundled clients. The lawyer may also use the system as a way to set up reminders for clients or to check back in with clients at later dates to ensure that they were able to complete their processes. This form of digital communication may especially appeal to self-help clients who would appreciate the convenience and easy accessibility of their own case files and documents. Even after the scope of the legal matter is completed by the lawyer, the termination of the limited representation may be noted in the client's online case file. The clients still retain access to their home pages and the ability to download and review the assistance provided by the lawyer during the limited representation.

press release for the project, "Georgetown Law Students Challenge Tradition by Building Online Legal Advisors with Neota Logic," PRWeb, <http://www.prweb.com/releases/neotalogic/irontechlawyer/prweb9438690.html> (April 24, 2012).

¹⁰⁷ See for example, Treeage, <http://www.treeage.com/industrySol/legal.html> (accessed May 27, 2012). Treeage Pro helps a lawyer assess the value of settlement before litigation by allowing the lawyer to create decision trees, influence diagrams, and use Markov models based on the issues identified in the client's legal matter.

¹⁰⁸ See for example, "choiceboxing" in Marc Lauritsen, *The Lawyer's Guide to Working Smarter with Knowledge Tools*, in ABA/LPM (2009):14). Marc Lauritsen has created a system for supporting decisions that, if implemented in a software program, could be used to assist lawyers in making decisions about strategy for their clients' legal matters. The description of the method from the pending patent explains the process in more detail. Embodiments of the present invention use a construct referred to herein as a 'choicebox' to support choice-making within a conceptual choicespace. The choicebox allows the identification of one or more options, one or more factors, and one or more perspectives for a particular choice. Each choice is associated with one or more categories. The options, factors, and perspectives are logically mapped to imagined x, y, and z axes and can be envisioned and graphically represented as a three-dimensional assessment matrix or box. Within the context of the present invention, choiceboxing is the activity of deliberating about a choice using such matrices. Choiceboxes are built and manipulated using software that renders their data into visual and interactive form. They serve as shareable places for collaborative deliberation. Choiceboxing allows the choices to be analyzed in a way that includes multiple people's input and emotions surrounding a decision without limiting the decision making to a checklist of tangible outcomes. Lawyers who make use of decision-making tools such as Choiceboxing might provide them to clients through an interactive web application.

¹⁰⁹ See "Suggested Minimum Requirements for Law Firms Delivering Legal Services Online," *ABA LPM eLawyering Task Force* (Oct. 15, 2009), http://meetings.abanet.org/webupload/commupload/EP024500/relatedresources/Minimum_Requirements_for_Lawyers_2009_10_24.pdf (accessed July 28, 2012). Some examples of case and client management technologies built specifically for the legal profession include: Total Attorneys, <http://www.totalattorneys.com>; Clio, <http://goclio.com>; and DirectLaw, <http://www.directlaw.com>.

4. Online Branded Networks

Comprehensive consumer Web portals are emerging that assist lawyers in delivering unbundled legal services online directly to consumers who are searching for online solutions.¹¹⁰ 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.¹¹¹ The consumer then may request to be matched with a lawyer within his or her jurisdiction for review of the document and additional assistance at a "discounted rate." The lawyer who pays to join this lead-generation service then may 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 prefilled forms that the client completes online are transferred to the lawyer when the client begins working with him or her. Given the fast pace at which these online services are being developed, any collaboration with these companies will require regular re-evaluation by the lawyer to weigh the risks and benefits of using them to deliver unbundled legal services online.

5. Web Calculators and Web Advisers

Some legal services organizations may choose to start out by providing unbundled service in the form of web calculators or web advisers that directly appeal to self-help, prospective clients, but which do not directly involve interaction with the organization's lawyers.¹¹² These tools are embedded in the organization's website for the use of the prospective client. In some cases, the web calculators or advisers provide information that can educate the prospective client on his or her legal needs and guide the client to turn to the organization for unbundled or full services. In other cases, they may provide an entire unbundled service, such as a legal document or legal guidance on a matter.

In the case of private practitioners using these tools, the law firm is using them as part of a larger marketing strategy to improve the search-engine optimization for the firm's website by providing unique and useful content, but also with the objective of converting those self-help individuals into paying clients. Some lawyers may even consider providing the online document assembly and automation tools for free to the self-help client in addition to other web calculators or web advisers.¹¹³ More free or low-cost iPad, iPhone and other tablet and smartphone computer applications that are geared toward the self-help individual are expected to show up online.¹¹⁴

¹¹⁰ See generally, Stephanie Kimbro, *Virtual Law Practice: How to Deliver Legal Services Online*, ABA/LPM Publishing, (October, 2010). For examples of legal technology companies providing secure client web portals, see DirectLaw, www.directlaw.com, and Total Attorneys, www.totalattorneys.com (accessed July 28, 2012).

¹¹¹ See Rocket Lawyer, www.rocketlawyer.com (accessed July 28, 2012).

¹¹² See for example, the child support calculator provided online by the Rosen Divorce Law Firm, <http://www.rosen.com/childcalculator/>, or the bankruptcy means test calculator provided by the The Law Offices of R. J. Atkinson, <http://rjabankruptcy.com/meanstest.php> (accessed July 28, 2012).

¹¹³ See, e.g., legalmove.com, <http://www.legalmove.com/>. Legalmove is the online division of Fidler & Pepper Solicitors, <http://www.fidler.co.uk/>, a conveyancing law firm in the UK. It provides conveyancing quotes online from its website and allows clients to track their cases online and receive SMS texts with alerts.

¹¹⁴ See, e.g., <http://lawlibe.thelawpod.com/> (accessed July 28, 2012).

6. Guided Walkthroughs

Similar to a web advisor, a guided walkthrough is a tool that allows a self-help individual to navigate through a series of questions to determine whether or not he or she has a legal need and how to address that. For example, the Access to Justice Author (A2J Author) sponsored by the Chicago Kent College of Law and the Center for Computer- Assisted Legal Instruction (CALI) is a web-based guided walkthrough for self-help individuals.¹¹⁵ This free, open-source software tool allows individuals such as court administrators and legal-service program staff who do not have a background in programming to create a process that helps them fill out the legal forms to be filed at the courthouse.¹¹⁶ After an A2J “Guided Interview” for the prospective pro se individual has been created using the Author tool, it is uploaded to Law Help Interactive (LHI), which uses web-based document-assembly services powered by HotDocs, a document-assembly and automation software.¹¹⁷ As the use of the software spreads to more court systems across the country, e-filing capabilities are being added as well as additional developments based on user feedback.¹¹⁸ According to the program’s website, Legal Aid of Western Ohio has begun a project to coordinate online intake among all participating legal-aid programs in the state that will use the A2J Guided Interview as the online interface for the client intake process.¹¹⁹ Iowa Legal Aid has already implemented such a program with a case management program used nationally by many legal-aid offices.¹²⁰

LawHelp Interactive is a web-based program powered by ProBono.Net and sponsored by the Legal Services Corporation, State Justice Institute, and HotDocs.¹²¹ LawHelp Interactive links to the different participating state legal-aid programs offering guided online assistance in completing legal forms using the A2J Author. The site also provides free legal-aid referrals and real-time chat services. The disclaimer for use of the services by self-help individuals provides that “. . . it is not a substitute for legal advice from qualified counsel. . . . Documents created using the website may require consultation with an attorney prior to execution or filing.”

In April of 2011, a proposal titled “Apps for Justice: Learning Law by Creating Software” was presented at the Futures Ed Conference sponsored by New York University and Harvard Law School.¹²² The proposal would engage law students across the country within law school legal clinics to create websites that would use the A2J Guided Interviews, increasing access to justice for pro se individuals via the Internet. This proposal won a competition at the Futures Ed Conference and subsequently received funding from the Legal Services

¹¹⁵ See the Chicago-Kent College of Law Center for Access to Justice and Technology, <http://www.kentlaw.edu/cajt/> (accessed May 27, 2012). For a description of the A2J Author program, see Staudt, *All the Wild Possibilities: Technology That Attacks Barriers to Access to Justice*, 1128-1137, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1543329 (accessed July 28, 2012).

¹¹⁶ *Id.* Staudt at 114-115.

¹¹⁷ *Id.*

¹¹⁸ *Id.* Chicago-Kent College of Law Center for Access to Justice and Technology.

¹¹⁹ See the website for Legal Aid of Western Ohio, http://www.ablelaw.org/index.php?option=com_content&task=view&id=1980&Itemid=1076 (accessed July 28, 2012).

¹²⁰ See the Iowa Legal Aid website linking to National Law Help, <http://www.iowalegalaid.org/IA/index.cfm>.

¹²¹ See the LawHelp Interactive Website, <https://lawhelpinteractive.org/> (accessed July 28, 2012).

¹²² See Ronald W. Staudt, “Thought Leaders Series: Apps 4 Justice,” College of Law Practice Management (January 23, 2012), <http://collegeoflpm.org/thought-leaders-series-apps-4-justice/> (accessed July 28, 2012).

Corporation's Technology Initiative Grants (TIG) program.¹²³ Three pilot law schools are planned to implement this program in January of 2013.

7. Video Conferencing & Real-Time or "Live Help" Chat

Lawyers are able to post their availability on a website to provide video conferencing or to engage in real-time chat using a number of free and subscription-based services.¹²⁴ With "live help" chat, clients are able to engage in real-time with a lawyer through secure text-based communications. This dialogue may be recorded as a digital file and emailed to the client as well as stored in the client's file for future reference. Video conferencing allows the client to use a web camera and microphone in his or her mobile device or other computer to communicate with a lawyer face-to-face through a video feed. Both the video and the audio may be recorded. It is also possible to hold group video conferencing in circumstances where this would benefit the client. Most mobile devices contain applications for free video conferencing tools as well as webcams and microphones that are built into the hardware. Unbundled coaching, strategy, and combinations of other unbundled services may be provided through video conferencing and real-time chat.

8. Video Tutorials and Legal Guidance

Another form of unbundling used by legal-aid offices comes in the form of short video tutorials or podcasts posted to the website. Short videos may be recorded and posted on YouTube or longer videos may be posted on a service, such as Vimeo, which provides more storage space and various privacy and user options.¹²⁵ Videos hosted online may be embedded in the organization's blog as well as maintained on a YouTube profile for the legal services organization. Some state legal-aid programs have created videos of unbundled legal advice to assist the self-help litigant navigate through the necessary courtroom procedures and to understand the process that is involved in proceeding pro se. For example, the Arkansas Legal Aid has a YouTube site with a library of videos including tutorials on divorce, debt collection, taxes, and more.¹²⁶ Statistics provided by sites such as YouTube and Vimeo may provide the legal services organization with information regarding how often these videos are viewed.¹²⁷

¹²³ See "Apps for Justice Wins Future Ed Contest," Chicago Kent Law School (April 20, 2011), <http://www.kentlaw.iit.edu/news/apps-for-justice-wins-future-ed-contest> (accessed July 28, 2012).

¹²⁴ For example, video conferencing technologies might include Skype, <http://www.skype.com>; Webex, <http://www.webex.com>; and Join.Me, <http://www.join.me>, among others. Examples of real-time or live help technologies might include LiveHelpNow, <http://www.livehelpnow.net/>; live2support, <http://live2support.com/>; olark, <http://www.olark.com/>; or LivePerson.com, <http://www.liveperson.com> (accessed July 28, 2012).

¹²⁵ See Vimeo, www.vimeo.com, and YouTube, www.youtube.com (accessed July 28, 2012).

¹²⁶ See the Arkansas Legal Services and Legal Aid of Arkansas website featuring LegalTube, a video library, <http://www.arlegalservices.org/legaltube> (accessed July 28, 2012).

¹²⁷ See generally, D. Zeng, Hsinchun Chen, R. Lusch, Shu-Hsing Li, *Social Media Analytics and Intelligence, Intelligent Systems*, IEEE vol. 25:6 (2010), <http://tinyurl.com/btq3j63>, providing an overview of using analytical tools to measure the use of social media, which includes the sharing of videos online (accessed July 28, 2012).

9. Game-Theoretic Bargaining Systems

In recent years, game theory has been used to conduct extensive studies of the dynamics underlying legal conflicts and legal negotiations. Thousands of articles using game theory to analyze the legal field have been published in journals dedicated to such studies.¹²⁸ Practical applications of some of this work have recently been developed and made available to lawyers and to the public at large. For example, several computerized bargaining systems that employ procedures grounded in game theory can currently be accessed and used online.¹²⁹ Such systems can be and are being used by parties and lawyers involved in litigation and legal negotiations, including providing unbundled legal services.

C. Case studies of legal services and volunteer lawyers using both

1. Document assembly: Idaho Legal Aid Services and the Idaho courts have teamed up to create automated forms for a variety of practice areas which are used by legal aid clients and users of the court self-help centers.¹³⁰ Examples of forms include divorce, domestic violence, small claims, name change, landlord and tenant, among others. Idaho Legal Aid Services has created a separate section of its services devoted to consumer law. Many of these forms are also available in Spanish.
2. Video legal guidance: Montana Legal Services Association has produced a series of interactive videos that not only provide users with information, but allows them to choose different scenarios as the video progresses and tailors the legal information to the user's fact situation.¹³¹ For example, one video involves the scenario where a client is attempting to have a security deposit returned from a landlord. The video pauses and asks if the lease ended more than 30 days earlier. Depending upon the response, the video will provide the appropriate information for the self-help client to follow to either obtain the return of his or her own security deposit or learn that this legal outcome is not possible given the circumstances.
3. Video legal guidance, Web adviser, and live help: Illinois Legal Aid Online has a YouTube channel that provides tutorials and other information for self-help individuals.¹³² The organization also provides an online web-adviser to guide individuals towards the assistance they might need and a "live help" option which provides real-time chat assistance.¹³³

¹²⁸ See for example, *American Law and Economics Review*, American Law and Economics Association, <http://www.amlecon.org/> and *Journal of Empirical Legal Studies*, Society for Empirical Legal Studies, <http://www.lawschool.cornell.edu/sels/> (accessed July 28, 2012).

¹²⁹ See for example, the various systems offered at <http://www.fairoutcomes.com/> (accessed July 28, 2012).

¹³⁰ These forms were all created using HotDocs and A2J Author and are hosted on LawHelp Interactive. LHI and A2J Author are free to LSC funded legal aid programs and HotDocs was provided free of charge and now is available at a heavily discounted rate.

¹³¹ See Montana Legal Services Association, <http://www.mtlsa.org/> (accessed July 28, 2012).

¹³² See the Illinois Legal Aid Online YouTube site, <http://www.youtube.com/illinoislegalaidsite> (accessed July 28, 2012).

¹³³ See the Illinois Legal Aid Online site, <http://www.illinoislegalaidsite.org/> (accessed July 28, 2012).

4. Calculators and Web advisers: Pine Tree Legal Assistance in Maine created a Maine Food Supplement estimator.¹³⁴ The tool uses a HotDocs interview through which users may determine if they would be eligible for assistance and, if so, what they can expect in benefits.
5. Web Adviser, hotline services, efilng: The Legal Aid Society of Orange County provides online unbundled services that include a hotline intake system, on-line court forms, and self-help workshops.¹³⁵ Individuals may request additional unbundled or full-service representation as needed. The Legal Aid Society of Orange County also partnered with a company, Legal Genie, Inc., to provide links to all of these online services and provide for client partnership with private practitioners who wish to provide unbundled assistance online or in a more traditional setting.¹³⁶ Legal Aid Society of Orange County also provides a service that allows individuals to efile their taxes online.¹³⁷ The system is called I-CAN! and includes online forms and Earned Income Tax Credit (“EITC”) electronic filing software.

V. New Ways to Use Emerging Technologies for Unbundling

The legal services community would benefit from the further integration of emerging technologies into its existing systems to increase the delivery of unbundled services. Whether or not government and state funding for legal services returns to its pre-recession amount, the need for access to justice nationwide will continue to increase, particularly as the economic situations of American citizens declines due to unemployment. Providing the public with alternative forms of legal assistance will make a significant impact on access to justice.

What are some of these emerging technologies for unbundling? What are the processes by which they may be integrated into the legal services delivery model? Who will use these technologies and how will unbundling with them impact legal outcomes for legal services clients? These are all questions the legal services community should keep in mind as it moves forward and analyzes the impact of adding unbundling technology to its existing delivery models.

Below are several proposed methods for integration, some calling for a change in mindset, others pointing towards a more specific implementation of technology to unbundle.

1. Future document-assembly and automation features may be enhanced so that the questions and forms are revised automatically or suggested changes made to the formation based on data collected from a large body of users, such as the members of a law firm or the firm’s clients’ responses related to the creation of specific unbundled

¹³⁴ See Pine Tree Legal Assistance, <http://www.ptla.org/> (accessed July 28, 2012).

¹³⁵ See Legal Aid Society of Orange County, <http://www.lasoc.com/> (accessed July 28, 2012).

¹³⁶ See Legal Genie, <http://www.legalgenie.org> (accessed July 28, 2012).

¹³⁷ See iCan!, <http://www.icandocs.org/ca/> (accessed July 28, 2012).

services, and the record of consistent and frequent edits made by the lawyers using the program. Depending on the selected technology, systems may be used to set up client libraries of legal forms, instructions, and other documents that the lawyer may store online for use with multiple clients. Document-assembly and automation technology may be integrated into a virtual law office set up for the legal services corporation to use with these libraries or a traditional legal services office may use the separate document assembly tools in conjunction with other software applications.

Online limited scope agreements may be created through web-based interfaces and the client's consent for use of the document-assembly process may be collected online and recorded within the client's file. A legal aid office might set up unbundled "packages" of services and post them on the website so that a prospective client may select from the website when searching for online legal assistance. The prospective client then would click on the desired legal service and the link would send the client through an automated process on a 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 is enormous potential through the use of secure online client interfaces to provide unbundled legal assistance to pro se individuals. Recognizing this potential, the Legal Services Corporation requires all LSC-funded legal aid programs to have a statewide website with legal information on those legal problems most often faced by the poor. If there are multiple programs in a state, they all must work together to be sure users are not confused by multiple sites. Most of these sites were originally funded by LSC's TIG program.¹³⁸ This program also funds LawHelp Interactive (LHI), a national server provided free to all LSC-funded legal aid programs, which hosts automated documents authored in HotDocs and the A2J Guided interviews that gather the information to populate these documents.¹³⁹ The use of the technology to streamline the intake process and guide the individual through the process of creating the necessary legal forms online also serves to lessen the burden that the courts and legal-aid offices have in handling pro se individuals.

Even if resulting legal documents and guidance require that the individual seek additional assistance from a licensed lawyer or additional services from the legal-aid office, the time savings from the use of the interface is valuable. Additionally, the software tool is free and open source, meaning that legal-aid programs and other nonprofits interested in the unbundling of legal services to increase access to justice may download the A2J Author software and create their own Guided Interviews.

A potential addition to a system like this would be to connect it to private practitioners interested in volunteering their time to provide unbundled pro bono assistance. At the end of the Guided Interview, if the individual did not want to proceed pro se and did not qualify for further legal-aid assistance, he or she could be provided with a list of potential

¹³⁸ See Legal Services Corporation, Technology Initiative Grants Program, <http://tig.lsc.gov/> (accessed July 28, 2012).

¹³⁹ See LawHelpInteractive, <http://www.lawhelpinteractive.org> (accessed July 28, 2012).

lawyers willing to continue to work with the individual on a limited-scope basis pro bono and be connected with one of the volunteer lawyers online. Based on the needs of the client, the lawyer then could provide unbundled pro bono assistance online or in person, making a limited appearance or providing additional guidance or coaching from the point that the Guided Interview and final legal document left off.

2. The legal services community might consider an approach to unbundling that is similar to the way that higher education is evolving to unbundle its services and adapting to use technology to meet the need for increased access to higher education.¹⁴⁰ Developments in online education are providing valuable case studies of how to deliver unbundled services online in a cost-effective manner and in a way that may be customized to the specific education level and learning style as well as assessed to ensure comprehension and retainment.¹⁴¹ We might apply a similar model to unbundling legal services where a single open sourced software solution could be customized by individual legal aid offices based on specific practice areas and the needs of their different client bases. It would be a learning and assessment tool more than a Wikipedia-type solution. Rather than just be available as a self-help model, this could be used in a variety of contexts where it is coupled with guidance from the legal aid office or with a volunteer lawyer with access to the technology. The legal forms and content for such a system already exist. It would be a matter of selecting and assembling the modules of delivery, such as video tutorial, whitepaper, interactive walkthrough, real time chat or other methods that were useful for the client based on his or her individual needs and discovered learning style that will ensure understanding and retainment of the information delivered.

A crowdsourced, open-sourced system contributed to by the entire legal aid community would quickly be able to grow to scale over a period of a few years to amass a large database of unbundled legal assistance that would continually be updated and developed by its user base. Richard Susskind in *End of Lawyers* imagines such community-based systems evolving, although not specifically in the legal aid context.¹⁴²

Increased collaboration with legal publishers who maintain databases of legal knowledge as well as with law schools, legal clinics, and volunteer lawyers would be critical to the development and management of the online knowledge-based system. While such a system would not be appropriate to serve many individuals needing full-service and in-person legal assistance, or those who may be served with unbundled deliver but who are less comfortable with technology, this would provide a starting point for a centralized and standardized system of unbundled legal knowledge that could be built upon.

¹⁴⁰ Clayton Christensen, Curtis Johnson and Michael Horn, *Disrupting Class: How Disruptive Innovation Will Change the Way the World Learn* (McGraw-Hill Publishing, 2008); and Clayton Christensen and Henry Eyring, *The Innovative University*, (Jossey-Bass Publishing, 2011).

¹⁴¹ See for example, “Harvard and M.I.T. Team Up to Offer Free Online Courses,” *The New York Times* (May 2, 2012), <http://www.nytimes.com/2012/05/03/education/harvard-and-mit-team-up-to-offer-free-online-courses.html> (accessed July 28, 2012); or Udacity, created by former Stanford professor Sebastian Thrun, <http://www.udacity.com/>; or Coursera, a new company providing online platforms for a number of higher education institutions, <https://www.coursera.org/> (accessed July 28, 2012).

¹⁴² Susskind, *End of Lawyers?: Rethinking the Nature of Legal Service*, 135.

In the spirit of innovation, it would be necessary for those adopting and developing such a system to focus energy on collecting the data and customizing it for their clients rather than getting stalled by issues such as maintenance of the quality of the materials or technology support and training for use of the system. Instead, the author suggests that, judging by many of the cloud-based open source communities in other areas of the Internet, these issues may work themselves out as the system develops through beta testing and user feedback. Because it would not be for self-help guidance in the initial stages, there would be less risk of abuse by the public and time for the legal community to operate as an open source community typically does.

3. Encourage overall acceptance of unbundling as a form of legal service delivery that can be high-quality and part of the solution to increasing access. Be flexible with volunteer lawyers who may want to unbundle, but may need to do so online or by phone rather than in-person. Also consider that a client may benefit from a multidisciplinary approach to solving their legal need, requiring the legal services provider or volunteer lawyer to establish partnerships with other providers in health care, housing and other social services areas.¹⁴³
4. Provide improved online directories for volunteer lawyers to “shop” for pro bono cases that may be unbundled rather than require full-service work. For example, after a prospective legal services client goes through the triage process and it has been determined that he or she qualifies, the organization might push this case to an online directory separating out cases that may be unbundled and match the prospective client with the volunteer lawyer who is already using technology in their own practice that would be appropriate for unbundling the case. This would encourage more volunteer lawyers to provide unbundled services because the online matching process would save them the time of having to browse online to find the cases that might be unbundled. The volunteer lawyer would know that he or she could use the technology to communicate and deliver services that he or she already had established in private practice. As more lawyers take their practices to the cloud and deliver online legal services, this form of matching in online directories will be necessary to tap into a larger prospective volunteer base of solos and small firms who want to volunteer their services, but perhaps are more comfortable using their chosen technology for practice management.
5. Add kiosks to legal aid offices where individuals of lower to moderate means may access unbundled legal guidance in the form of educational materials and guided online walkthroughs. The individual would go through the legal aid office’s client intake system to determine if he or she qualifies and if he or she does not qualify for full service representation at the office, the individual would be provided with a list of unbundled options including self-help guidance, legal documents and referrals to lawyers willing to unbundle on a pro bono basis.

¹⁴³ Supporting a multidisciplinary approach, *see generally*, Deborah L. Rhode, Whatever Happened to Access To Justice?, 42 Loy. L.A. L. Rev. 869 (Summer 2009), 899, stating “Many clients have problems that would benefit from holistic, multidisciplinary approaches. Homeless individuals may require not just legal assistance with housing needs, but also access to education, health services, and substance-abuse programs. One-stop shopping is particularly beneficial for elderly, rural, and disabled clients who cannot readily shuttle between multiple agencies.”

6. Consider collaborating with legal technology companies that have an interest in using their products to increase access to justice. For example, LawGives is a legal technology startup with the backing of Stanford University's CodeX and StartX. This technology would allow a "community", a local legal aid office for example, to customize a volunteer lawyer matching system that pairs clients who qualify for unbundled services with a volunteer lawyer in their jurisdiction or a lawyer who is able to unbundle for less than a traditional lawyer fee.¹⁴⁴ There may be other methods of collaboration, such as using a company's cloud-based software for delivering services online or funneling consumers who qualify for legal assistance through the technology to assist them in finding the appropriate care whether it is free online resources, full-service legal aid, unbundled services with a volunteer lawyer, or a combination of services.
7. Consider partnering with some of the legal SaaS technology vendors who have products that allow for unbundling of services. Begin discussing customization between the existing solutions used by legal aid and these newer systems as well as how to create a feeder system that would make use of these vendors' access to lawyers who are keen on unbundling in their practices and who could provide those services online separately to clients or in support of legal assistance provided by legal aid.
8. Consider that unbundling services does not have to be limited to unbundling for legal aid client. Unbundling could also be an accepted form of delivery by a volunteer lawyer for the lawyers at legal aid. This would be similar to the way that in-house counsel at companies retains lawyers in firms to unbundle services for particular client projects.
9. Consider adding unbundled service options to increase private lawyer involvement (PAI) not just for pro bono but in a judicare context.¹⁴⁵ The typical judicare lawyer works for legal services programs at a reduced hourly rate, but unbundling would allow lawyers to agree to do discrete tasks for fixed, low-cost fees.¹⁴⁶ Examples would be a review of the documents, coaching on presenting the case, or appearing at initial hearings to establish temporary custody and child support.
10. There is a need for a nation-wide empirical study to determine, based on legal outcomes, the extent to which unbundled legal services provided to individuals through the use of technology is better than a self-help individual proceeding alone without any legal assistance.¹⁴⁷ The resulting empirical data would provide legal services with more informed guidance on how to integrate unbundling into the scope of assistance provided state wide. It might also provide tangible, fact-based evidence that could be used by the

¹⁴⁴ See LawGives, www.lawgives.com (accessed July 28, 2012). LawGives is backed by Stanford's StartX and CodeX and asserts that access to justice through technology and unbundling is one of their primary goals.

¹⁴⁵ Judicare is the government funding of private practitioner representation of low-income individuals. For a history of judicare, see Luz E. Herrera, *Rethinking Private Attorney Involvement Through a "Low Bono" Lens*, 43 Loy. L.A. L. Rev. 1 (Fall 2009), 12.

¹⁴⁶ See generally, *Id.* Herrera, 1 (arguing that "shift from a pro bono to a "low bono" legal services model would improve access to the judicial system by low- and moderate-income Americans.").

¹⁴⁷ See for example, Jessica K. Steinberg, *In Pursuit of Justice? Case Outcomes and the Delivery of Unbundled Legal Services*, 18 Geo. J. on Poverty L. and Pol'y 453 (Symposium 2011), 457, reported on an empirical study conducted on two forms of unbundling provided by the Legal Aid Society of San Mateo County that focused on the case outcomes of indigent litigants.

Legal Services Corporation to lobby for additional government funding for technology used to provide unbundled services to the public or provide a basis for a nation-wide standardization of technologies and databases used for certain forms of unbundled assistance.

VI. Conclusion

Unbundled delivery moves away from the more traditional method of legal services delivery to more closely meet the current needs of a majority of the public and responds to the demands for accountability by those outside the legal profession. Unbundling is now seen primarily as a service to be handled pro bono or “low” bono, or as a service primarily to aid pro se litigants navigate the justice system. However, unbundling should be looked at in a much broader sense—as the middle ground between no legal representation and full-service representation. Until the day our society can afford the resources to provide full-service representation to all, the reality is that the legal profession must find ways to provide as much assistance as possible.

Changes in technology and consumer behavior have irrevocably changed the method of legal services production and delivery. Unbundling permits lawyers to adapt to changes by slowly making their processes more cost-effective and efficient through the use of technology. Responsible adoption of unbundling across the legal profession will help push the profession into the next generation of legal services delivery - increasing access to justice for the public we serve.¹⁴⁸ To get there will require greater collaboration and cooperation among private practitioners, legal services organizations, technology providers and law schools and legal clinics.

¹⁴⁸ Supporting this statement, see Jeanne Charn, *Legal Services For All: Is The Profession Ready?* 42 LYLALR 1021 (Summer 2009), 1056, “While information and other online resources should be targeted to low- and middle-income consumers, higher-income people might also benefit from these services. Thus, a side benefit of making technology-based services widely available could be a broadening of interest in and support for public investments in access to justice.”