



Unbundled Legal Services: The Cure for the Access to Justice Problem?

The United States legal system has an “access to justice” problem.

An increasing number of low-income Americans are not retaining attorneys to help them with their legal matters. By some estimates, [at least 60% of litigants do not have a lawyer](#) representing them in court. And when individuals without legal training feel that they must handle legal matters themselves, it is unlikely that those matters will be resolved fully or favorably.

It’s not surprising then that [almost 9 out of 10 civil legal problems reported by low-income Americans](#) receive inadequate or no legal assistance. Court dockets across the country are clogged with slow-moving cases because these pro se litigants do not know how to navigate the litigation process.

Many attorneys are sensitive to the legal problems that low-income Americans face and do their part to tackle access to justice issues [through pro bono work](#). But few attorneys can—or want to—discount their fees to a level that low-income Americans would consider affordable.

But what if there was a way for low-income Americans to access affordable legal services? What if the attorneys providing those services were able to charge a reasonable fee that would ensure they would get paid? What if this offering could also help litigation move more smoothly through the courts because of the involvement of an attorney?

There is a way. It’s called unbundled legal services (also known as limited-scope representation).

WHAT ARE UNBUNDLED LEGAL SERVICES?

When attorneys provide unbundled legal services, they assist their clients with only some of the work required to resolve their legal matters. The clients are responsible for the rest. When attorneys provide their services on this “a la carte” basis, clients get the benefit of professional assistance with their matters without having to incur the large expense of full legal representation.

Opportunities abound for unbundled legal services. In small litigation matters, attorneys can draft court papers or review documents, but not appear in court. In real estate matters, attorneys may prepare documents, but not attend closings. In mediated matters, attorneys may prepare a client for mediation sessions and participate in them, but not represent the client in litigation if mediation is unsuccessful. In divorce cases, attorneys can assist with one aspect of a divorce, such as custody or division of marital assets. In practically any legal matter, attorneys can guide clients through the process of resolving the matter and advising on the approach to certain tasks without actually performing those tasks (and then charging the clients for their time).

A benefit to consumers of unbundled legal services is that attorneys often charge a fixed fee, upfront, based on the discrete tasks or phases of a matter. This provides cost certainty and predictability to clients that full legal representation for the duration of a matter, billed by the hour, cannot.

The discrete nature of unbundled legal services provides certainty to attorneys as well but in the form of knowing roughly how long certain tasks will take. That’s why flat fees are prevalent here. With flat fees that are paid upfront, attorneys can avoid depleting a client’s retainer early on in a representation without knowing whether the client will be able to replenish it promptly.

THE ETHICS OF UNBUNDLED LEGAL SERVICES

The American Bar Association’s Model Rule of Professional Conduct 1.2(c), “[Scope of Representation & Allocation Between Client & Lawyer](#),” permits attorneys to “limit the scope of the[ir] representation if the limitation is reasonable under the circumstances and the client gives informed consent.”

Most states follow the lead of the ABA and [permit attorneys licensed in those states](#) to offer unbundled legal services. However, many states have additional rules of professional conduct or ethics opinions concerning unbundled legal services that attorneys should consult before they start offering such services.

Other ethics rules, such as [Rule 1.1 \(Competence\)](#) and [Rule 1.4 \(Communications\)](#), and their local equivalents, would still apply to an attorney’s offering of unbundled legal services. Attorneys planning to aggressively market an unbundled offering should be mindful of the ethics rules governing advertising, including [Rule 7.1 \(Communication Concerning a Lawyer’s Services\)](#) and its local equivalents. Under Rule 7.1, attorneys may run into ethics issues if they market their unbundled legal services as “low-cost” or “discount.”

HOW TO DETERMINE IF UNBUNDLED LEGAL SERVICES ARE RIGHT FOR A CLIENT MATTER

As inviting as unbundled legal services are, they are not appropriate for all legal matters.

Clients involved in complex or high stakes matters such as commercial litigation, acrimonious divorces and serious criminal matters (such as federal or violent crimes) will likely need more assistance from attorneys than would be provided to them through unbundled legal services.

Even where a legal matter would normally be conducive to unbundled legal services, a client may not have the personality or ability to take on the lion’s share of work and responsibility that comes with unbundled services.

In these circumstances, it could be ethically unreasonable for an attorney to offer unbundled legal services.

Here are some factors attorneys should consider when determining if unbundled legal services are reasonable for a client matter:

- Can the legal issues be broken down into separate steps that can be divided between the attorney and the client?
- Can the client understand the legal issues well enough that they can work on their parts of the matter without relying on the attorney?
- Is the client realistic about their ability to handle all or parts of their matter on their own?
- Is the client able to handle their parts of the matter? (This includes assessing whether the client has a disability, the client's comfort level with the English language, whether the client is dealing with mental health issues and whether the client lives or works in an environment that will allow them to devote time and energy to working on their matter.)
- Will the client be able to appear in court without the assistance of an attorney?
- Can the client understand instructions and directions, especially those not written in plain English?
- Does the client have access to technology that would allow them to complete their parts of the matter and comply with local rules, like e-filing?

DESPITE THE POSITIVES, UNBUNDLED LEGAL SERVICES HAVEN'T GAINED MUCH TRACTION

On paper, unbundled legal services seem like a can't-miss proposition. But to date, they [have not caught on with attorneys in private practice](#) as many industry observers anticipated.

One possible reason is that some attorneys believe offering unbundled legal services will cause their malpractice insurance premiums to increase.

Generally speaking, [this does not appear to be the case](#). Also, at least one appellate court [has held that attorneys will not be liable for malpractice](#) when their limited representation of a client does not require them to perform a task that would normally have been performed under a full representation agreement.

Another possible reason for this failure to gain traction is fear by attorneys that judges may be reluctant to honor the limited scope of unbundled legal services—even in jurisdictions that expressly permit them.

While this does not appear to be a universal truth based on some relevant court decisions, state courts are training judges on unbundled legal services. They're also [publishing standardized court forms](#) for attorneys to use when they are representing clients on a limited scope.

UNBUNDLED LEGAL SERVICES WILL GET THEIR DAY IN THE SUN

Like most innovations in the practice of law, unbundled legal services may take a while to become common—even though they may solve a significant problem plaguing society (with the added benefit of helping attorneys do well by doing good). Attorneys who offer unbundled legal services can increase their firms' revenues and build their practices.

With ethical rules generally allowing unbundled legal services, and more attorneys [embracing innovative approaches](#) to delivering legal services to clients, it is only a matter of time before more attorneys begin wading into the unbundled waters. When they do, judges will see these arrangements more frequently and become more comfortable with them. Additionally, misconceptions about how these arrangements impact malpractice insurance will likely vanish.

At that point, unbundled legal services will finally be poised to fulfill their potential as a solution to the United States' access to justice problem.