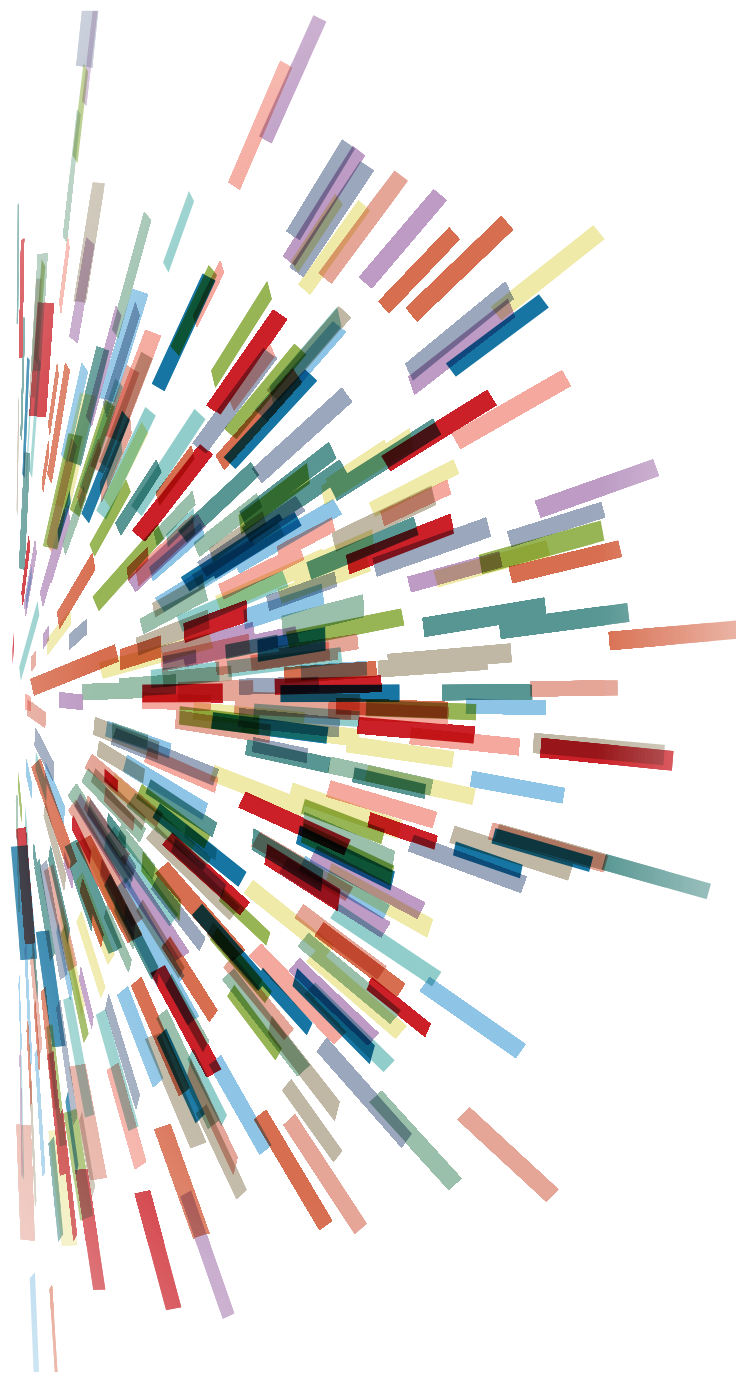


BETTER ACCESS THROUGH
UNBUNDLING

FROM IDEATION TO
IMPLEMENTATION





INSTITUTE *for the* ADVANCEMENT
of the AMERICAN LEGAL SYSTEM



UNIVERSITY *of*
DENVER

BETTER ACCESS THROUGH UNBUNDLING: FROM IDEATION TO IMPLEMENTATION

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IAALS, the Institute for the Advancement of the American Legal System, is a national, independent research center at the University of Denver dedicated to facilitating continuous improvement and advancing excellence in the American legal system. We are a “think tank” that goes one step further—we are practical and solution-oriented. Our mission is to forge innovative and practical solutions to problems within the American legal system. By leveraging a unique blend of empirical and legal research, innovative solutions, broad-based collaboration, communications, and ongoing measurement in strategically selected, high-impact areas, IAALS is empowering others with the knowledge, models, and will to advance a more accessible, efficient, and accountable American legal system.

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INTRODUCTION

Reform-minded lawyers recognize that the legal profession cannot maintain a monopoly on services it does not provide. High percentages of litigants in civil and family cases are navigating court processes without attorneys.¹ Although the factors that drive people to self-represent are multifaceted, the cost of legal representation is a major component. Many segments of the legal profession are responding to this growing reality by focusing on new, client-centric models of legal services delivery. Among these, the unbundled legal services model (also referred to as limited scope representation, limited assistance representation, or discrete task representation) is increasing in visibility.

In October 2017, IAALS, the Institute for the Advancement of the American Legal System at the University of Denver, partnered with the American Bar Association (ABA) Standing Committee on the Delivery of Legal Services to host a national two-day conference on advancing implementation of the unbundled legal services model. *Better Access through Unbundling: From Ideation to Implementation* brought together diverse stakeholders from 26 states, Washington D.C., and Canada to share perspectives, exchange best practices, and chart paths for deeper collaboration.²

Conference attendees heard from leaders in the field of unbundled legal services. Diverse panels and presentations queued important issues, challenges, and opportunities:

- What do self-represented litigants want? What are lawyers providing?
- How do we reach law students, newly admitted lawyers, and even seasoned practitioners to provide a broader platform of unbundled legal services?
- What do we know about the practitioner’s experience with unbundled legal services? Are certain client populations better served than others?

¹ Colorado, for example, reports a 75 percent self-representation rate in FY2017, for both the filing and the responding party in domestic relations cases. OFFICE OF THE STATE COURT ADMIN., COLO. JUD. BRANCH, CASES AND PARTIES WITHOUT ATTORNEY REPRESENTATION IN CIVIL CASES: FY 2017, *available at* <https://www.courts.state.co.us/Administration/Unit.cfm?Unit=annrep> (follow “2017” hyperlink under “Cases/Parties without Attorney Representation” header). A recent study of civil cases from Virginia courts shows that in only 6 percent of Adult Juvenile and Domestic Relations Court cases and in 38 percent of circuit court cases are both parties represented. JOHN E. WHITFIELD, SUMMARY REPORT ON THE FINDINGS OF THE VIRGINIA SELF-REPRESENTED LITIGANT STUDY 2 (Apr. 4, 2018), *available at* <http://brls.org/wp-content/uploads/2018/03/Summary-Report-on-the-Findings-of-the-Virginia-Self-Represented-Litigant-Study-rev.pdf>.

² This was the second partnership of this kind. In 2015, IAALS, the ABA Standing Committee on the Delivery of Legal Services, and the ABA Legal Access Job Corps Task Force co-hosted a two-day conference: *Client-Centric Legal Services: Getting from Here to There*. The conference focused on developing new models of legal services delivery that enhance engagement, redefine and create value, and pivot practitioners into 21st Century problem solvers. *Client-Centric Legal Services: Getting from Here to There*, AM. BAR ASS’N, https://www.americanbar.org/groups/delivery_legal_services/events_training/client_centric_legal_services.html (last visited June 14, 2018).

- How do we engage a wide variety of collaborative stakeholders in the pursuit of advancing unbundling and take advantage of the nexuses they create?
- How are technology solutions creating new dynamics around the implementation of unbundled legal services?
- How can rulemakers and other decision makers create policy and other guidance to clearly chart the course toward implementation and provide direction on risk assessment?
- What are best practices with respect to implementing and advancing unbundling?
- How can we engage the bench in order to legitimize the unbundled services model?
- What are practitioners' concerns with unbundling and how can we diffuse them?

The robust agenda of panel presentations and interactive working group discussions yielded a number of actionable tools, techniques, and strategies applicable to stakeholders around the country. The following report provides a summary of these recommendations and solutions.

Section I first offers a brief overview of the unbundled legal services model, its history, and its structure. Sections II and III outline the high-impact discussion points that emerged from conversations about stakeholder-specific strategies for advancing unbundling and solutions for deeper collaboration across stakeholder groups, respectively. Section IV details elements of the strategic plans developed by representatives from states in varying stages of adoption and implementation. Section V concludes with hyperlinks to Conference resources.

This report and the solutions detailed therein are designed to add to the strengthening foundation for widespread implementation of unbundled legal services.

I. THE UNBUNDLED MODEL: REFRAMING LEGAL SERVICES DELIVERY AROUND CLIENT NEEDS

Lawyers have traditionally provided personal legal services under a “full service model,” whereby the lawyer performs any and all tasks that are necessary to meet the needs of the case, from beginning to end. In an unbundled legal services model, both client and attorney agree, usually at the onset of the engagement, to limit the scope of services that the attorney delivers. The attorney performs discrete tasks—for example, researching issues, drafting documents, or representing the party in court—and the client completes all other portions of the case.

Unbundling is not a new concept. The foundations for the model have existed for some time, influenced by Forrest “Woody” Mosten’s work in the early 1990s involving disintermediation trends in the real estate market. The ABA Standing Committee on the Delivery

of Legal Services encouraged a broad conversation about the unbundled model beginning in 1992,³ after studying the growing rate of self-representation among divorce litigants.⁴ While many factors play a role in driving litigant decisions to self-represent, it is well understood that the inability to afford an attorney is a primary consideration.⁵ Unbundling offers affordable legal services options to clients whose alternative is often no legal representation at all.⁶

Some legal and court communities are turning to advancing unbundled legal services as a viable model for bridging the access to justice gap. However, there are considerable differences among the states in how an unbundled practice is implemented and can be structured within the context of each state's rules and regulations.⁷ And even in states with no remaining rule-based obstacles to unbundling, too few practitioners are embracing the model and few consumers are aware of it. Overcoming the implementation gap remains a challenge.

II. STAKEHOLDER-SPECIFIC RECOMMENDATIONS FOR ADVANCING UNBUNDLING

Conference attendees came from diverse backgrounds and included researchers, private practitioners, legal aid attorneys, bar association representatives, legal educators, regulators, judges, court staff, self-help staff, legal technology providers, and others. Through panel and

³ In 2002, the ABA Model Rules of Professional Conduct were amended to authorize the practice, so while it may have been ethically questionable at some point in the past, it no longer is today in the vast majority of states that have adopted the ABA Model Rule provision governing limited scope representation. Subsequently, the Committee sponsored a resolution that passed the ABA House of Delegates in 2013 to encourage stakeholders to advance unbundling.

⁴ JOHN GOERDT, NAT'L CTR. FOR STATE COURTS, *DIVORCE COURTS: CASE MANAGEMENT, CASE CHARACTERISTICS, AND THE PACE OF LITIGATION IN 16 URBAN JURISDICTIONS* (1992), *available at* <https://cdm16501.contentdm.oclc.org/digital/collection/famct/id/4> (finding that in domestic relations cases in studied courts, 53 percent of the cases involved one party without an attorney and 18 percent involved two parties without an attorney).

⁵ *See, e.g.*, NATALIE ANNE KNOWLTON, LOGAN CORNETT, CORINA D. GERETY & JANET L. DROBINSKE, INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS., *CASES WITHOUT COUNSEL: RESEARCH ON EXPERIENCES OF SELF-REPRESENTATION IN U.S. FAMILY COURT* (2016), *available at* <http://iaals.du.edu/honoring-families/publications/cases-without-counsel-research-experiences-self-representation-us> [hereinafter CWC RESEARCH] (exploring the various factors that drive litigant decisions to self-represent, including perceptions that attorney involvement will affect the ongoing relationship of the parties and litigant desires to have a voice in the process).

⁶ Moreover, it provides a model to serve a subset of family law litigants who can afford some level of legal representation but who do not want the full representation model because they assume (whether justified or not) that engaging a full service lawyer will make their case more adversarial.

⁷ A 2014 Standing Committee paper outlines state approaches to implementing and regulating limited scope representation. AM. BAR ASS'N STANDING COMM. ON THE DELIVERY OF LEGAL SERV., *AN ANALYSIS OF RULES THAT ENABLE LAWYERS TO SERVE SELF-REPRESENTED LITIGANTS* (Aug. 2014), *available at* https://www.americanbar.org/content/dam/aba/administrative/delivery_legal_services/ls_del_unbundling_white_paper_2014.authcheckdam.pdf. Additionally, the ABA's Unbundling Resource Center provides state cases, rules, ethics options, and other materials related to unbundling. *Unbundling Resource Center*, AM. BAR ASS'N, https://www.americanbar.org/groups/delivery_legal_services/resources.html (last visited June 14, 2018).

working group discussions, these participants outlined stakeholder-specific strategies for rulemakers and regulatory bodies, court systems and court service providers, attorneys and professional organizations, and law schools and legal educators.

A. RULEMAKERS & REGULATORY BODIES

Clear rules of professional responsibility and civil procedure are the foundation for encouraging the adoption and spread of unbundling as a viable legal services delivery model. There are many existing models for rules amendments, including Rules 1.2(c) and 6.5 of the ABA Model Rules of Professional Conduct, which a number of states have implemented in identical or similar form.⁸ But even the best rules do not guarantee that lawyers will offer unbundled services or that clients will know to ask for unbundled services. Rulemakers and regulatory bodies can help bridge this implementation gap in a number of ways to support practitioners who want to offer clients unbundled services:

- Develop additional explanatory comments and materials to accompany ethics rules, with guidance for practitioners.
- Support the creation and widespread dissemination of toolkits and other instructional materials for attorneys on how to unbundle services ethically and efficiently.
- Publish articles and other official statements authored by regulators and bar leaders, to provide reassurance that the unbundled model is both authorized and encouraged.
- Educate malpractice carriers on the unbundled model and assure them that this model is not only authorized by professional regulatory authorities but encouraged.
- Encourage carriers to explicitly include unbundled legal services as a covered activity in their informational and advertising materials.

Conference attendees also had a broader candid discussion on the interplay between the respective roles of those charged with regulating the profession and those pushing the boundaries of what is permissible under existing regulations. A foundational suggestion emerging from these discussions is that regulators, and the legal profession more broadly, should rethink common perceptions of what it means to protect clients. Because there is an ongoing access to justice crisis where clients need attorneys but cannot afford them, regulators cannot focus solely on how to protect clients from harm when they do hire an attorney and ignore the harm that occurs when a client who needs an attorney cannot hire one.

⁸ MODEL RULES OF PROF'L CONDUCT r. 1.2(c), r. 6.5 (AM. BAR ASS'N 2016).

B. COURT SYSTEMS & COURT SERVICE PROVIDERS

Courts are on the front line of the growing numbers of self-represented civil and family court litigants. Difficulties navigating the process, problems completing and filing forms, and challenges navigating hearings and trial all impact court staff and judges in terms of time, efficiency, and—in some instances—case outcome.⁹ Court systems stand to benefit greatly from an increase in attorney participation in appropriate cases, and there are things judicial system stakeholders can do to support the unbundled practice model:

- Familiarize judges and court staff with the unbundled model.
- Educate litigants about the unbundled model, including how to access these services and how to assess whether these services are appropriate given a client’s particular needs and situation.
- Engage court leadership in encouraging rulemakers to support the model and encouraging area attorneys to adopt the model. This might take the form of process and procedure modifications that can facilitate client representation through an unbundled model. Informal and expedited domestic relations trials, for example, provide an opportunity for limited scope attorney engagement, while expediting divorce case processing and freeing judicial time for high-conflict or high-touch cases.
- Provide practitioners with guidance on key issues related to offering unbundled trial services, perhaps making available standard, court-approved forms for entry of limited appearance, withdrawal from representation, etc. It is of critical importance to adopt a formal procedure that respects an unbundled legal services agreement in which the parties agree that the lawyer will not be representing the client in court—and will assuage attorney fears that the court could obligate them to represent a client in litigation even where such representation exceeds the scope of the legal services agreement.¹⁰

⁹ See, e.g., CWC RESEARCH, *supra* note 5.

¹⁰ E.g., Or. Uniform Trial Court Rule 5.170: 5.170 LIMITED SCOPE REPRESENTATION

(1) Applicability – This rule applies to limited scope representation in civil cases subject to this chapter, when an attorney intends to appear in court on behalf of a party.

(2) Notice of Limited Scope Representation – When an attorney intends to appear in court on behalf of a party, the attorney shall file and serve, as soon as practicable, a Notice of Limited Scope Representation in substantially the form as set out on the Oregon Judicial Department website (<https://www.courts.oregon.gov/Pages/default.aspx>) .

(3) Termination of Limited Scope Representation – When the attorney has completed all services within the scope of the Notice of Limited Scope Representation, the attorney shall file and serve a Notice of Termination of Limited Scope Representation in substantially the form as set out on the Oregon Judicial Department website (<https://www.courts.oregon.gov/Pages/default.aspx>) in accordance with UTCR 3.140. UTCR 8/1/17 5.10.

(4) Service of Documents – After an attorney files a Notice of Limited Scope Representation in accordance with this section, service of all documents shall be made upon the attorney and the party represented on a

- Stress the importance of court-private sector synergies to capture lessons from both fields.

C. ATTORNEYS & PROFESSIONAL ORGANIZATIONS

With the proliferation of information online, a growing number of legal services platforms,¹¹ and increasing court efforts to provide self-help programming, there is an opportunity for individual attorneys to redefine the services they offer and the value they bring to clients. An unbundled model supports this reinvention:

- The traditional mindset of attorneys and clients alike, that full service representation is necessary in family law cases, no longer reflects the current reality that *some* legal help is better than *no* legal help. Messaging to prospective (and appropriate¹²) unbundling clients that some help is available at an overall lower cost than full service representation is a marketing tool to meet the latent client demand.
- An unbundled legal service delivery model is not just appropriate for, or attractive to, low-income and modest-means clients. Individuals of all income and education levels may be drawn to the ability to retain certain aspects of their case, limit the engagement of an attorney, control legal fees, and define the scope of the attorney's work.¹³

Discussion at the Conference also reminded attorneys of the reality that unbundling is a business model and—like any law practice model—requires forethought and planning in order to be successful. Unbundled practitioners presenting at the Conference offered a number of practical suggestions for incorporating unbundling into a law practice¹⁴:

- In terms of defining the scope of an unbundled practice, begin by considering the whole-picture perspective of serving a client, parsing out from there the tasks that are particularly high-impact for potential clients or aligned with personal specializations and training. Equally important is deciding at the outset what, if any, services will *not*

limited scope basis. The service requirement terminates as to the attorney when a Notice of Termination of Limited Scope Representation is filed and served, or when an attorney withdraws.

¹¹ Legal service providers such as RocketLawyer, Avvo, and LegalZoom are increasingly offering opportunities to discuss discrete topics with an attorney for a flat fee.

¹² An unbundling arrangement will not be appropriate for all cases and all litigants. An unbundled practitioner should adequately screen clients before entering into the client-attorney agreement. *See* FORREST S. MOSTEN & ELIZABETH POTTER SCULLY, UNBUNDLED LEGAL SERVICES: A FAMILY LAWYER'S GUIDE 51-76 (2017) (detailing strategies and tools for client intake and the initial client conference).

¹³ *E.g.*, CWC RESEARCH, *supra* note 5, at 16-20.

¹⁴ *See also* MOSTEN & SCULLY, *supra* note 12, at 245-276 (providing an overview of successful models in place around the country).

- be offered to unbundled clients, such as formally entering an appearance in a case or representing a client at court hearings.
- Screen clients to determine client and case suitability for an unbundled arrangement. Factors to consider include case type, complexity of issues, hearing/trial requirements, opposing party representation status, etc. Client characteristics are also very important in determining suitability: for example, the presence of domestic violence or other significant power imbalance that would affect a client's ability to perform their tasks under the agreement, client sophistication to understand the limitations of the unbundling agreement and perform their role under that agreement, etc.
 - Understand how to convert an unbundled arrangement into a broader scope arrangement—and what documentation is necessary to do so. Many lawyers who offer unbundling services report that it is common for an unbundled arrangement to lead to full service representation or an expanded scope of unbundled services.
 - Develop a repository of appropriate forms to reference, including screening checklists, special retainer agreements, form documents, and other materials that can streamline the process.
 - Remember that pricing, marketing, lead generation, client conversion, fee collection, and other commonly encountered practice issues are no less of a consideration for an unbundled practice.
 - Contact malpractice carriers to ensure they will provide coverage for limited scope representation arrangements.¹⁵ Also, and as with any legal services delivery model, attorneys should be proactive and employ strategies to avoid malpractice in the first instance. Use existing resources, where available, to navigate potential or actual ethical issues that might arise from an unbundled client arrangement.¹⁶
 - Use technology tools to significantly streamline an unbundled practice. Client management systems, document assembly programs, automated billing systems, and other technologies can create the efficiencies needed to grow a thriving unbundled law practice.

Finally, support across professional organizations and within attorney communities can be an effective means through which to spread unbundling. Unbundling needs to be a more institutionalized part of the legal profession; otherwise, there is no appropriate home for this

¹⁵ Reports from participants at the conference indicated that malpractice providers are generally willing to cover limited scope representation arrangements.

¹⁶ The Colorado Bar Association facilitates a Hotline through which attorneys with ethical dilemmas or questions can have a 10-minute conversation with a member of the Ethics Committee. *Ethics Committee*, COLO. BAR ASS'N, <http://www.cobar.org/ethics> (last visited June 14, 2018).

service delivery innovation.¹⁷ Endorsements from respected, well-known bar leaders can provide and instill a sense of permission and support. Conversely, bar leaders and professional organizations condemning and opposing the model can create a chilling effect on broader practitioner willingness to adopt the model.

D. LAW SCHOOLS & LEGAL EDUCATORS

Conference discussions on the role of legal educators suggested a need for realigning law school curriculum—and perhaps also the underlying ethos of legal education—around helping law students appreciate the diversity of potential client bases and the implications for models of legal services delivery. Courts and legal providers are increasingly adopting a customer-centric approach to serving justice system users, and this focus should similarly be built into efforts to reframe legal education. As noted by Woody Mosten in a comparison between the legal profession and the medical profession:

If you have trouble breathing or feel a sharp pain in your heart, would you first consult an internist or a heart surgeon? Most people understand that surgery is an invasive procedure that should be considered as a last option only when necessary, and rarely as a first step. The same can be said of litigation.¹⁸

From a practical standpoint, information on unbundled models (including how to operate an unbundled practice) should be included in law school curriculum. To this end, conference discussions highlighted opportunities for modifying law school curriculum in a number of ways:

- Expose law students to a variety of practice models and law practice options, including the unbundling model.
- Teach skills associated with a law practice (including an unbundled practice) in addition to legal reasoning and analysis.
- Parse out and train students on the discrete tasks that might comprise an unbundled practice: advising, mediation, document assembly, coaching before trial, etc.
- Integrate education on law practice and legal service delivery models into professional responsibility and ethics courses, and test students on commonly encountered or anticipated issues.
- Ensure diversity in faculty law practice experience to facilitate student exposure to a variety of practice types and diverse client needs.

¹⁷ *E.g.*, *Section Directories, Unbundled Law*, ALASKA BAR ASS'N, <https://alaskabar.org/member-services/section-directories> (last visited June 14, 2018).

¹⁸ MOSTEN & SCULLY, *supra* note 12, at 39.

- Incorporate the delivery of unbundled legal services into experiential learning programs.
- Support post-graduate incubator projects to teach young attorneys about delivering unbundled legal services and operating an unbundled practice.

III. OPPORTUNITIES FOR ENHANCED COLLABORATION AMONG STAKEHOLDERS

At the Conference, participants identified collaboration as essential to the advancement of unbundled services. According to Jon Asher, Executive Director of Colorado Legal Aid, “Unbundling will only get traction if implemented through collaboration of stakeholders in varied areas of service.” To that end, panel sessions and expert presentations highlighted a number of areas for collaboration among stakeholders, including legal providers, technology providers, court systems, and community services.

A. BETWEEN LEGAL PROVIDERS & TECHNOLOGY PROVIDERS

It is arguably still the case that technology solutions alone, completely independent of human involvement, cannot yet provide most clients with legal advice and representation (although one cannot ignore that this possibility is on the horizon, however distant). For now, though, technology providers are playing an essential role in expanding unbundled services by facilitating connections between clients and legal services providers.

Legal directories (like Martindale-Hubbell and Justia), online legal marketplaces and matching platforms (like Avvo, Legal Zoom, Court Buddy, Unbundled Attorney, and UpCounsel), legal insurance plans (like those offered by ARAG and LegalShield), and other business-to-consumer legal technology providers are facilitating client-attorney connection on a scale not possible by solo and small firm marketing efforts. While the business models vary across these providers, access to attorneys delivering unbundled legal services is at the core of many of them. Additionally, the contribution of these online/technology stakeholders to the spread of unbundling extends beyond the connector function. Leading platforms have paved the way in messaging about this new practice model and are familiarizing customers with these alternative approaches to legal services delivery.

Business-to-business technology providers are also facilitating implementation of the unbundled model by creating efficiencies on the practice side which, in turn, make an unbundled model more accessible (and potentially lucrative) for practitioners. Document assembly and automation, user-friendly client portals, attorney-client communication tools, calendaring functions, and other features are creating an efficient structure for delivering discrete task legal

services. Additionally, AI-powered tools are increasingly becoming part of law practices, offering opportunities for redefining legal services and streamlining client engagement. There is an opportunity here for younger, more technologically savvy attorneys to mentor and train new and established attorneys alike on the technological aspects of streamlining an unbundled practice.

B. BETWEEN COURT SYSTEMS & LEGAL PROFESSIONALS

In states where unbundling is successfully spreading, there is a symbiotic relationship between court system support for the model and attorney willingness to implement the model. Natural partnerships between the legal profession and court stakeholders can grow this support:

- While courts cannot give self-represented litigants advice (or demand they engage the services of an attorney), court staff and judges *can* educate litigants on the existence of the unbundled model, which in turn may facilitate the model's usage and provide litigants with the tools to help them decide if unbundling is appropriate for them.
- In addition to educating litigants about the existence of affordable legal services options, courts—in partnership with bar associations—can offer litigants a vetted list of attorney providers who offer unbundled legal services, making this list available at court self-help centers and online.¹⁹
- Jointly hosting continuing legal education and judicial education programs with bar leaders can help demonstrate the judiciary's commitment to unbundling as a model.²⁰
- Law libraries exist as an important but sometimes overlooked intersection between attorneys, court staff, judges, and self-represented litigants. Litigants often turn to law libraries for help, especially in the absence of a dedicated self-help center or website. Law libraries can facilitate the spread of information and authorized referral lists of unbundled practitioners.

C. BETWEEN ATTORNEYS & COMMUNITY ORGANIZATIONS

Partnerships with community organizations can facilitate the connection between providers and clients. Healthcare facilities, immigration clinics, veterans' organizations, and

¹⁹ A number of jurisdictions that currently offer litigants a list of attorneys who provide unbundled services include, but are not limited to: Maricopa County, AZ; Mecklenburg County, NC; and King County, WA.

²⁰ In Colorado, for example, a group of lawyers and judges created a traveling roadshow, giving presentations around the state to educate practitioners on the model and discuss common fears that impede attorney willingness to adopt it. James Carlson, *Order up! Legal services go a la carte*, COLO. SUPREME COURT OFFICE OF ATTORNEY REGULATION, http://coloradosupremecourt.com/Newsletters/Summer2016/order_up_legal_services_go_a_la_carte.htm (last visited June 14, 2018).

other community partners can provide natural sites for attorney-client partnerships in various substantive legal areas that lend themselves to an unbundled model. Law schools and legal clinics can serve these specific, discrete community needs while also training law students on the practice. Large law firm pro bono initiatives are also well-positioned to develop and staff these relationships, providing new attorneys with an opportunity to gain experience directly serving in-need clients through discrete task representation.²¹

IV. CRAWLING, WALKING, & RUNNING TOWARD UNBUNDLING: STRATEGIC PLANNING FOR STATE & LOCAL IMPLEMENTATION

Because individual states and local jurisdictions are in vastly different stages of enabling, implementing, and institutionalizing unbundled legal services, strategies and tools being employed in one jurisdiction may not be appropriate or timely in another jurisdiction. During the Better Access through Unbundling Conference, working group sessions brought together stakeholders from similarly situated jurisdictions to develop tailored strategic plans for increasing the visibility, adoption, and use of the unbundled delivery model in their respective jurisdictions.

For purposes of connecting participants whose home states are in similar stages of implementing unbundled legal services, conference attendees self-identified their state as fitting into one of three categories: Crawling, Walking, or Running. Conference hosts provided the following broad outline to help participants identify the most appropriate category²²:

- Factors that might characterize jurisdictions that are “crawling” with respect to implementing unbundled legal services include: the rules changes authorizing the model were only recently enacted; many members of the bar do not know what unbundling is or do not understand how to incorporate the method into their practice; many judges are reluctant to allow the practice.
- In jurisdictions that are “walking,” we might expect to see some enabling rules in place governing limited scope representation; the state bar and other CLE providers are beginning to develop programs on unbundling and how to incorporate the model into a law practice; a few lawyers in the jurisdiction are well-known for offering

²¹ The Los Angeles Incubator Consortium (LAIC) is a partnership between Southwestern Law School, UCLA School of Law, Loyola Law School, Los Angeles, the Los Angeles County Law Library, and local legal aid organizations. Graduates of these law schools who are selected to join the 12-month program receive mentoring and training on the law and ethical law practice management, with the requirement that they provide 100 hours of pro bono work during that time. Los Angeles Incubator Consortium, <https://www.laincubatorconsortium.com> (last visited June 14, 2018).

²² *Finding Your Community*, http://iaals.du.edu/sites/default/files/documents/publications/finding_your_community_parameters.pdf IAALS, (last visited June 14, 2018).

unbundled legal services; courts are increasingly accepting of unbundled arrangements.

- Finally, “running” jurisdictions might be identified by the following characteristics: unbundling is becoming or is already commonplace among attorneys; clients and potential clients are beginning to understand what unbundling means and who offers it; the state bar and other CLE providers offer an array of programs on unbundling and how to incorporate the model into a law practice; attorneys are effectively advertising and educating clients on unbundled services; courts and self-help center staff make available lists of unbundled providers; judges encourage limited scope representation.

While classifying state implementation status and progress is far more complicated than these simplistic groupings suggest, this framework allowed participants to find strategic planning partners who shared implementation challenges and opportunities. The reports from these working groups—presented in a plenary session at the conclusion of the Conference—offer a series of strategic planning action items designed to address the needs of jurisdictions at any stage of unbundling implementation.

A. STATES IN THE CRAWLING STAGE

Conference participants in jurisdictions identified as just having begun the conversation on unbundling, or otherwise in the early stages of embracing the practice, highlighted a number of foundational elements that should be in place to support the success of the unbundling model:

- ***Changing Rules & Regulations:*** A precursor to any strategic plan for promoting unbundling is implementing the appropriate regulatory infrastructure to support the practice. Rules of professional conduct, rules of civil procedure, and other policies should be amended to explicitly authorize the limited scope representation model and the attendant legal services and activities.
- ***Framing the Need:*** The underlying principles supporting unbundling and other alternatives to the traditional legal services delivery model are rooted in access to justice. Framing the importance of and urgency behind unbundled services in this context provides a meaningful motivation for rule makers and regulators to get behind the model.
- ***Understanding Constituent & Community Needs:*** Each jurisdiction is unique in the legal issues and needs prevalent among community members. Understanding the demographics of one’s community and how access to justice issues manifest among community members can help unbundled practitioners better define services.

- ***Recruiting Champions:*** Every cause needs champions, and engaging key stakeholders from the bar, the judiciary, the legal profession, and the broader community is a solid strategy for advancing the unbundled model across multiple channels. Malpractice carriers are an important but often overlooked contingent, and engagement from these stakeholders can go a long way in providing attorneys with the permission they need to seriously consider an unbundled practice.

B. STATES IN THE WALKING STAGE

States with the regulatory infrastructure and stakeholder support system in place still frequently encounter challenges with attorney implementation and adoption of the unbundled model. Supply-side solutions to increase the number of attorneys who offer unbundled legal services include the following:

- ***Attorney Education & Training:*** In many jurisdictions, running an unbundled practice is not something lawyers will have covered in law school. The impetus is therefore on state and local bar associations to develop CLE programming on unbundling for practitioners that both educates them on how to implement the practice and also allays concerns over offering these services.
- ***Broader Recruiting Programs:*** Early attorney adopters will proactively seek and take advantage of CLE programs on unbundling; these early adopters will also be creative and active in serving the legal needs of their communities. But CLEs serve another function beyond training those who have already bought in and that is messaging to skeptics and late adopters about the promise of an unbundled practice.
- ***Business Model Messaging:*** In addition to providing training tools to attorneys interested in implementing unbundling into their law practice, it is important to message to attorneys that this is a viable business model. CLE programs can satisfy this function, as can informal or formal mentorship programs that leverage the experience and expertise (and energy) of established, respected unbundled practitioners.

C. STATES IN THE RUNNING STAGE

Jurisdictions where unbundling is becoming or already is an established fixture in legal communities still experience implementation challenges, particularly with respect to generating public attention and client demand. These demand-side issues often manifest themselves in the difficulty attorneys face finding clients and the difficulty potential clients face learning about and understanding the model. No matter how available or affordable a legal solution might be, public education about non-traditional service models can be an uphill battle—especially given the

widespread familiarity with traditional models and the often-voiced criticism of those models' cost.

Many strategic plans from running-stage states include extensive strategies for connecting with the public that heavily leverage technology tools and collaboration with justice system and community partners:

- **Referral Pipelines:** Bar association-developed and appropriately vetted lists of unbundled attorneys can reach clients in greater numbers when distributed through the courts. Similarly, referral pipelines from legal aid organizations, court-based educational programs, and public law libraries can help these providers direct in-need clients to affordable legal solutions.
- **Outreach to Community Organizations:** There was a clear appreciation among conference participants identifying with states in the running stage that the burden is on attorneys to meet clients where they are. Practitioners in these states reported expanding their reach beyond obvious client sources, connecting with religious institutions, libraries, rural communities, etc.
- **Robust Public Education:** Educating the public about changes in the delivery of legal services is a foundational prerequisite to attracting client attention and business. Advertising is a growing tool for unbundled practitioners and leveraging publicity around celebrity legal events and other relevant news stories, to the extent these opportunities exist, might potentially bring what are otherwise internal industry conversations into the mainstream.
- **Refining & Expanding Messaging:** Talking to the public about unbundled legal services is a much different exercise than talking to the legal community about the model. Messaging to the public about the importance of affordable legal services and the availability of new service delivery models should focus on how these issues directly impact people's lives.

Strategic plans for running states also leveraged court partnerships to change the way unbundled attorneys and their clients interface with court processes:

- Develop streamlined court processes that create both efficiencies for self-represented litigants and opportunities for unbundled practitioners to participate in the process.²³

²³ Oregon has pioneered a new, streamlined type of trial, called an Informal Domestic Relations Trial (IDRT). The IDRT is a voluntary process, where parties can be represented by attorneys or represent themselves. The Rules of Evidence are suspended, allowing parties to say everything they think is important and to introduce into evidence everything they think is relevant. Additionally, the parties speak directly to the judge about the disputed issues, only the judge asks questions, and other witnesses are not allowed to testify unless they are an expert and given permission by the judge. OR. UNIFORM TRIAL CT. R. 8.120 (2017); *Informal Domestic Relations Trial*, OR. JUDICIAL

- Give judges more flexibility to pause proceedings so self-represented litigants can consult with an unbundled attorney (and resume the process in a timely manner thereafter).
- Change hearing setting models to frontload cases with self-represented litigants, providing attorneys with an opportunity to potentially connect with potential clients on discrete issues.²⁴

Finally, in jurisdictions where unbundling is becoming or is already commonplace among attorneys, there was discussion around how to redefine legal services and approaches to service delivery. When the various components of a full service representation model are broken down into their discrete parts, new ways of messaging about these tasks emerge—both in terms of defining the scope of the service and in justifying the value to clients:

- Giving advice is central to any attorney’s service model. For unbundled practitioners, there is an explicit agreement regarding the advice that is given. This strengthens attorney-client communications and creates a level of acknowledgement that is often understated (or lost entirely) in full service representation arrangements. As a result, this explicit communication may provide clients with a more tangible understanding of the service for which they are paying.²⁵
- Coaching—where a lawyer provides behind-the-scenes guidance to a client—is another function implicitly built into many full service representation models. The University of Windsor Faculty of Law is redesigning some of these coach-like functions (and pairing them with important non-legal skills) into a separate client service. Law students in the first-of-its-kind program in North America are being trained in this new role through a Self-Represented Litigants Conflict Coaching class.²⁶
- The value of certain soft skills in legal services delivery is sometimes overlooked. But in high emotion case types like divorce, for example, a thoughtful attorney can minimize some of the emotional stress associated with the process.²⁷ The previously

BRANCH, <https://www.courts.oregon.gov/programs/family/forms/Pages/Informal-Domestic-Relations-Trial.aspx> (last visited June 14, 2018).

²⁴ The common rationale for putting cases with represented parties at the beginning of the docket is to avoid having attorneys wait and accrue costs, but there is also a compelling argument for this approach, as it provides self-represented litigants with an opportunity to observe and learn about the process before they engage in it.

²⁵ *E.g.*, CWC RESEARCH, *supra* note 5, at 23.

²⁶ The class was pioneered by Dr. Julie Macfarlane, Full Professor in the Faculty of Law at the University of Windsor. Dr. Macfarlane leads the National Self-Represented Litigants Project (NSRLP) that builds on her groundbreaking National Self-Represented Litigants Research Study. This qualitative empirical research study provided the foundation for the IAALS *Cases Without Counsel* study, and Dr. Macfarlane served as an advisor to IAALS on that project. *Windsor Law To Offer For-Credit SRL Coaching Course*, NSRLP (Aug. 21, 2017), <https://representingyourselfcanada.com/windsor-law-to-offer-for-credit-srl-coaching-course>.

²⁷ CWC RESEARCH, *supra* note 5, at 46-47.

mentioned Windsor Law SRL Conflict Coaching class recognizes the importance of providing emotional support to people in the legal process. Not traditionally advertised alongside attorney services and credentials, an unbundled practitioner might frame this role as a service in and of itself.

- Preventive legal wellness services and legal checkup programs are growing in popularity, creating forward-looking opportunities for assisting clients, as opposed to limiting services to those that are reactive in nature.

V. BUILDING FOUNDATIONS FOR THE FUTURE OF UNBUNDLING

Every good movement needs champions and early adopters. Fortunately, on the road to advancing unbundling, we have many. The Conference showcased leaders in the field of unbundling, and panelists and attendees submitted a wealth of materials relevant to any and all stakeholders engaged in or supportive of client-centric legal services delivery.²⁸ These materials complement the already robust and growing collection of unbundling resources housed on the ABA Standing Committee on the Delivery of Legal Services Unbundling Resource Center.²⁹

The goal of the Better Access through Unbundling: From Ideation to Implementation Conference was to facilitate a forum in which stakeholders could share, collaborate, and advocate for unbundling as a path to help close the justice gap. We succeeded in that effort and by releasing this report now hope to broaden that forum to reach other stakeholders and other organizations who share a commitment to advancing unbundled legal services. One step at a time, we will move from ideation to implementation.

²⁸ *Better Access through Unbundling Conference Materials*, <http://iaals.du.edu/events/better-access-through-unbundling#tab=materials> (last visited June 14, 2018).

²⁹ *Unbundling Resource Center*, AM. BAR ASS'N, https://www.americanbar.org/groups/delivery_legal_services/resources.html (last visited June 14, 2018).