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THE EVOLUTION OF UNBUNDLING IN LITIGATION MATTERS: THREE CASE STUDIES AND A LITERATURE REVIEW

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Perhaps the most famous "bundle" in United States law is the metaphor used to conceptualize property rights. Law students learn that one way to understand property is as a bundle of rights: the right to possess, the right to exclude, the right to sell, the right to destroy, the right to devise, etc.[1] One reason to conceptualize anything in terms of a bundle is to consider what happens if someone or something—the state, a third party—unties the binding or pulls out one of the sticks. In property, this thought exercise helps students understand many of the doctrines taught in the canonical first year course, including easements, adverse possession, and the rule against perpetuities.

Forrest "Woody" Mosten, whom some called the "Father of Unbundling" in the practice of law,[2] no doubt had all this in mind when, in the 1990s, he began traveling the nation with a bundle of popsicle sticks tied together with a ribbon. To each stick, Mosten attached a label that represented some aspect of legal practice, such as researching the law or negotiating with opposing parties.[3] During his presentation, Mosten would untie the ribbon and wave around the now-separated popsicle sticks to emphasize his point that unbundling in the practice of law was possible and desirable.[4] Mosten's road show comprised part of a trend towards the recognition, legitimization, and promotion of limited legal assistance[5] in litigation matters. The trend began in California[6] and since has spread to almost every state in the nation,[7] with most of the action

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1. *See, e.g.*, JOSEPH WILLIAM SINGER, PROPERTY 2 (3d ed. 2010).

2. MADELYNN M. HERMAN, LIMITED SCOPE LEGAL ASSISTANCE: AN EMERGING OPTION FOR PRO SE LITIGANTS NATIONAL CENTER FOR STATE COURTS (2003), *available at* http://www.ncsconline.org/WC/Publications/KIS_ProSe_Trends03.pdf; *Unbundling Legal Services*, MOSTEN MEDIATION, http://www.mostenmediation.com/books/unbundlinglegal.html (last visited May 27, 2012).

3. In an article published in the early 1990s, Mosten identified seven sticks, including the two mentioned above. Forrest S. Mosten, *Unbundling of Legal Services and the Family Lawyer*, 28 FAM. L.Q. 421, 423 (1994).

4. Telephone Interview with Jonathan Asher, Exec. Dir., Colo. Legal Servs. (Dec. 19, 2011).

5. Unbundled legal services go by a number of names, including discrete task representation, limited assistance representation, and limited scope representation, among others.

6. Telephone Interview with M. Sue Talia, Private Family Law Judge (Feb. 7, 2012).

7. *See generally Court Rules*, AM. BAR ASS'N, http://www.americanbar.org/groups/delivery_legal_services/resources/pro_se_unbundling_resource_center/court_rules.html (last visited Dec. 14, 2011).

occurring in the last two decades.[8] Although some continue to fight the trend,[9] these opponents appear to be losing the battle, and losing badly.[10]

Given the ubiquity of the trend toward unbundling in litigation matters as well as the public nature of some of the opposition,[11] it is unsurprising that the concept has received some attention in academic and professional journals. Indeed, one of the two purposes of our contribution to this symposium issue is to provide a bibliography of sources discussing the concept. We do so in Part III. Our second purpose, however, is to address a lacuna in this literature concerning the answer to the following question: how does a movement toward mainstreaming of limited assistance in litigation matters begin, develop, and spread? To start to answer this question, we interviewed relevant persons, and reviewed relevant documents and literature, in three states: Colorado, Massachusetts, and Alabama.[12]

A preview of our findings is as follows: Although we hesitate to draw conclusions from a discussion of only three states, we did notice several similarities in those we studied. First, in all three states, unbundled representation had been actively practiced, in the context of litigation matters, by legal aid providers (joined in some cases by pro bono attorneys) years before a recognizable movement toward mainstreaming of unbundling began. In some instances, these legal assistance programs were highly visible, in that they included providing representation to eligible clients in the hallways outside of courtrooms, in mediation sessions, and even in court colloquies and motion arguments. What we find notable about this fact is that in each of the three states, few of the private bar or judicial actors we interviewed mentioned the legal assistance experience as providing a source of lessons learned, or a possible model, for a more generalized move towards unbundling (until we asked). In Massachusetts, for example, legal assistance programs operated lawyer for the day (LFTD) programs in family and housing courts for years be-

8. M. SUE TALIA, ROADMAP FOR IMPLEMENTING A SUCCESSFUL UNBUNDLING PROGRAM 3 n.2 (2005); Jessica K. Steinberg, *In Pursuit of Justice? Case Outcomes and the Delivery of Unbundled Legal Services*, 18 GEO. J. ON POVERTY L. & POL'Y 453, 461 n.32 (2011); *see also* Margaret Graham Tebo, *Loosening Ties: Unbundling Legal Services Can Open Door to New Clients*, 89 A.B.A. J. 35 (2003).

9. For example, although not technically an unbundling matter, the Texas Family Bar continues to oppose the plans formulated by the Texas Supreme Court, made in consultation with the Texas State Bar and the Texas Access to Justice Commission, to develop and to make available standardized pleading and order forms for divorce cases. *See* Richard Zorza, *For Texas Advocates, No Good Deed Goes Appreciated*, ACCESS TO JUSTICE BLOG (Jan. 23, 2012), http://accesstojustice.net/2012/01/23/for-texas-access-advocates-no-good-deed-goes-appreciated/.

10. *See Court Rules*, *supra* note 7.

11. *See, e.g.*, John L. Kane, Jr., *Debunking Unbundling*, 29 COLO. LAW. 15 (2000) (guest editorial by a United States Senior District Judge arguing against unbundling).

12. Our selection of these three states was not scientific. We chose Colorado because we thought it might be of interest to readers of the *Denver University Law Review*. We chose Massachusetts because both of us currently reside there. We chose Alabama because it seemed likely to be different from Colorado and Massachusetts.

fore the Massachusetts Supreme Judicial Court authorized what it labeled its "Pilot Project" on limited assistance representation (LAR).[13] Further investigation turned up links between legal services and pro bono efforts on the one hand and the unbundling movement on the other.[14] Yet the lessons drawn from the former efforts were limited. Those with whom we spoke described the pilot project as an essential coalition-building measure, necessary to convince the stakeholders involved of unbundling's efficacy;[15] the previous experiences of those in legal services and pro bono programs were not considered sufficient to persuade. This disconnect between what was already happening in legal assistance and what was thought to be revolutionary in the private bar may hint at deeper themes concerning the distinct worldviews among types of litigators and among judicial actors performing conceptually similar tasks and occupying similar public spaces. We hope to explore these themes in future work.

Second, while the movement toward recognition, legitimization, and promotion of limited assistance in litigation matters germinated in different places in different states, it eventually had to include a coalition of leaders in the private bar, judges and justices of state appellate and supreme courts, administrators of state ethical rules and guidelines, and others. Moreover, with respect to the judiciary, an unbundling movement turned a key corner when judges agreed to give up a cherished power, namely, the power to decide whether to allow an attorney who had formally entered a piece of litigation on a limited basis to withdraw. That is, to induce attorneys to enter a piece of litigation for a particular hearing or for a single aspect of the matter, courts had to pre-commit to allow litigators to withdraw after aspect of the case had concluded.

Third, no one we interviewed knew whether unbundling worked. That is, no one knew whether the movement to legitimize unbundling in litigation matters (which has consisted primarily of making and advertising changes to ethical rules, judicial guidelines, and rules of civil procedure) had any serious effect on the way in which the private bar conducted business, on the number or percentage of litigants who self-represented in court hearings or during other phases of litigation, or on any discernible aspect of access to justice.[16] Although some with whom we spoke cited examples of individual attorneys or offices offering à la

13. Mass. Sup. Jud. Ct., Order In Re: Limited Assistance Representation (Apr. 10, 2009), *available at* http://www.mass.gov/courts/sjc/docs/Rules/Limited_Assistance_Representation_order1_04-09.pdf.

14. For example, the various committees responsible for devising and implementing the pilot project included members from the legal services and pro bono communities. Telephone Interview with Cynthia J. Cohen, Assoc. Justice, Mass. App. Ct. (Mar. 27, 2012).

15. *Id.*

16. *See, e.g.*, Telephone Interview with Gregory Hobbs, Assoc. Justice, Colo. Sup. Ct. (Jan. 9, 2012) (lamenting the dearth of statistical evidence on the use of unbundled legal services and other access to justice interventions).

carte services for litigation matters, and some cited the value of easily-limited representation as a recruitment tool for pro bono groups, no one could point to (nor did our independent research unearth) a credible study or evaluation purporting to assess the effect of a statewide movement or of an individual program that offered unbundled representation.[17] This is not to say that we know that unbundling is ineffective; rather, our point is one of ignorance. We do not know what the effects of LAR movements or programs are on a macro or micro level. Indeed, no one knows even whether the changes states made to their ethical and other rules have resulted in a greater availability and usage of unbundled services.[18]

We proceed as follows. In Part I, we define what we mean by unbundled legal services in litigation matters; rehearse the justifications proponents offer to support it; then review briefly the laws, ethical rules, codes of judicial conduct, and informal practices that must be altered to mainstream unbundling. In Part II, we provide our short case studies of the evolution of limited-scope representation in Colorado, Massachusetts, and Alabama. In Part III, we discuss the bibliography we compiled.

I. WHAT IS THE UNBUNDLED PRACTICE OF LAW IN LITIGATION MATTERS?

A. Our Definition

We propose the following definition of the unbundled practice of law in litigation matters[19]: unbundling occurs when a licensed attorney provides a limited set of legal services, in a litigation matter, accompanied by the expectation that the client will proceed pro se on all other aspects of the matter.[20] The services provided are less than the set of services ordinarily expected in the context of a traditional "full" attorney–

17. One of us recently coauthored two studies evaluating unbundled legal assistance programs vis-à-vis offers of full representation. D. James Greiner et al., The Limits of Unbundled Legal Assistance: A Randomized Study in a Massachusetts District Court and Prospects for the Future (Jan. 18, 2012) (unpublished manuscript), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1948286; D. James Greiner et al., How Effective Are Limited Legal Assistance Programs? A Randomized Experiment in a Massachusetts Housing Court (Mar. 12, 2012) (unpublished manuscript), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1880078.

18. Telephone Interview with Jonathan Asher, Exec. Dir., Colo. Legal Servs. (Mar. 29, 2012).

19. We use this term to include matters that have not yet reached litigation (or administrative adjudication), but will do so if not settled.

20. The American Bar Association Section on Litigation has identified thirteen different varieties of limited scope legal assistance. AM. BAR ASS'N, HANDBOOK ON LIMITED SCOPE LEGAL ASSISTANCE: A REPORT OF THE MODEST MEANS TASK FORCE 16–38 (2003). The most important of these varieties for our paper are (1) preparing or reviewing documents and pleadings (also called ghostwriting), (2) stand-alone interviews and advice, (3) Lawyer of the Day programs, and (4) representation in an initial case or proceeding that affects the result of a subsequent case or proceeding in which the client appears pro se. Our definition excludes two of the ABA categories: collaborative lawyering and group representation. Although collaborative lawyering may technically be limited-scope representation under our definition, as the lawyers determine they will not represent the parties in court, it differs from unbundling as we conceive it for the purposes of this paper.

client relationship. This definition is intentionally limited in several ways. First, we exclude the provision of legal services by law students, paralegals, and other non-attorney but legally trained personnel. We do not intend to suggest that such services are unimportant in any sense. Our purpose in this paper, however, is to illuminate certain aspects about the behavior of licensed attorneys and their counterparts in adjudicatory systems, and we limit our definition accordingly.

Second, we intentionally focus on unbundled services "in litigation matters," meaning matters that already are or will soon be before judicial or agency decision makers. Again, this limit is simply to focus our Article. We do not intend to suggest that LAR outside of an adjudicatory process is unimportant. To the contrary, our point here is that in many ways, litigation is the last frontier for unbundling in the practice of law. For reasons not entirely clear to us, it has been thought to present the most difficult setting in which unbundled representation might operate. Discrete task representation has long been standard practice outside of the adjudicatory context, particularly in transactional work and estate planning. For example, clients have frequently hired lawyers to draft contracts, but not to represent them in the precursor negotiations.[21]

Third, we limit our consideration of LAR to settings in which the client is expected to self-represent in the portions of the matter that the lawyer will not handle. We make this clarification because, in the course of our interviews, we were reminded of the routine practice of separating representation in, among other places, insurance defense.[22] For instance, a lawyer for an insurance company may represent an insured on a claim but not any counterclaims arising from the same incident, with the expectation that the insured will retain separate counsel for the counterclaim.[23] Again, we do not intend to suggest that this practice is uninteresting, but merely that this practice implicates concerns different from those we focus on here.

Although we do not discuss further the legal services or practices excluded in the three previous paragraphs, the above discussion helps to highlight a major point of this Article: the bundle of sticks constituting legal representation has always been tied loosely, if it was tied at all, even in the litigation context. What has changed in the past two decades

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21. *See* Bradley A. Vauter, *Unbundling: Filling the Gap*, 79 MICH. B.J. 1688, 1689 (2000).

22. Telephone Interview with John Lebsack, Shareholder, White & Steele P.C. (Jan. 9, 2012).

23. *Id.* The insurance lawyers choose this route because providing the client with full representation may represent a conflict of interest. *Id.* The conflict of interest arises because the insurance company may have a financial incentive to settle a claim on terms to which the opposing litigant will agree only if the insured drops (or otherwise settles) a counterclaim on terms the insured does not find desirable. *See* Ethical Duties of Attorney Selected by Insurer to Represent Insured, Colo. Ethics Op. 91 § II(C)(2) (Jan. 16, 1993), *available at* http://www.cobar.org/index.cfm/ID/386/subID/1812/CETH/Ethics-Opinion-91:-Ethical-Duties-of-Attorney-Selected-by-Insurer-to-Represent-Insured,-01/16/93/.

is that the looseness of the tie has been recognized, legitimized, and encouraged by a number of actors in the legal system.

We close this subsection with an attempt to apply our definition, *i.e.*, to determine what services our definition encompasses. To begin, we recognize that there is a broad continuum of services that ranges from information provision, such as informing a potential client of the hours and location of a courthouse, to some kind of service that unquestionably constitutes unbundled representation, such as arguing a motion on a client's behalf. In our view, however, definitions others have proposed, such as a hard line at the courtroom door,[24] or distinctions among degrees of ghostwriting,[25] are either insufficiently inclusive or borderline impossible to apply in practice. We suggest one helpful tool in drawing concededly difficult[26] lines is to say that when an attorney's conduct arguably implicates ethical or legal duties apart from those that govern the relationship between the client and the attorney, then the conduct has moved beyond information provision and into the realm of unbundled legal practice.

Ours is a definition of inclusion, not exclusion: conduct that implicates no external relationship might still constitute unbundled representation. But a definition of inclusion can be useful. Under our use of the term, unbundled representation includes contacting or negotiating with an opposing party or attorney on a client's behalf, even if the attorney expressly limits the effort to a single conversation over the telephone, because such conduct arguably implicates opposing counsel's duties regarding contact with represented parties. Our definition of unbundling also includes ghostwriting, instructing the client on particularized arguments to make at a hearing, and appearing on a client's behalf as part of a LFTD program because such conduct arguably implicates[27] duties owed to the tribunal.

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24. *See Profile: "Unbundled" Legal Services Attorney Panel, Maricopa, Arizona*, UNBUNDLED LAW, http://www.unbundledlaw.org/old/Program Profiles/Maricopa profile.htm (last visited May 27, 2012) (describing the panel as providing advice outside of the courtroom but not limited appearances within it).

25. *See* Jona Goldschmidt, *In Defense of Ghostwriting*, 29 FORDHAM URB. L.J. 1145, 1166–67 (2002) (noting the existence of such ethics opinions and explaining that such standards are ripe for inconsistent application).

26. Some of the ethical opinions and other writings we reviewed for this Article were difficult to understand regarding how and where to draw the line between information provision and the practice of law. *See, e.g.*, Mass. Bar Ass'n Ethics Op. 98-1 (May 29, 1998), *available at* http://www.massbar.org/publications/ethics-opinions/1990-1999/1998/opinion-no-98-1.

27. Our point here is not to suggest that, because an ethical or legal duty is arguably triggered, one or another form of disclosure or some other course of conduct is ethically or legally compelled. Jurisdictions may, and in fact already have, differed on what sorts of disclosure they require of attorneys who have, say, ghostwritten documents. *Compare* ME. R. CIV. P. 11(b) (requiring a ghostwriting attorney to include a full signature block on all documents submitted to the court), *and* Kan. Bar Ass'n, Ethics Op. 09-01 (Nov. 24, 2009) (requiring "any document prepared by the attorney is marked 'Prepared with the Assistance of Counsel.'"), *with* CAL. R. COURT 3.37(a) (requiring no disclosure at all). Rather, our point is that conduct that arguably implicates such duties of or to the

In terms of examples of specific programs, Hennepin County, Minnesota, maintains a self-help center in a court frequented by pro se litigants where court employees provide referrals, answer questions, and maintain a public computer with access to court records.[28] This is not unbundling. The center also has a "Legal Access Point" at which an attorney offers litigants 15-minute advice sessions;[29] depending on what is said in those sessions, these might constitute unbundled representation. Perhaps the most difficult case for our purposes is the instructional clinic, in which a knowledgeable person teaches attendees about a particular kind of legal proceeding, the applicable law, and useful strategies. Courts,[30] legal aid organizations or pro bono groups,[31] and law students[32] can all provide clinics. The courts in Ventura County, California organize this type of clinic weekly.[33] Volunteer attorneys, law students, and paralegals sponsor each clinic, which begins with an overview of the court system and then proceeds into the details of a specific family law topic.[34] Each evening, a filing clerk examines each participant's pleadings and then files them.[35] Our sense is to exclude informational clinics, even those conducted by lawyers, from the definition of unbundling unless the clinics include lawyers' eliciting facts from litigants, then using those facts to provide advice designed to shape pleadings. This practice essentially constitutes a limited form of ghostwriting, and for the reasons stated above it is included in our definition.

B. What Are the Alleged Benefits of Unbundling in Adjudication?

Having defined what we mean by unbundling in litigation, a second question arises: why pursue it? In other words, what arguments have proponents of unbundling marshaled to support the movements we describe in Part II? Essentially, proponents' arguments fall into four major categories: access to justice, increased client choice, judicial administration, and business opportunities.

First, proponents of discrete task representation have argued that it facilitates access to justice. By allowing a set of persons who cannot afford to hire a lawyer for an entire matter to hire one for discrete tasks within that matter, the argument runs, unbundling allows clients to real-

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tribunal requires examination to decide what ethical and legal rules should apply, and conduct of this nature should be included in a definition of unbundled assistance.

28. Brenda Star Adams, *Unbundled Legal Services: A Solution to the Problems Caused by Pro Se Litigation in Massachusetts's Civil Courts,* 40 NEW ENG. L. REV. 303, 328 (2005).

29. *Id.*

30. Tiffany Buxton, Note, *Foreign Solutions to the U.S. Pro Se Phenomenon*, 34 CASE W. RES. J. INT'L L. 103, 122 (2002).

31. *Id.* at 123.

32. *See* Margaret Martin Barry, *Are Pro Se Clinics a Reasonable Response to the Lack of Pro Bono Legal Services and Should Law School Clinics Conduct Them?* 67 FORDHAM L. REV. 1879, 1898–99 (1999).

33. Buxton, *supra* note 30, at 122.

34. *Id.* at 122.

35. *Id.*

ize their goals more cheaply, easily, and quickly.[36] Second, proponents have contended that unbundling empowers the class of clients who actually could afford bundled legal services. This is a straightforward anti-paternalism argument: consumers should be allowed to buy exactly what they want to and no more.[37] Third, proponents have suggested that unbundling constitutes a response to the pro se litigation crisis that has afflicted the adjudicatory systems of state courts, as well as state and federal administrative agencies, for some time. The idea here is that having an attorney engage in discrete tasks will facilitate settlements, understandable pleadings, and smooth adjudicatory proceedings.[38] Fourth, proponents have asserted that discrete task representation represents a coherent business model. According to this view, attorneys can access a heretofore untapped market, namely, potential clients with income or assets sufficient to allow them to purchase some but not all of the sticks in the traditional representation bundle.[39]

Because other authors have thoroughly explored these justifications, we have little to add here except for the observation that each of these justifications depends on assumptions that, to our knowledge, have never been credibly evaluated. Perhaps the most important of these assumptions is the idea that every little bit helps, and each little bit helps a little more. In other words, with respect to the set of things that lawyers do, a little is better than nothing, some is better than a little, more is better than some, and a lot is better than more. Our view is that, a priori, there is little reason to believe (or to disbelieve) this assumption in the unbundling context, particularly with respect to the access to justice rationale. Perhaps, like a small dose of antibiotics, a small amount of lawyering can be ineffective, or even harmful, as at least some previous research in a somewhat analogous context has suggested.[40]

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36. *See id.* at 122–23; *see also* John C. Rothermich, *Ethical and Procedural Implications of "Ghostwriting" for Pro Se Litigants: Toward Increased Access to Civil Justice*, 67 FORDHAM L. REV. 2687, 2728–29 (1999); Alicia M. Farley, Note, *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, 565–66 (2007); David A. Hyman & Charles Silver, *And Such Small Portions: Limited Performance Agreements and the Cost/Quality/Access Trade-Off*, 11 GEO. J. LEGAL ETHICS 959, 974–75 (1998); *cf.* Fred C. Zacharias, *Limited Performance Agreements: Should Clients Get What They Pay For?* 11 GEO. J. LEGAL ETHICS 915, 956–57 (1998); Fred C. Zacharias, *Reply to Hyman and Silver: Clients Should Not Get Less Than They Deserve*, 11 GEO. J. LEGAL ETHICS 981, 987–88 (1998).

37. FORREST S. MOSTEN, UNBUNDLING LEGAL SERVICES: A GUIDE TO DELIVERING LEGAL SERVICES A LA CARTE 9 (2000).

38. Comment, *A National Conference on 'Unbundled' Legal Services*, 40 FAM. CT. REV. 26, 28 (2002). Some with whom we spoke contended that this purpose trumped all others, and that because of this fact courts were the primary movers behind the unbundling movement in most states. *E.g.*, Telephone Interview with Cynthia J. Cohen, *supra* note 14. Associate Justice Cohen served as Chair of the Supreme Judicial Court Steering Committee on Self-Represented Litigants. *Id.*

39. MOSTEN, *supra* note 37, at 11.

40. *See, e.g.*, JOHN M. GREACEN, SELF REPRESENTED LITIGANTS AND COURT AND LEGAL SERVICES RESPONSES TO THEIR NEEDS: WHAT WE KNOW 20 (2002), *available at* http://www.courts.ca.gov/partners/documents/SRLwhatweknow.pdf. After finding that visiting a

C. What Must a Jurisdiction Do to Mainstream Unbundling?

We discuss here the set of steps that jurisdictions typically have taken to recognize, legitimize, and promote limited legal assistance in litigation matters. Jurisdictions have taken these steps in part to allay a variety of attorney fears,[41] which include malpractice suits, court sanctions, or judges that refuse to release them from cases despite contracts with clients limiting their involvement.[42] Based on our limited survey of three states, it appears that unbundling rules have evolved in a rough conceptual order, beginning with basic rule changes or ethical opinions permitting unbundling and moving toward more comprehensive revamping of rules.[43] Although we present these changes in something like a conceptual order, we recognize that they do not always evolve in this sequence. The process has been evolutionary and can proceed step by step or via convulsive change. States sometimes changed their rules, surveyed the resulting landscape, and realized new possibilities for change.

Preliminary steps typically began with amendments or interpretations to the equivalent to ABA Model Rules of Professional Conduct 1.2(c) and 6.5. With respect to the former, all fifty states have a rule equivalent to ABA Model Rule of Professional Conduct 1.2(c).[44] On its

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self-help center did not make it more likely that litigants would prevail, the authors state: "The Van Nuys Legal Self Help Center evaluation concluded that litigants who had received Center services, who then lost their unlawful detainer cases, were more likely to perceive that they had not been prepared than litigants who had not visited the Center. In other words, visiting the Center appears to have increased a litigant's expectations of his or her own ability to perform in court." *Id.*

Our sense of caution on this score is heightened by Forrest Mosten's list of sample personal characteristics that might make a client an appropriate candidate for an unbundled relationship. This list includes handling details well; following through on deadlines; reading technical documents effectively; having at least one year of college education; and possessing sufficiently functional eyesight, hearing, and other physical conditions. MOSTEN, *supra* note 37, at 27. Almost any population will have a wide variation on these characteristics, so it is hard to know whether the lower-to-middle-income population that is allegedly benefited by the availability of an unbundled market for legal services possesses these skills in sufficient quantity to allow unbundling to have a significant access-to-justice impact.

41. LIMITED REPRESENTATION COMM. OF THE CAL. COMM'N ON ACCESS TO JUSTICE, REPORT ON LIMITED SCOPE LEGAL ASSISTANCE WITH INITIAL RECOMMENDATIONS 15 (2001) *available at* http://www.americanbar.org/content/dam/aba/migrated/legalservices/delivery/downloads/ca2001unbundlingreport.authcheckdam.pdf.

42. *See, e.g., id.* (reporting the findings of a focus group that discussed attorneys' resistance to limited scope representation). The malpractice worry is slowly being put to rest by malpractice insurers, who are actually seeing lower rates of malpractice suit for attorneys who provide discrete task representation. ABA SECTION OF LITIGATION, HANDBOOK ON LIMITED SCOPE LEGAL ASSISTANCE: A REPORT OF THE MODEST MEANS TASK FORCE 52-54 (2003).

43. For example, some states that have joined the party later than others, such as Alabama, examined the universe of state approaches to unbundling rules and regulations before adopting any rules. This process allowed them to adopt both the basic rules and the more specific rules at the same time. Telephone Interview with Henry Callaway, Member, Hand Arendall, LLC & Tracy Daniel, Exec. Dir., Ala. Law Found. (Jan. 5, 2012).

44. REBECCA L. SANDEFUR & AARON C. SMYTH, ACCESS ACROSS AMERICA: FIRST REPORT OF THE CIVIL JUSTICE INFRASTRUCTURE MAPPING PROJECT (2011), *available at* http://www.americanbarfoundation.org/uploads/cms/documents/access_across_america_first_report_of_the_civil_justice_infrastructure_mapping_project.pdf.

face, this rule might appear to authorize limited legal services.[45] However, the rule by itself has often been insufficient to convince the bar that providing unbundled services was ethical and legal, and in any event, states interpreted the rule's text in widely varying ways.[46] For example, the Alabama State Bar released an ethics opinion in 2010 interpreting Rule 1.2(c) to allow ghostwriting and other unbundled legal services,[47] but Massachusetts' interpretation (since effectively overruled by other rule changes) was narrower in that it permitted only limited advice while barring ghostwriting and more substantial aid to otherwise pro se litigants.[48] Meanwhile Mississippi's 1990 opinion specifically condoned only limited advice given to small businessmen during clinics held by the Chamber of Commerce.[49] Similarly, most states have adopted ABA Model Rule of Professional Conduct 6.5, which governs conflicts of interest for limited legal service programs,[50] or a substantial equivalent.

But these rule changes have ordinarily provided insufficient balm for the fears attorneys associate with unbundling, particularly regarding whether a judge will honor a limited representation agreement by allowing an attorney to withdraw from a case once the attorney has appeared to argue a motion or conduct a single hearing. While some organizations had well-established relationships with judges who allowed limited scope representation and withdrawal,[51] mainstreaming of unbundling depended on firmer assurances.[52]

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45. For example, Rule 1.2(c) is cited in a Colorado ethics opinion that authorizes insurance defense attorneys to represent insureds on claims but not counterclaims. Colo. Ethics Op. 91 (Jan. 16, 1993), *available at* http://www.cobar.org/index.cfm/ ID/386/subID/1812/CETH/Ethics-Opinion-91:-Ethical-Duties-of-Attorney-Selected-by-Insurer-to-Represent-Insured,-01/16/93/.

46. For instance, the Massachusetts Bar Association raised concerns that substantial attorney involvement in otherwise pro se litigation would be unethical; the opinion deemed appropriate "only background advice and counseling . . . ." Mass. Bar Ass'n Ethics Op. 98-1, *supra* note 26. For another view, see UNBUNDLEDLAW, *supra* note 24, which described RPC 1.2 as authorizing advice outside of the courtroom but not limited appearances within it. Note that in Massachusetts, Opinion 98-1 has since been supplanted by a MBA resolution endorsing LAR. Tricia Oliver, *Delegates Complete Full Agenda at November Meeting in Springfield*, MASS. LAWYERS J., (Jan. 2011), *available at* http://www.massbar.org/publications/lawyers-journal/2011/january/delegates-complete-full-agenda-at-november-meeting-in-springfield.

47. The Unbundling of Legal Services and "Ghostwriting," Ala. State Bar, Ethics Op. 2010-1 (2010), *available at* http://www.alabar.org/ogc/fopDisplay.cfm?oneId=424. As we discuss in Part II, this ethics opinion was the first step in a still-ongoing process. Telephone Interview with Henry Callaway & Tracy Daniel, *supra* note 43.

48. Mass. Bar Op. 98-1, *supra* note 26.

49. Miss. Bar Ass'n Op. 176 (Sept. 7, 1990), *available at* http://www.msbar.org/ ethic_opinions.php?id=438.

50. Forty-three states and the District of Columbia have adopted Rule 6.5 or its equivalent. SANDEFUR & SMYTH, *supra* note 44. Of the seven states that have not adopted Rule 6.5, three (West Virginia, Mississippi, and Kansas) have ethics opinions that permit unbundling in some form. Mississippi, however, discussed *supra*, does not contemplate limited scope representation for pro se or indigent litigants.

51. *See, e.g.*, Telephone Interview with Richard MacMahon, S. Coastal Legal Services (Feb. 1, 2012); *see also* Telephone Interview with Judge Dina Fein, First Justice, Massachusetts Housing Court, Western Division (Jan. 27, 2012).

52. *See* Telephone Interview with Daniel M. Taubman, Judge, Colo. Court of Appeals (Jan. 3, 2012); *see also* Telephone Interview with Adam Espinosa, Assistant Regulation Counsel, Colo.

Overall, states have addressed four primary areas in order to mainstream unbundling: the attorney–client relationship, the duty of candor to the court, the relationship with opposing counsel, and judicial conduct. We discuss each in turn.

1. The Attorney–Client Relationship

States have examined the set of rules governing the reasonableness of limited scope representation for a given client, including informed consent and competency of representation. Rule 1.2(c) has been mentioned above, but other rules are implicated,[53] and the collective interaction of these rules has required clarification.[54] Those states wishing to incentivize unbundling also have considered the following issues unanswered by the text of professional conduct rules:

- What does competent representation look like in the limited representation context?[55]

- What is informed consent to limited representation?[56] What risks and benefits should a client considering limited scope representation be apprised of?[57] How would a stock paragraph in an engagement letter that explained the alternatives read?

- Are there circumstances in which limited scope representation is per se unreasonable?[58] What about per se reasonable?

2. The Duty of Candor to the Court

The ABA's comments on Model Rule of Professional Conduct 3.3 establish that an attorney is responsible for pleadings and other litigation documents.[59] This commentary has created confusion for attorneys wish-

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Supreme Court (Jan. 10, 2012) (noting attorneys' fears that they would enter an appearance that would not be honored by the presiding judge).

53. For example, the attorney competency requirement is not set forth within 1.2(c) but rather in Model Rule 1.1, which governs all representations. MODEL RULES OF PROF'L CONDUCT R. 1.1 (1983).

54. *See* Telephone Interview with Daniel M. Taubman, *supra* note 52 (discussing the necessity of understanding how the definition of informed consent, which requires disclosure of both the risks and benefits of a specific choice, interacts with the choice to proceed pro se or with limited representation).

55. The requirement of competency is imposed by MODEL RULES OF PROF'S CONDUCT R 1.1.

56. Informed consent is required by MODEL RULES OF PROF'L CONDUCT R. 1.2(c).

57. *See* MODEL RULES OF PROF'L CONDUCT R. 1.0(e) (defining "informed consent" as an "agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonable alternatives to the proposed course of conduct").

58. For example, some have suggested it would be per se unreasonable to limit the scope of representation in a criminal matter by defending only one of the charges against a client from a single incident. *See, e.g.*, Adam Espinosa, *Ethical Considerations when Providing Unbundled Legal Services*, 40 COLO. LAW. 75, 76 (2011). Others have suggested that some problems may be so complex that competent advice cannot be provided in a limited service context. *See, e.g.*, Emily K. Spitser, The Ethics of Unbundling Legal Services in America: Re-visiting American Legal Ethics at the Turn of the Millenium 39 (2002) (unpublished manuscript) (on file with authors).

59. MODEL RULES OF PROF'L CONDUCT R. 3.3 cmt.

ing to engage in certain forms of unbundled representation, with ghostwriting serving as the primary focus of the resulting debate. States have considered the following questions implicating the duty of candor:

• What information, if any, must a ghostwriting attorney provide on any documents filed with the court? A full signature block?[60] The attorney's name?[61] A statement that the document was prepared with professional legal assistance?[62] Or no disclosure at all?[63] Do the answers to these questions depend on whether the lawyer composes an original document as opposed to assisting as a litigant fills out a pre-existing standardized pleading form? If so, how much of a pleading may a lawyer compose before she triggers the different (presumably higher) duties attendant to composition of an original pleading?

• Must other assistance, such as coaching a client on how to argue a motion, be disclosed to the court? If so, what other assistance?[64] How and when should such disclosure be made?

3. Relationship with Opposing Counsel

Limited scope representation necessarily implicates existing rules about contact with represented parties, as a party engaging a lawyer on a limited basis will, at times, be unrepresented. Therefore, states have been forced to consider the following questions:

• Who does an opposing party or attorney contact, the client or the lawyer? Does the answer to this question change at different points in the proceeding, and if so, what facts charge opposing counsel with notice that a direct contact with the client would be unethical? [65]

• On whom will process be served?[66]

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60. *See* ME. R. CIV. P. 11(b).

61. *See* IOWA R. CIV. P. 1.423(1).

62. *See* N.M. R. PROF'L. CONDUCT 16-303(E).

63. *See* CAL. R. CIV. PROC. 3.37(a).

64. *See* Mass. Bar Op. 98-1, *supra* note 26 (suggesting that "on-going behind the scenes representation," if not disclosed, "runs a risk of circumventing the whole panoply of ethical restraints that would be binding upon the attorney if she was visible"). Again, we note that the Massachusetts Bar Association has since endorsed LAR. Oliver, *supra* note 46.

65. Some, but probably not enough, clarification can come from court-approved forms to use when making and ending a limited appearance. *See* Mass. Probate & Family Ct., Notice of Limited Appearance, *available at* http://www.mass.gov/courts/courtsandjudges/courts/probateandfamilycourt/documents/noticeoflimitedappearance.pdf; Mass. Probate & Family Ct., Notice of Withdrawal of Limited Appearance, *available at* http://www.mass.gov/courts/courtsandjudges/courts/probateandfamilycourt/documents/noticeofwithdrawaloflimitedappearance.pdf; Colo. Ct. Form JDF 630, Civil Notice of Limited Appearance, *available at* http://www.courts.state.co.us/Forms/renderForm.cfm?Form=795; Colo. Ct. Form JDF 632, Civil Notice of Completion by Att'y, *available at* http://www.courts.state.co.us/Forms/renderForm.cfm?Form=797.

66. *See, e.g.*, VT. R. CIV. P. 79.1(b); N.D. R. CIV. P. 5(b)(1).

4. Judicial Conduct

Experience has shown that the cooperation of the presiding judge was essential for effective unbundled representation. Again, a primary emphasis of unbundling efforts has been to obtain a judicial commitment to allow attorneys to withdraw when they have exhausted their obligations under unbundled agreements. For this reason, many states adopted more comprehensive rules governing entrance and withdrawal of limited appearances. These additional rules constrained a judge's discretion to prevent an attorney from withdrawing from a case.[67] Apart from this question, states have also considered the following questions implicating judicial conduct:

- How much help can a judge provide to litigants, and does the answer to this question vary according the nature of an attorney's involvement?[68]

- How liberally should pleadings be construed, and does the answer to this question vary according to how extensively an attorney has ghostwritten the pleading?

- How should a judge treat pleadings where it is unclear if the party is represented?[69]

- Should federal judges behave differently than state judges?[70]

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67. These rules can appear either in a state's rules of civil procedure or a state's rules of professional conduct. *See, e.g.*, N.D. R. CIV. P. 11(e); NEB. RULE OF PROF'L CONDUCT 501.2; IOWA R. CIV. P. 1.404(3)-(4).

68. For example, Delaware has developed a set of judicial guidelines for dealing with pro se or partially-represented litigants, which recommends that a judge use her "discretion to assume more than a passive role in assuring that during litigation the merits of a case are adequately presented through testimony and other evidence," while remaining "neutral in the consideration of the merits and in ruling on the matter." DEL. S. CT., DELAWARE'S JUDICIAL GUIDELINES FOR CIVIL HEARINGS INVOLVING SELF-REPRESENTED LITIGANTS 1.1 (2011), *available at* http://courts.delaware.gov/supreme/AdmDir/ad178guidelines.pdf. Other states have rules addressing adjudication with self-represented parties; these rules vary in the level of judicial engagement and intervention they encourage. *See, e.g.*, MASS. JUD. INST., JUDICIAL GUIDELINES FOR CIVIL HEARINGS INVOLVING SELF-REPRESENTED LITIGANTS (2006), *available at* http://www.mass.gov/courts/judguidelinescivhearingstoc.html. One person with whom we spoke suggested that Massachusetts was the first state to adopt a comprehensive set of rules. Telephone Interview with Cynthia J. Cohen, *supra* note 14.

69. Several states have enacted a presumption that a party is unrepresented. *See, e.g.*, UTAH R. PROF'L CONDUCT 4.2, 4.3; WASH. R. PROF'L CONDUCT 4.2, 4.3.

70. This has been a major issue in Colorado, where a federal judge excoriated ghostwriting early in the development of unbundling. *See* Johnson v. Bd. of Cnty. Comm'rs, 868 F. Supp. 1226, 1231–32 (D. Colo. 1994), *aff'd on other grounds*, 85 F.3d 489 (10th Cir. 1996). The Colorado federal courts have affirmed this position, refusing to adopt Colorado state rules of professional conduct that would permit ghostwriting or other forms of unbundling. *In the Matter of Rules of Professional Conduct*, Amended Administrative Order 1999-6 (Apr. 10, 2000), *available at* http://www.cod.uscourts.gov/Documents/Orders/99-AdminOrder-6.pdf. This is not to say that the federal courts are uniformly opposed to ghostwriting; rather, some types of federal court proceedings, such as immigration hearings, have provided models for state attempts to implement limited scope representation. Email from Dianne Van Voorhees, Exec. Dir., Metro Volunteer Lawyers, to Molly Jennings, (March 29, 2012 2:25:26 PM EDT) (on file with authors).

II. HOW UNBUNDLING FOR LITIGATION MATTERS HAS EVOLVED

In this Part, we provide the results of our attempt to understand how unbundling for litigation matters evolved in our three study states. We begin with a very brief national overview before turning to Colorado, Massachusetts, and Alabama.

Nationally, the first rumblings of unbundling in litigation matters we found occurred in the early 1970s with the establishment of private legal clinics. These clinics focused on legal services that could be standardized, such as divorces and bankruptcies.[71] They represented a move toward a consumer-friendly legal market and enjoyed success in the 1970s.[72] According to Mosten, as legal clients joined broader consumer trends, they began demanding more control over and understanding of the court system.[73] The traditional private bar eventually picked up this momentum.[74]

Attorneys like M. Sue Talia and Mosten began advocating broader use of unbundled legal services as a method of increasing business for the small-firm or solo practitioner.[75] Done correctly, they emphasized, limited scope representation was a "low risk practice, of great service to the courts and litigants and profitable to the lawyer."[76]

Elsewhere, courts and legal services providers turned to unbundling to increase the number of clients they could serve. For instance, Maricopa County, Arizona began an unbundling project in 1994 in its superior court that referred pro se litigants to attorneys who, for a fee, advised them on legal strategy or procedure.[77] Further, groups such as North Central Alabama Legal Services have offered assistance completing forms for simple family law cases since the 1980s.[78]

Unbundling reached a visible national stage with the first national conference on the subject, held in Baltimore in 2000.[79] Panel topics included "Unbundled Practice and Pro Bono Opportunities" alongside "Successful Models for Unbundled Practice: Pioneers in the Field,"[80]

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71. Mosten, supra note 3, at 425; Henry J. Reske, *New Niche for Firm that Led a Revolution*, 80 ABA J, 22 (1994), at 22. Two examples of clinic-based law firms are Jacoby & Myers and Hyatt Legal Services. *Id.*

72. Reske, *supra* note 71, at 22.

73. Mosten, *supra* note 3, at 425.

74. *Id.*; *see also* Reske, *supra* note 71, at 22 ("Like the Romans when they conquered the Greeks, the traditional forms of law firms have maintained their dominance by learning from those they have overcome.").

75. *See, e.g.*, Telephone Interview with M. Sue Talia, *supra* note 6.

76. M. SUE TALIA, *ROADMAP FOR IMPLEMENTING A SUCCESSFUL UNBUNDLING PROGRAM*, 1 (2005), *available at* http://www.ajs.org/prose/South%20Central%20Notebook%20Contents/Tab%206/Roadmap%20for%20Implementing.pdf.

77. UNBUNDLED LAW, *supra* note 24.

78. Telephone Interview with Tom Keith, Legal Services Ala. (Jan. 18, 2012).

79. *Conference Program*, UNBUNDLED LAW, http://unbundledlaw.org/old/program/program.htm#WORKSHOPS AND MATERIALS (last visited May. 28, 2012).

80. *Id.*

demonstrating the alternative justifications of limited service representation as an access to justice measure and as a new business model. In 2002, the American Bar Association finalized changes to the Model Rules of Professional Conduct to provide bare-bones authorization for unbundling, including proposed amendments to Rules 1.2(c) and 6.5 (both discussed above).[81] More recently, the ABA Standing Committee on Delivery of Legal Services announced its plan to introduce a resolution in support of unbundled legal services at the ABA's 2013 mid-year conference.[82] These changes, limited as they were, complimented an increased focus on unbundling at the state level, to which we now turn.

A. Colorado

In Colorado, unbundling in litigation matters began with localized coalitions among legal services groups, pro bono efforts, and individual courts. As a 1998 Colorado ethics opinion would subsequently note, the Denver District Court established an "Information and Referral Office" around 1996, staffed by attorneys who provided limited legal advice and would refer clients to attorneys offering unbundled legal services.[83] At this time, it was not 100% clear that these efforts were legal and ethical, although the involvement of the local court system no doubt provided substantial cover to attorneys engaged in the practice. The current director of Colorado Legal Services explained to us that the legal services attorneys involved "put the huge unmet need [of the otherwise unrepresented] ahead of rule evolution."[84] Similarly, the Metro Volunteer Lawyers program, which provided pro bono volunteer opportunities for Den-

81. *Ethics 2000 Commission*, AM. BAR ASS'N, http://www.americanbar.org/groups/professional_responsibility/policy/ethics_2000_commission.html (last visited May 29, 2012). Rule 1.2(c) was amended to "more clearly permit, but also more specifically regulate" limited scope representation agreements. *Reporter's Explanation of Changes: Rule 1.2*, AM. BAR ASS'N, *available at* http://www.americanbar.org/groups/professional_responsibility/policy/ethics_2000_commission/e2k_rule12rem.html (last visited May 28, 2012). Rule 6.5 was amended in order to permit attorneys to participate in LFTD programs without fear of violating conflict-of-interest rules. *Reporter's Explanation of Changes: Rule 6.5*, AMERICAN BAR ASS'N, http://www.americanbar.org/groups/professional_responsibility/policy/ethics_2000_commission/e2k_rule65rem.html (last visited May 11, 2012).

82. *See Standing Committee on the Delivery of Legal Services*, AM. BAR ASS'N, http://www.americanbar.org/groups/delivery_legal_services.html (last visited July 30, 2012). The resolution confirms that the ABA supports limited scope representation as a means of increasing access to justice and that the ABA will work to increase public awareness of limited scope representation. AM. BAR ASS'N, STANDING COMM. ON THE DELIVERY OF LEGAL SERVS., REPORT TO THE HOUSE OF DELEGATES (July 19, 2012), *available at* http://www.americanbar.org/content/dam/aba/administrative/delivery_legal_services/2012%20limited%20scope%20representation%20report%20ls_del.authcheckdam.pdf

83. Colo. Bar Ass'n, Ethics Op. 101 (Jan. 17, 1998), add. 2006, *available at* http://www.cobar.org/index.cfm/ID/ 386/subID/1822/CETH/Ethics-Opinion-101:-Unbundled-Legal-Services,-01/17/98.

84. Telephone Interview with Jonathan Asher, *supra* note 4.

ver-area lawyers, had begun providing legal advice through its LFTD program in the early 1990s.[85]

According to participants, these programs worked because the lawyers in charge of individual programs had strong relationships with judges in courts inundated with pro se litigants, judges who were willing to be flexible in attempts to restore some sense of order to the courtroom.[86] The existence of these programs, which predated the statewide push towards unbundling, induced Colorado legal aid attorneys and pro bono program administrators to play a somewhat unusual and partly behind-the-scenes role. That is, despite the fact that they were already actively engaged in the unbundled practice, legal aid and pro bono attorneys did not initiate the statewide effort to mainstream that practice. Rather, when that effort began, these attorneys sought to shape the resulting rule amendments to assure that their preexisting programs would be deemed ethical and otherwise permissible.[87]

The movement toward recognizing, legitimizing, mainstreaming, and promoting unbundling began when Forrest Mosten gave several presentations in the early 1990s on the concept.[88] Despite a 1994 opinion by a Colorado federal district judge excoriating ghostwriting,[89] the Denver Bar Association requested a formal opinion from the Ethics Committee of the Colorado Bar Association in 1996.[90] In January 1998, the Ethics Committee responded by adopting Ethical Opinion 101, which concluded that unbundling was permissible under Colorado's Rules of Professional Conduct.[91] The opinion permitted unbundling in the broadest sense, limiting it only by the lawyer's duty to provide competent representation for her client.[92]

The ethics opinion was swiftly followed by a rules change. In July 1999, the Colorado Supreme Court amended Rules of Professional Conduct 1.2, 4.2, and 4.3, as well as Rule 11 of the Colorado Rules of Civil

85. Telephone Interview with Dianne Van Voorhees, Exec. Dir., Metro Volunteer Lawyers Program (Jan. 12, 2012); Telephone Interview with Gina Weitzenkorn, Mills & Weitzenkorn P.C. (Jan. 12, 2012); Telephone Interview with Gregory Hobbs, *supra* note 16 (acknowledging that in its original form, this program consisted of pro se divorce clinics, at which lawyers taught pro se litigants how to fill out the forms needed to obtain a divorce).

86. Telephone Interview with Gina Weitzenkorn, *supra* note 85. The judges in the district court where the Metro Volunteer Lawyers programs began providing rooms and access to the necessary court files.

87. Telephone Interview with Jonathan Asher, *supra* note 18.

88. Telephone Interview with Daniel M. Taubman, *supra* note 52; Telephone Interview with Jonathan Asher, note 4.

89. Johnson v. Bd. of Cnty. Comm'rs, 868 F. Supp. 1226, 1231–32 (D. Colo. 1994), *aff'd on other grounds*, 85 F. 3d 489 (10th Cir. 1996).

90. Letter from Steven C. Choquette & Jon S. Nicholls, co-chairs of the Denver Bar Ass'n Legal Servs. Comm., Barbara G. Chamberlain, Dir. of the Thursday Night Bar Program, and David B. Ells, Dir. of the Colo. Bar Ass'n Pub. Legal Educ., to Kathie J. Fliss, Colo. Bar Ass'n Ethics Comm. (Oct. 9, 1996) (on file with author) [hereinafter Choquette Letter].

91. Colo. Bar Ass'n, Ethics Op. 101, *supra* note 83 (referencing the 2006 addendum).

92. *Id.*

Procedure, in order to permit unbundling for pro se litigants without filing a notice of appearance.[93] These rules permitted ghostwriting (but insisted that the attorney's name, address, telephone number, and registration number appear on the pleading).[94] The swift adoption of these new rules was possible because of the relatively limited objection to unbundling from either state judges[95] or the private bar.[96]

The interviews and other research we conducted made clear that in the consideration of these rule changes and in the deliberations regarding what role unbundling should play in Colorado practice, the experiences of the Denver-based programs discussed above played only a limited part. These programs did, however, play some role. For example, the Denver Bar Association's 1996 request to the Colorado Bar Association's Ethics Committee for an opinion on unbundling[97] was in part spurred by the Bar's desire to clarify the ethical status of some of its pro bono efforts, and these programs were identified as examples in subsequent presentations to the private bar.[98] But few of the persons we interviewed mentioned these programs until we asked about them. Rather, the rule changes were expected to expand unbundling in the private bar with two goals in mind: making legal services more affordable for middle-income Coloradans and increasing pro bono participation.[99] To accomplish this, the Colorado and Denver Bar Associations collaborated to hold several events designed to encourage unbundling.[100] The bench also worked to increase use of unbundling as an access to justice tool, most recently through the Access to Justice Commission, created through appointments by the Colorado bar and the Colorado Supreme Court.[101] Despite the efforts of the bench and bar, private attorney involvement in unbundling remained low.[102] Bar-sponsored pro bono organizations

93. Raymond P. Micklewright, *Discrete Task Representation a/k/a Unbundled Legal Services*, 29 COLO. LAW. 5 (January 2000); Colo. Bar Ass'n, Ethics Op. 101, *supra* note 83.

94. COLO. R. CIV. P. 11(b) (2012) (providing that an attorney's name on the ghostwritten pleading does not constitute an appearance).

95. The federal judiciary in Colorado remained hostile toward limited scope representation, issuing administrative order 1999-6 in April 2000, reaffirming its disapproval of ghostwriting. Colo. Bar Ass'n, Ethics Op. 101, *supra* note 83 (referencing the 2006 addendum). The district court affirmed this position yet again in 2002, adopting local rules that integrated all state rules of procedure and professional conduct except those mentioned in administrative order 1999-6. *Id.*

96. One justice suggested that the private bar may have been more willing to support unbundling because a mandatory pro bono rule was also on the table at the same time these rules were adopted. Telephone Interview with Gregory Hobbs, *supra* note 16.

97. Choquette Letter, *supra* note 90.

98. Email from Dianne Van Voorhees, Exec. Dir., Metro Volunteer Lawyers, to Molly Jennings (March 29, 2012 2:25:26 PM EDT) (on file with author).

99. Telephone Interview with Jonathan Asher, *supra* note 4.

100. Loren Ginsburg, *BBR: Unbundling Legal Services?*, THE DOCKET, 15 (May 1998) (reporting on the Colorado Bench/Bar Retreat panels on unbundling); *Unbundling Your Legal Practice: How to Offer Limited Legal Services* (flyer advertising a continuing legal education event in Denver on September 10, 1997).

101. Colorado Access to Justice Commission formed. COLO. BAR ASSOC., *Access to Justice Commission*, http://www.cobar.org/page.cfm/ID/20129 (last visited Dec. 9, 2011).

102. Telephone Interview with Adam Espinosa, *supra* note 52.

sought to use limited scope representation both to serve more people and to entice more attorneys to volunteer,[103] but the effectiveness of this effort remained unclear.

In the late 2000s, attorneys began to change their perspective on unbundling, perhaps due to deteriorating economic conditions.[104] The bench and bar made further efforts to emphasize unbundling to the private bar. Adam Espinosa, a Colorado Assistant Regulation Counsel, and Colorado Court of Appeals Judge Daniel Taubman began giving presentations to private bar lawyers on how unbundling worked under Colorado law.[105] At these presentations, attorneys frequently raised an issue existing Colorado rules did not address: how could an attorney entering a case for a specific purpose be certain she would be able to withdraw once that purpose was served?[106] The Colorado Supreme Court responded to this concern by adopting amendments to Colorado Rule of Civil Procedure 121 that abrogated the judge's discretion to keep an attorney on a case after filing a limited appearance.[107]

We draw the following lessons from the Colorado experience. First, legal aid providers and pro bono groups made informal arrangements with local courts to enable unbundled representation for litigation matters years before changes in rules mainstreamed the practice. Second, rule changes were iterative; initial changes were found insufficient, and a sustained effort was necessary. A key moment in the process occurred when courts gave up the discretion regarding whether to allow an attorney who entered a case for a limited purpose to withdraw after that purpose had been fulfilled. Third, in Colorado, resistance came primarily from the federal courts; the movement to mainstream unbundling had powerful allies in the state bench, the bar, and the office of disciplinary counsel, among others. Even with such allies, changes made thus far have taken over fifteen years to put in place.

B. Massachusetts

Like Colorado, Massachusetts was home to a number of providers who assisted clients on a limited-scope basis before rule changes and ethics opinions mainstreamed unbundling. Early LFTD programs began

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103. Telephone Interview with Dianne Van Voorhees, *supra* note 85.

104. Telephone Interview with Adam Espinosa, *supra* note 52.

105. *Id.*

106. *Id.*

107. Adam Espinosa & Daniel M. Taubman, *Limited Scope Representation Under the Proposed Amendment to CRCP 121, §1-1*, 40 COLO. LAW. 89 (Nov. 2011). Along with the new rule, the Colorado courts adopted JDF forms 630, 631, and 632 which an attorney may file to indicate a limited appearance. Zachary Willis, *State Judicial Issues Forms Allowing Limited Appearances by Attorneys for Pro Se Parties*, CBA CLE LEGAL CONNECTION (last visited May 28, 2012), http://cbaclelegalconnection.com/2011/11/state-judicial-issues-forms-allowing-limited-appearances-by-attorneys-for-pro-se-parties/.

in the late 1980s and early 1990s.[108] These programs began by offering limited advice and counseling to pro se litigants, gradually expanded to include representation in mediation sessions,[109] and moved from there to having attorneys argue motions or engage in court colloquies.[110] Ordinarily, these programs were staffed by a combination of legal aid providers and pro bono attorneys; in some cases, legal aid providers specialized in full representation, while litigants referred to bar-pro bono groups during triage often received limited services.[111] Meanwhile, even apart from the legal aid context, attorneys and clients also began to engage in unbundled arrangements, whereby the scope of representation was dictated by some combination of the client's gumption and ability to pay for legal services.[112]

As was true in Colorado, Massachusetts's movement toward legitimizing unbundling began with an early ethics opinion, adopted in 1998.[113] By that time, Massachusetts had already (in 1997[114]) adopted Model Rule 1.2(c). Unlike Colorado, however, Massachusetts's ethics opinion initially envisioned a narrower role for unbundling. The ethics opinion distinguished "limited background advice and counseling" from ghostwriting and "more extensive services," permitting only the former.[115] On its face, then, the ethics opinion left unclear the ethical status of a number of forms of unbundling, such as LFTD representation in settlement discussions and mediation sessions.

Some judges did try to capitalize on the early momentum generated by the rule adoption and the ethics opinion. A year after the adoption of the ethics opinion, a committee of the Massachusetts Probate and Family Court released a report that suggested "controlled unbundling" as a potential solution to the pro se crisis.[116] A feature of "controlled unbun-

108. Telephone Interview with Ilene Mitchell, Admin. Office of the Mass. Probate & Family Ct. (Jan. 19, 2012).

109. Telephone Interview with Sandy Moskowitz, Former Dir. of the Bos. Housing Ct. LFTD Program (Jan. 30, 2012). In Boston, the mediation component was added to the program in the early 2000s. *Id.*; *see also* email from Stephanie Lee, Boston Bar Ass'n (Feb. 6, 2012) (on file with author). Programs outside of Boston followed suit, offering representation in mediation sessions run by housing specialists. Ross Dollof & Patricio Rossi, *Mediation Project Gets Results for North Shore Tenants*, 16 LEGAL SERVS. REPORTER 1, 12-14 (2006) (discussing the decision by Neighborhood Legal Services, Inc. to create a LFTD program that extended representation to mediation sessions in the Northeast Housing Court); *see also* Telephone Interview with Judge Dina Fein, *supra* note 51.

110. Telephone Interview with Sheila Casey, Exec. Dir., Neighborhood Legal Servs., Inc. (March 30, 2012) (stating that in 2006, the NLS lawyer for the day program began engaging in court colloquies and motion arguments on behalf of clients).

111. Telephone Interview with Richard MacMahon, *supra* note 51.

112. *See* PROBATE & FAMILY CT. PRO SE COMM., PRO SE LITIGANTS: THE CHALLENGE OF THE FUTURE 42 (1995), *available at* http://www.mass.gov/courts/courtsandjudges/courts/probateandfamilycourt/prosefinalreport.pdf (noting that, in the probate and family court, "it is becoming more common that litigants are retaining attorneys but using them selectively depending on the nature of the court appearance.").

113. Mass. Bar Ass'n, Ethics Op. 98-1, *supra* note 26.

114. MASS. R. PROF'L CONDUCT. 1.2 (2012).

115. Mass. Bar Ass'n, Ethics Op. 98-1, *supra* note 26.

116. PROBATE & FAMILY CT. PRO SE COMM., *supra* note 112, at 42–43.

dling" was that the judge retained discretion as to whether to permit an attorney to withdraw from a case entered for a limited purpose once that purpose was resolved.[117] This suggestion triggered the common attorney fear of indefinite commitment to a case, as articulated above, and opposition in the private bar halted further movement toward "controlled unbundling."[118]

For a year or so after the release of the report suggesting "controlled unbundling," little changed in Massachusetts.[119] Then, Massachusetts Chief Justice Margaret Marshall convened an access to justice conference in March 2001, which she followed about six months later with the establishment of the Supreme Judicial Court Steering Committee on Self-Represented Litigants.[120] The Steering Committee began meeting in April 2002 and started work on several initiatives, including a blue-ribbon Working Group on expanding access to legal representation.[121]

In an effort to reassure the private bar that its concerns would receive serious attention, the Group's co-chairs were selected from nominations by the Boston Bar Association and Massachusetts Bar Association.[122] The Steering Committee also assured that the Working Group's membership included representatives of legal aid organizations that had experience with unbundled programs.[123] The Working Group issued several reports and recommendations. One report argued that ghostwriting was not unethical and that concerns regarding duty of candor to the court could be addressed by including an annotation on a court document noting that it was prepared with assistance of counsel.[124] The Group further recommended that Massachusetts engage in a pilot project testing the provision of unbundled legal services. The Steering Committee on Self-Represented Litigants received this recommendation with caution, fearing the reaction of the private bar, but at a subsequent meeting of the Massachusetts Bar Association, attorneys and judges who had previously opposed LAR thought the idea of a pilot project worth trying.[125]

The pilot program began in two courts but soon expanded to include a third; it was only open to attorneys who had completed training in LAR.[126] An advisory group for the pilot program included representa-

117. Interview with Cynthia J. Cohen, Assoc. Justice, Mass. App. Ct. (Jan. 9, 2011).

118. Interview with Jayne Tyrrell, Dir. of Massachusetts Interest on Lawyers Trust Fund Accounts (Dec. 20, 2011).

119. Interview with Cynthia J. Cohen, *supra* note 117.

120. *Id.*

121. *Id.*

122. *Id.*

123. Telephone Interview with Cynthia J. Cohen, *supra* note 14.

124. *Id.* The Working Group also pushed Massachusetts to adopt Model Rule of Professional Conduct 6.5, which governs conflict checking for attorneys involved in pro bono limited representation programs.

125. *Id.*

126. Interview with Cynthia J. Cohen, *supra* note 117. *See generally* Suffolk, SS. Supreme Judicial Court, Order In Re: Limited Representation Pilot Project, (Aug. 1, 2006), *available at*

tives from various sectors of the bar, including legal aid and pro bono groups.[127] The advisory group also proposed the term "limited assistance representation" instead of "unbundling" so as to separate the concept from the "controlled unbundling" idea.[128] After receiving positive reactions (drawn in large part from surveys of judiciary staff) regarding the pilots, the Steering Committee issued a report recommending that LAR be made available in all of the state trial courts.[129] The Massachusetts Supreme Judicial Court issued an order empowering each of the state's seven trial court departments to authorize LAR, and the departments in turn issued the appropriate orders.[130] These orders required attorneys to undergo LAR training; further, entry and exit from a piece of litigation was to be effectuated automatically by filing appropriate notices, thus removing the need for a court order permitting the withdrawal.[131] Some reports suggest that LAR has been used to leverage pro bono assistance, but has not caught on in the fee for service context, at least in the state's housing courts.[132]

We draw the following conclusions from the Massachusetts experience. First, unbundling was an established part of several legal assistance programs run both by legal aid providers and by pro bono attorneys prior to the Massachusetts Supreme Judicial Court's "pilots." Further, under applicable court rules, legal aid and pro bono attorneys were subject to the same ethical strictures as the private bar.[133] Despite these facts, these programs were not seen as providing sufficient information for judgments regarding how challenges such as contact with represented parties and entry/withdrawal from pending litigation should be addressed statewide. Instead, the "pilots" were considered necessary to address these issues.

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http://www.mass.gov/courts/sjc/limited-rep.html. The program began in the Boston Family Court and the Springfield Family Court. Interview with Cynthia J. Cohen, *supra* note 117. It later expanded to the Deadham Probate and Family Court in Suffolk, SS. Supreme Judicial Court, Amended Order In Re: Limited Representation Pilot Project, (June 28, 2007), *available at* http://www.mass.gov/courts/sjc/limited-rep.html.

127. Telephone Interview with Cynthia J. Cohen, *supra* note 14.

128. *Id.*

129. *Id.*; *see also* THE SUPREME JUDICIAL COURT STEERING COMMITTEE ON SELF-REPRESENTED LITIGANTS, ADDRESSING THE NEEDS OF SELF-REPRESENTED LITIGANTS IN OUR COURTS: FINAL REPORT AND RECOMMENDATIONS (2008), *available at* http://www.mass.gov/courts/sjc/ report-self-rep-litigants.html.

130. Interview with Cynthia J. Cohen, *supra* note 117; *see, e.g.*, Mass. Housing Ct. Dept., Standing Order 1-10, Limited Assistance Representation (Aug. 30, 2010), *available at* http://www.mass.gov/courts/courtsandjudges/courts/housingcourt/housing-standing-order1-10.pdf.

131. The orders of the various Massachusetts trial court divisions resemble one another. Telephone Interview with Judge Dina Fein, First Justice, Mass. Housing Ct., W. Div. (March 26, 2012).

132. Telephone Interview with Judge Dina Fein, *supra* note 51. Judge Fein suggested further marketing programs targeted at the state bar to promote interest in unbundling on a fee-for-service basis.

133. *See, e.g.*, Mass. Housing Ct. Dept., Standing Order 1-01, Lawyer for a Day Program (Sept. 10, 2001), *available at* http://lawlib.state.ma.us/source/mass/rules/housing/standingorder1-01.html.

Even today, Massachusetts legal and ethical rules as applied in certain courts draw a line between, say, LAR as part of a LFTD program (which are typically run by legal aid providers and pro bono attorneys) versus limited appearances by attorneys not associated with such a program. For example, an attorney who appears in the Massachusetts Northeast Housing Court to argue a motion as part of that court's LFTD program is governed by Massachusetts Housing Court Standing Order 1-01, need not file a notice of limited appearance or a notice of withdrawal of limited appearance, and need not have completed any special training.[134] In contrast, when a lawyer's appearance to argue a motion is separate from the Northeast Housing Court's LFTD program, her appearance is governed by Massachusetts Housing Court Standing Order 1-10. This latter order requires that the lawyer file a notice of limited appearance and a notice of withdrawal of limited appearance, and the lawyer must have undergone LAR training.[135] We confess that we are uncertain as to the conceptual distinction between these two situations, particularly given that Massachusetts Housing Court Standing Order 1-01 expressly provides that the Rules of Professional Conduct apply in full to LFTD attorneys.[136]

Second, in Massachusetts, there was substantial opposition to unbundling at the inception of the movement, and this opposition led to another iterative process towards mainstreaming. Third, a key sticking point in the process was whether courts would give up the discretion regarding whether to allow an attorney who entered a case for a limited purpose to withdraw after that purpose had been fulfilled. Progress was only possible after courts made clear that they would in fact do so.

C. Alabama

Alabama's rule changes and official adoption of unbundling rules happened later than the other states surveyed. Nevertheless, some legal aid providers and pro bono groups began providing various forms of unbundled assistance before the organized bar began seriously considering rule changes that mainstreamed the practice. For instance, responding to both the wave of pro se litigants experienced by Alabama state courts

134. Telephone Interview with Sheila Casey, *supra* note 110; Mass. Housing Ct. Dept., Standing Order 1-01, *supra* note 133. For a similar understanding in family court, see Telephone Interview with Ilene Mitchell, *supra* note 108.

135. Mass. Housing Ct. Department Standing Order 1-10, *supra* note 130, at 1–2. For a similar regime in family courts, see Memorandum from Paula M. Carey, Chief Justice of the Massachusetts. Probate and Family Court to All Judges, Registers, Chief Probation Officers, Judicial Case Managers, and Family Law Facilitators of the Probate and Family Court Re: Ltd. Assistance Representation (May 8, 2009), *available at* http://www.mass.gov/courts/courtsandjudges/courts/probateandfamilycourt/documents/memorelarstatewide.pdf.

136. Mass. Housing Ct. Dept., Standing Order 1-01, *supra* note 133; *see also* Russell Engler, *And Justice for All—Including the Unrepresented Poor: Revisiting the Role of the Judges, Mediators, and Clerks*, 67 FORDHAM L. REV 1987, 2046 (1999) (describing pro se interventions as lying along a spectrum rather than on one side or the other of a hard-and-fast line).

and to funding cuts,[137] Legal Services of North Central Alabama[138] began creating pro se forms in the mid-1980s without the advance approval of the courts.[139] Feeling it was irresponsible to hand out the forms without direction, Legal Services of North Central Alabama also began providing limited advice to pro se litigants looking to use the forms.[140] Furthermore, legal services attorneys in Alabama have for years engaged in limited representation in the form of telephone negotiations with opposing parties without formally entering cases.[141]

Movement towards mainstreaming began within the organized bar in 2000, later than in Colorado and Massachusetts.[142] At that time, Chief Justice Perry Hooper and Alabama State Bar president Wade Baxley nominated an access to justice task force.[143] When Chief Justice Hooper retired in 2001, however, the task force stopped meeting.[144] A subcommittee organized by the Alabama State Bar Committee on Volunteer Lawyers Programs/Access to Legal Services attempted to continue the work of the task force, but after gathering some pro se forms and holding a few meetings, the subcommittee found it lacked the authority to go further.[145] In 2004–2005, the bar put together a task force that produced two concrete recommendations to improve access to justice: (1) appointing a committee to develop and distribute pro se forms and (2) enabling limited scope representation.[146] This committee report, while highlighting potential benefits of unbundling, failed to convince the bar to take affirmative steps. The Alabama State Bar chose to focus on increasing the number of pro se forms and essentially tabled the limited scope representation recommendation, citing concerns about the unauthorized practice of law.[147]

In 2007, the Supreme Court of Alabama renewed the focus on unbundling (along with several other measures) by establishing an Access

137. Interview of Tom Keith by Kenneth Cain, Jr. (July 26, 1992), *available at* http://www.ll.georgetown.edu/nejl/Tom_Keith_trans.cfm.

138. At the time, Legal Services of North-Central Alabama was its own organization. In 2004, all the legal services organizations in Alabama merged into one group, Legal Services Alabama. *About Us*, LEGAL SERVICES ALABAMA, http://www.legalservicesalabama.org/ about_us/ (last visited May 29, 2012).

139. Telephone Interview with Tom Keith, *supra* note 78; Interview of Tom Keith by Kenneth Cain, Jr., *supra* note 137.

140. Telephone Interview with Tom Keith, supra note 78; Telephone Interview with Stacey Haire, Attorney, formerly of Legal Services of North Central Alabama (Jan. 20, 2012).

141. Telephone Interview with James Chipley, Attorney, Legal Services of Alabama (February 22, 2012).

142. Telephone Interview with Tom Keith, *supra* note 78; ACCESS TO JUSTICE TASK FORCE, ACCESS TO JUSTICE? SELF-REPRESENTED LITIGANTS IN THE ALABAMA COURT SYSTEM 2 (2005).

143. *Id.*

144. *Id.*; Dana Beyerle, *Justice Hooper to Retire*, GADSEN TIMES, Oct. 8, 2000, at B1, B8.

145. ACCESS TO JUSTICE TASK FORCE, *supra* note 142, at 2–3.

146. *Id.* at 4, 6; Telephone Interview with Henry Callaway & Tracy Daniel, *supra* note 43.

147. Telephone Interview with Henry Callaway & Tracy Daniel, *supra* note 43.

to Justice Commission (ATJ Commission).[148] While the order establishing the ATJ Commission did not specifically reference unbundling, the Commission financed a state bar Pro Bono Committee that began looking into unbundling as a response to the pro se crisis.[149] This Committee began to develop a set of rule changes to promote limited scope representation that, it was hoped, would provide sufficient specificity for attorneys considering unbundling their practices.[150] The proposed changes, based on lessons learned from other states, included (1) clarification of what must be included in a limited scope representation agreement, (2) how to determine if a party was represented or unrepresented, (3) permission for ghostwriting if document includes notation that it was prepared with assistance of counsel, and (4) an automatic withdrawal provision for limited scope attorneys.[151]

Momentum grew in 2010, when the Alabama State Bar General Counsel's office issued Ethics Opinion 2010-01, stating that the rules as they stood permitted ghostwriting and limited scope representation.[152] Although the Commission noted that the ethics opinion did not provide sufficient guidance to induce private attorneys to incorporate unbundled legal services into their practices,[153] certain pro bono groups took the opinion as sufficient initiative to launch new programs to serve the underrepresented.[154]

Finally, the Alabama State Bar Board of Bar Commissioners approved the Pro Bono Committee's proposed rule changes in November 2011, after which they were sent to the Alabama Supreme Court for approval.[155] The Alabama Supreme Court adopted the new rules on March 26, 2012.[156]

We draw the following lessons from the Alabama experience. First, as in Colorado and Massachusetts, legal aid and pro bono groups were pursuing unbundled representation in litigation matters before alterations to court and ethics rules mainstreamed the practice. Yet again, this expe-

148. *About Us*, ALA. ACCESS TO JUSTICE COMM'N (2009), http://alabamaatj.org/about_us.html (last visited May 29, 2012).

149. Telephone Interview with Henry Callaway & Tracy Daniel, *supra* note 43.

150. *Id.* The proposed rule changes will affect Alabama Rules of Professional Conduct 1.1, 1.2, 4.2, and 4.3, as well as Alabama Rules of Civil Procedure 11 and 87. Memorandum from Henry Callaway on behalf of the Pro Bono and Public Service Committee to the Alabama State Bar Executive Committee (July 22, 2011) (on file with author).

151. Memorandum from Henry Callaway, *supra* note 150.

152. Ala. State Bar, Ethics Op. 2010-1, *supra* note 47.

153. Memorandum from Henry Callaway, *supra* note 150.

154. Telephone Interview with Kelli Mauro, Exec. Dir., Birmingham Volunteer Lawyers Program (Jan. 26, 2012).

155. Minutes of the Ala. State Bar Bd. Comm'rs Meeting 6 (Nov. 4, 2011), *available at* http://www.alabar.org/bbc/minutes/1111/Minutes_Board%20Meeting_November42011.pdf; Telephone Interview with Henry Callaway & Tracy Daniel, *supra* note 43.

156. Ala. Sup. Ct., Order Approving Amendment to Rules 1.1, 1.2(c), 4.2, & 4.3 of the Ala. Rules of Prof'l Conduct (Ala. Mar. 26, 2012), *available at* http://www.alabar.org/media/img/Ala-Sup-Ct-Order%20-LSR.pdf.

rience was thought to have limited relevance to the mainstreaming effort. Second, Alabama learned from the experience of other states and, in doing so, was able to propose a more comprehensive set of rule changes.[157] Third, opposition within Alabama to the concept of unbundling has been somewhat muted, and the organized private bar for the most part has been a proponent, not an obstacle, to mainstreaming.

D. Common Conclusions

We articulated our view of the lessons common to all three states in the Introduction to this Article. To avoid too much repetition, we simply summarize our views here. First, in all three states, legal aid providers (joined in some cases by pro bono providers) had actively practiced unbundled forms of representation in litigation matters in years before a recognizable mainstreaming movement began. Second, the movement toward recognizing, legitimizing, and promoting limited assistance in litigation matters had to include a coalition of leaders in the private bar, the judiciary, administrators of state ethical rules and guidelines, and others. Third, no one knows whether the mainstreaming efforts have in fact realized the goals they were designed to promote.

III. THE BIBLIOGRAPHY

The final part of this paper consists of a bibliography of sources concerning unbundling, which is available at www.denverlawreview.org. We limit this bibliography to sources that focus on the definition of unbundling we laid out in Part I, *supra*—for instance, we have excluded sources that deal primarily with collaborative lawyering[158] and law student clinics, both of which fall beyond the scope of this paper. Further, we exclude the numerous state bar publications on unbundling[159] because of the volume of such publications, the difficulty in obtaining them, and the fact that many are listed elsewhere.[160] The national bar publications

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157. Persons involved with the push for unbundling in Alabama had gone so far as to hire a consultant familiar with the California experience to generate ideas and to facilitate more comprehensive moves. Telephone Interview with Henry Callaway & Tracy Daniel, *supra* note 43 (discussing the hiring of M. Sue Talia, Private Family Law Judge, as a consultant).

158. Collaborative lawyering involves a lawyer-client relationship limited by an agreement that "the lawyer will not represent the client in court in an adversarial proceeding against the other party at any time." Susan L. Amato, *Collaborative Family Law: Setting the Framework for Effective Collaborative Practice*, *in* UNDERSTANDING COLLABORATIVE FAMILY LAW: LEADING LAWYERS ON NAVIGATING THE COLLABORATIVE PROCESS, WORKING WITH CLIENTS, AND ANALYZING THE LATEST TRENDS 179 (2011). If an agreement between the parties is not reached, none of the collaborative professionals will participate in any adversarial court proceeding involving these parties. *Id.*

159. We have included two pieces from Colorado publications because they represent a high-profile debate on the propriety of unbundling between the state and federal courts in the State. *See* Kane, *supra* note 11 (describing support for unbundling); Micklewright, *supra* note 93 (same).

160. The ABA Standing Committee on the Delivery of Legal Services, for instance, maintains a bibliography of sources relating to unbundling, which includes many relevant state bar publications. *See Pro Se/Unbundling Resource Center: Articles*, ABA STANDING COMMITTEE ON THE DELIVERY OF LEGAL SERVICES, http://apps.americanbar.org/legalservices/delivery/delunbundart.html (last visited May 28, 2012).

included in our bibliography accurately reflect the content of many of the state bar articles, which tend to describe recent developments in state law.

The sources are organized into the following categories:

- *Problem/Trend Descriptive*: These sources explore the problem of pro se litigation and trends in unbundling.

- *Empirical*: These pieces take an empirical look at unbundling's efficacy or provide a framework for future empirical work.

- *Ethical*: Pieces in this category consider the ethical implications of unbundling.

- *Legal*: Sources in this category analyze the rules of civil procedure or professional conduct relevant to unbundling.

- *Operational*: These articles consider the steps a practitioner must take to unbundle his practice.

- *Ghostwriting*: Articles in this category look at issues unique to ghostwriting.

- *Judicial Role*: These pieces suggest varied best practices for judges faced with parties using limited representation.

- *Court-Based Delivery Systems*: These sources explore unbundling services provided through court-based self-help centers.

- *Clinics*: Articles in this category consider the effectiveness of pro se clinics, whereby a legal services organization teaches pro se litigants how to proceed before they go to court.

- *Elder Lawyering*: These sources appraise issues specific to unbundling for elderly clients.

- *Hotlines*: These pieces investigate the use of hotlines for delivery of unbundled legal services.