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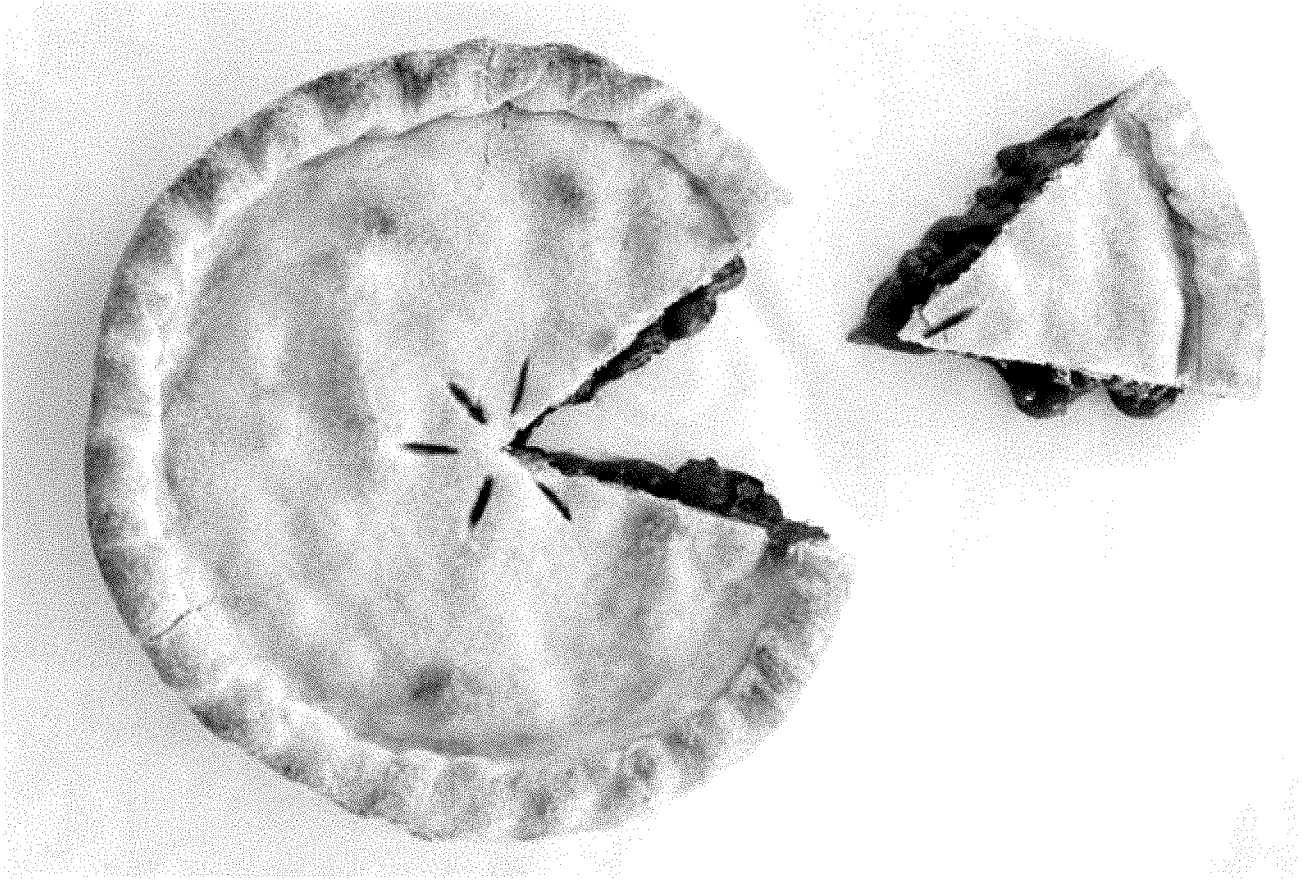
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PAMELA BUCY PIERSON



“Unbundling” in the New Legal Marketplace

It was the end of the semester. Alan, an impoverished 1L, sat in traffic, frustrated. Parked U-Hauls, SUVs, and students carrying boxes and furniture were everywhere. As he watched two coeds struggle with a large flat screen television, Alan thought, “I could make money moving students in and out of apartments.” His mind raced . . . Bart, a classmate, needed money as badly as Alan and had a big pickup truck . . . We could charge \$15, maybe \$20 an hour . . . Moving furniture wouldn’t be all that different than working out at the gym. Alan called Bart.

By the time Alan reached home, he and Bart had a plan and a name for their business, “Law Man in a Van.” They distributed flyers around campus, advertised on Craigslist, posted on Facebook, and within days had dozens of customers. Then they started thinking about the things that could go wrong. What if they dropped someone’s

television? Or had a car wreck hauling customers’ belongings? Would they be sued? Could they limit their liability by incorporating? Alan and Bart made a list of questions and scheduled a meeting with Carol, an attorney Bart had worked with.

Carol recommended that they create an LLC to limit their liability; increase their insurance coverage; obtain “cargo” insurance (required by law); and register their business with the Secretary of State and probate judge in their local county (both required by state law). Carol also advised that they protect their business’s name, “Law Man in a Van,” by acquiring a trademark. “Who knows,” she said, “you may want to franchise your moving business after you graduate.”

Aware that Alan and Bart were concerned about the cost of legal fees, Carol explained that they could save fees by “unbundling” their legal needs and handling some of the legal issues themselves.

“What is unbundling?” Bart asked. He had never heard the term.

Nor have many attorneys. Because “unbundling,” also known as “limited scope representation,” is a new way of delivering legal services, many lawyers don’t know about it. They should. Unbundling is good for clients and for lawyers. It helps clients get legal services they need. It also helps lawyers expand their client base and, by providing a mechanism for limiting their role in a case, helps lawyers weed out unresolvable or nonprofitable cases.

Unbundling occurs when a client and attorney agree that the attorney will handle some aspects of the client’s legal matters and the client will handle the rest. For example, Carol suggested that Alan and Bart could handle incorporating their business, obtaining the necessary insurance, and registering their business with the Secretary of

State and the probate judge. Forms and instructions are publicly available for all of these tasks. However, if Alan and Bart wanted to trademark their business, Carol advised that they should use counsel.

Business clients have unbundled their legal work for years, keeping some matters in-house and outsourcing others to law firms. Unbundling has not been an option for individual clients until recently, however. Several developments in the legal marketplace have made unbundling viable for individual clients. Today, almost everyone has immediate, free access to legal advice, forms, and filing instructions through the Internet. Some advice is good, and some is not, of course, but the fact is legal advice on simple matters is readily available. Another factor is the high cost of attorney fees. The average person cannot pay several thousand dollars for help with a legal problem.

For both of these reasons, many people are going to court *pro se*, which is creating a large burden on the courts. Court systems, government offices, and bar associations have responded by providing a variety of free services and online tools to help individuals handle some of their legal issues themselves. Legislatures have also responded. Within

procedure and codes of professional responsibility vary from state to state. Since failure to comply with duties of professional responsibility can jeopardize a lawyer's license to practice law, it is important for attorneys who unbundle services to know how to do so. Here are a few of the unique issues posed by unbundling:

- The professional codes of responsibility in every jurisdiction prohibit counsel from communicating with a party represented by opposing counsel. State legislatures have addressed this duty in unbundled representations by permitting, for example, communication with a party represented by opposing counsel on matters outside the scope of limited representation (Nebraska), or permitting communication with a party unless counsel is provided notice of the limited scope representation (Washington, Florida, Iowa).
- State laws mandate that when counsel signs and files pleadings, he or she certifies that the pleadings are well grounded in fact and law. Some jurisdictions alter this obligation in unbundled repre-

sentations simply require the pleadings to state "prepared with assistance of counsel."

- Attorneys must avoid representation that creates a conflict of interest with other clients. In limited representations arising from programs sponsored by nonprofit organizations or courts where continued representation is not anticipated, many jurisdictions, following the ABA's lead, limit this prohibition to actual conflicts of which counsel is aware (ABA Model Rule 6.5; *Cf.* Maine, Wisconsin). By absolving counsel from the obligation to conduct a full conflicts check within his or her firm, this approach facilitates unbundling, at least in qualified programs.
- While clarity with one's client about the scope of legal representation is always a best practice, clarification in unbundled situations is especially important. Counsel in unbundled representations should memorialize, in writing, the scope of the representation prior to entering into a representation arrangement, as well as any changes in the scope of the representation.

Unbundling fits today's world where self-help is increasingly viable and clients are demanding cost-effective provision of legal services.

In the past few years, all 50 states have amended their civil rules of procedure and codes of professional responsibility to make it easier for attorneys to handle some, but not all, of clients' legal needs.

Unbundling a client's legal needs can be tricky, however, which is why law firms like to hire lawyers who know how to do it. Not all cases or clients are appropriate for unbundling. Complex cases and clients with mental illness, limited intellectual ability, or psychological health problems are not good candidates for unbundling. Unbundling legal services can also be a challenge because the applicable rules of civil

representations somewhat, permitting, for example, counsel to rely on the "self-represented person's representation of facts, unless the attorney has reason to believe that such representation is false, or materially insufficient" (Alabama, Arizona, Montana).

- Some jurisdictions require that counsel disclose his or her role in limited representations to the court and opposing counsel (Nevada, Oregon) and inform the court and opposing counsel when the agreed upon services have been concluded (Washington, Florida). Other

Unbundling fits today's world where self-help is increasingly viable and clients are demanding cost-effective provision of legal services. As Henry A. Callaway, an expert in unbundling, states: "Unbundling is like going to iTunes and downloading the song you want instead of buying the whole album, or going to Home Depot, and checking yourself out with the scanner instead of paying the higher price at the local hardware store." Lawyers should take note of this new way of delivering legal services and become proficient at it, thereby helping their clients and giving themselves a boost in a competitive job market. ■

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