

ACCESS TO JUSTICE CHAMPIONS

THE WSBA LOW BONO SECTION'S NEWSLETTER



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5 TIPS FOR PROVIDING UNBUNDLED SERVICES

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Low Bono Section

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5 TIPS FOR PROVIDING UNBUNDLED SERVICES

BY JENNIFER ORTEGA, LLLT

Simply put, unbundled services are a method of legal assistance or representation which limits the work to be performed by the legal practitioner, leaving responsibility for the other aspects of the case to the client.¹

From the client's perspective, this can save money and provide more control over their case.

Legal practitioners may benefit through increased ability to balance workloads while assisting more people.

Unbundled services may not work for every client or type of matter, and it is up to the legal professional to decide whether and how to offer this type of service. Here are some tips to consider when providing unbundled services:

1. Conduct an in-depth initial consultation with the prospective client.

Experienced attorneys and LLLTs know clients rarely provide all the important facts in the first call or email. Scheduling a 60- to 90-minute consultation can go a long way towards ensuring the



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relevant facts are disclosed and understood, and helps both the client and legal practitioner decide if they want to work together.

Consultations may be paid or no-cost, but in general clients place greater value on the legal professional's time and advice when the client pays for it.

2. Begin work only after a legal services fee agreement is signed.

A legal services fee agreement is a document that clearly states what is—and just as importantly—what is not included in the services to be provided. For example, an unbundled legal services fee agreement could state whether the legal practitioner will enter a limited notice of appearance or write correspondence on behalf of the client. Or in a flat fee agreement, for example, work could be limited to drafting specific documents or providing other clearly defined services.

It is important the legal services fee agreement clearly spells out specific details, responsibilities, and terms so the client has a solid understanding of the scope of services and how the legal professional will bill for services. Both the client and the attorney/LLLT should sign and date the agreement. Ensuring the agreement is completed prior to beginning work is important to avoid potential misunderstandings.

3. Review RPCs and ethics opinions.

If the ethics regarding unbundled services seem unclear, check for ethics opinions and re-read the relevant RPCs, in particular RPC 1.5(f)(2) which discusses flat fee agreements. Even after years of practicing law, a purposeful review of the RPCs can be quite helpful.

4. Keep the client informed—often and well.

The client is counting on the specific services being performed in a timely manner (those RPCs are important!) and needs to know the status of their matter, especially because the client remains responsible for everything outside of the scope of the legal services fee agreement. A quick status update email or phone call (documented in writing afterwards) will often suffice.

5. Consider offering flat fee services.

Generally, clients pay for flat fee services in advance, and those fees are not placed in trust. Washington state attorney and LLLT RPCs include specific rules regarding flat fee services and handling of payment. One great thing about flat fee services is that the legal practitioner already knows approximately how much work it will take to perform the specified services, and once those services are completed, there is no further expectation for additional work per

the legal services fee agreement. This helps the legal professional balance workloads and is appreciated by clients because there are no surprise legal bills.

1 https://www.americanbar.org/groups/dispute_resolution/resources/DisputeResolutionProcesses/unbundled_legal_services/.



Jennifer Ortega is an owner and partner at Legal Technician Division, PLLC. Her firm focuses on providing excellent family law services at affordable rates.

RISK VS. UNCERTAINTY

BY MARYA NOYES, LLLT, MBA

For those of you not living under a rock, I am sure I don't have to explain that the United States economy is currently having a pretty rough go of it. Unemployment has skyrocketed, businesses are going bankrupt and quite a few legal practitioners are experiencing a substantive drop in their billable hours as a consequence of the COVID-19 pandemic. At present, both employers and consumers alike are struggling to find stable footing in the face of a rapidly

to explore the way economists define economic "risk" versus "uncertainty," and the subsequent actions consumers usually take in reaction to both. Of course, these observations would be academic and pointless if I didn't conclude this article with possible actions a business can take to protect their bottom line in the face of an unpredictable business landscape.

"RISK IS PRESENT WHEN FUTURE EVENTS OCCUR WITH MEASURABLE PROBABILITY. UNCERTAINTY IS PRESENT WHEN THE LIKELIHOOD OF FUTURE EVENTS IS INDEFINITE OR INCALCULABLE"
- FRANK H. KNIGHT

Frank H. Knight established the economic definition of risk and uncertainty in his 1921 book, appropriately named, *Risk, Uncertainty and Profit*. In that book Mr. Knight stated "risk is present when future events occur with measurable probability." By comparison, he wrote "uncertainty is present when the likelihood of future events is indefinite or incalculable." In other words, risk is measurable and quantifiable, while uncertainty is just that ... uncertain.



"Beautiful woman swings near waterfall in the jungle of Bali island, Indonesia." by Artem Beliaikin licensed under CC BY-SA 2.0, <https://creativecommons.org/licenses/by-sa/2.0/>

In daily life we take calculated risks all the time. Society wouldn't have an insurance industry if it didn't know how to calculate with almost freakish accuracy the approximate odds of one type of driver running into another. When dealing with risk, individuals tend to approximate the possible payoffs of any situation and take



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changing economic landscape. As a result of this "coronacrisis," our society is now experiencing what many parents refer to as a "teaching opportunity."

Unfortunately for you, I am going to use this "opportunity" to discuss economic theory. (Yay!) Specifically, I am going

RISK VS. UNCERTAINTY - continued

the appropriate action which corresponds to a level of risk they can endure.

I am sure many of you have had this exact conversation with your financial planner, “Let’s talk about your risk tolerance.” While most investors would love the highest possible payout for their investment, higher payouts tend to correspond to higher levels of risk. While very few investments are not without some degree of risk, the risk level itself is usually calculable. The ability to calculate the amount of risk is what informs and emboldens consumers to engage at their preferred level of investment.

Conversely, economic uncertainty has a very different effect on the end consumer. In an article titled, “Policy Uncertainty and Household Savings” located in the May 2012 issue of *The Review of Economics and Statistics* published by the MIT Press, researchers Francesco Giavazzi and Michael McMahon found that in the face of economic uncertainty about the future path of income, households increase their savings significantly. A household can increase its savings by either consuming less or working more.

Now, while I am absolutely certain everyone reading this article will rush right out and buy a copy of this academic journal to confirm these findings, I will save you the time and trouble by directing your attention to the United States Department of Commerce Bureau of Economic Analysis (BEA). In the April 30, 2020 report, the BEA reported that

the United States personal savings rate jumped to 13.1 percent in March of this year, approximately 5 percent higher than the February 2020 savings rate of 8 percent. (In case you were wondering, the average monthly savings rate in 2019 was approximately 7.7 percent.)

Presently, consumers have no idea what is going to happen with this virus or in our economy. The truth of this statement is exemplified by the measurements of Consumer Confidence produced by the United States Conference Board (CB). For those of you fortunate souls unfamiliar with the term, the

In April, that number dropped to 85.70, only to raise to an anemic 85.90 in May. The dramatic decline in this number attests to the fact that American consumers are not optimistic about the state of the economy. Consequently, consumers are doing what consumers always do in the face of economic uncertainty. If a degree of risk can’t be calculated for a specific expense or investment, consumers will conserve financial resources until the approximate risk level can be calculated.

Historically, consumers will incur an expense when levels of risk can be approximated, and investments can



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CB Consumer Confidence is an economic indicator which expresses the degree of optimism about the state of the economy consumers are expressing through their spending. Since January 2017, the CB Consumer Confidence has averaged approximately 129. In February of this year, the United States CB Consumer Confidence level was measured at an optimistic 132.60.

be made that correspond with their preferred risk tolerance. Frankly, it would be irrational to take any other course of action. Please understand, economists assume that consumers act rationally and in ways that are consistent with their own best interests. (Obviously, if you have worked in family law for more than 5 ½ seconds, this assumption of rationality can be a bit of a reach.)

RISK VS. UNCERTAINTY - continued

So, does this mean that businesses are destined to wallow in financial purgatory until the economy finds a clear course of action? Not necessarily. Economists and business leaders alike suggest that a flexible pricing model can maximize a firm's profitability in the face of "Demand Uncertainty." For example, in the face of a potential economic downturn a restaurant may find itself without customers if it only offers filet mignon to its potential patrons. If, however, that same restaurant also offers hamburgers for purchase, those same patrons would be afforded a greater opportunity to engage with the business at their individual preferred level of risk.

This analogy applies in the legal industry when potential clients are

presented with only one possible pricing option for their legal representation. When faced with market uncertainty, the economic model predicts most consumers will conserve their resources instead of risking their limited financial resources. Availing potential clients with a variety of pricing options for their legal representation may enable potential clients to engage with the firm at their preferred risk tolerance.

Uncertainty created by the pandemic has required many industries to change their business practices to ensure their survival. Pricing flexibility may provide another tool for service providers to overcome the inherent emotional challenges currently facing the consumer in this uncertain

marketplace. After all, the father of the theory of evolution, Charles Darwin, is often paraphrased as saying, "It is not the strongest of the species that survives, nor the most intelligent. It is the one most adaptable to change."



Marya Noyes is a LLLT practicing family law at Genesis Law Firm in Everett. She was licensed as a LLLT in 2017, and earned her MBA at Seattle University in 2019. Marya regularly writes articles on economic analysis and market opportunities presented by addressing the justice gap.

KINSHIP CAREGIVERS NEED LOW BONO SERVICES

BY CELESTE MILLER, JD



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Low bono attorneys provide services in many ways—through sliding scale fees, flat fees, unbundled services, limited representation, and more. There are multiple areas of law that lend themselves well to a low bono practice. One client group that may be overlooked are kinship caregivers. They often have legal needs that are somewhat unique, and many are in the financial realm between "eligible for free legal aid" and "can pay \$300-plus per hour for legal advice."

Kinship care is when relatives are raising children (grandchild,

KINSHIP CAREGIVERS NEED LOW BONO SERVICES - cont.

nephew, younger sibling, etc.). The majority of children in kinship care are not involved in the public child welfare system. A smaller percentage of kinship caregivers are involved with the formal child welfare system and have become licensed foster parents.

Children who live with their grandparents and other relatives are there for different reasons: primarily for parental opioid and substance abuse issues, incarceration, mental illness, child abuse and neglect, parental death, or military deployment. These families represent all income levels, races, and ethnicities. In Washington state an estimated 45,000 children are being raised by grandparents and other relatives, not including those in relative foster care.¹

Many kinship caregivers are at retirement age or older, and often are financially unprepared to provide for young children. They may be on a fixed income, or they may have health problems of their own. There are many kinship caregivers in Washington state who cannot afford an attorney at “regular” rates.

Kinship caregivers have a variety of legal needs. One of the main issues they face is legal custody. When they are caring for a child but do not have legal authority to make important decisions about the child’s upbringing, or the safety of a court order protecting a child from a parent who presents risk of harm to the child, they live in a precarious situation. Nonparent

custody has been one option for kinship caregivers in Washington state for decades. (Low bono family law attorneys should note that the nonparent custody statute is being repealed and replaced with RCW 11.130 Article Two: Guardianship of a Minor, effective January 1, 2021.) Temporary parental consent, adoption, and guardianship are other options, as well as becoming a licensed foster parent. However, often families want to avoid the child welfare system becoming involved in their lives.

If the kinship caregiver is caring for children who are in the child welfare system, they often struggle with the dependency cases,

to dependency cases and are not afforded an attorney. Providing limited legal advice in a consultation and explaining the dependency process could be very valuable to a kinship caregiver.

Similarly, before the kinship caregiver decides to try to become a licensed foster parent or to stay “informal” while raising the child, it would be extremely valuable to have the different legal options explained to them, and the pros and cons based on their individual situation.

Outside of the custody and dependency arena, kinship caregivers have other legal needs. Sometimes they have children who



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especially since the kinship caregiver does not usually have legal representation. The children will have an attorney or CASA (court appointed special advocate), the parents have public defenders or private attorneys, and the state will have an assistant attorney general. Kinship caregivers (and all foster parents) are not parties

require an IEP or other forms of special education. Advocating for and enforcing those rights is difficult to do without legal advice, which a low bono attorney could provide.

Consent for medical treatment for a child can be authorized by a kinship caregiver, according to Washington

KINSHIP CAREGIVERS NEED LOW BONO SERVICES - cont.

state law (RCW 7.70.065(2)) depending on the circumstances and with a signed affidavit. However, many kinship caregivers face pushback from medical providers even with the affidavit, and being able to hire a low bono attorney to help draft a letter or provide other unbundled services could provide peace of mind.

Planning for emergencies or illness is on the forefront of many caregivers' minds right now. They are in the unique position of raising a child but not being able to name a guardian for them in their estate planning documents (unless they've legally adopted them). A low bono attorney could help come up with the best backup plan possible for kinship caregivers who worry about what will happen to the child after the caregiver can no longer care for them. Article Two

of the new Uniform Guardianship Act noted previously includes increased options to plan ahead in these situations, including standby guardianships, emergency guardianships, and a strong power of attorney that allows for delegation of custody. It will go into effect in 2021.

Of course, some kinship caregivers are very low income and would not be able to hire even a low bono attorney. There are opportunities to volunteer and help these clients gain some stability in their legal situations when a grandchild or other relative child suddenly appears in their life and needs them.

Many volunteer legal programs across the state of Washington offer clinics and some provide full representation cases for pro bono attorneys who want to help

a client and gain valuable experience.

Contact Celeste Miller for information on volunteering, being on a referral list for low bono kinship caregiver clients, or learning more about the legal needs of kinship caregivers.

1 Annie E. Casey Foundation, Kids Count Data Center, WA State, 2017-2019.



Celeste Miller is the KCBA Statewide Kinship Care Legal Aid Coordinator. She ran her solo low bono family law firm from 2013-2019 and is the immediate past chair of the Low Bono Section.

THE FUTURE OF LOW BONO PRACTICE

BY CECILY JURMAN, LAW STUDENT

As the need for legal assistance for low-income individuals continues to increase, low bono options must also increase exponentially to meet the demand. Low bono practice allows attorneys to balance their desire to help individuals and create positive change within their community, with their need to make a living. While lawyers providing low bono services may be making less per case, the trade-

off is an influx of clients who have never been able to access legal assistance. In Washington alone, 29 percent of the population qualifies as moderate-income individuals in need of affordable legal services.¹

As a result, low bono practice opens the door to an entire sector of the economy and society with whom private attorneys have not previously engaged.



"Woman Using a Samsung VR Headset at SXSW" by nan palmero licensed under CC BY 2.0, <https://creativecommons.org/licenses/by/2.0/>

THE FUTURE OF LOW BONO PRACTICE - continued

The current most utilized methods for low bono practice include the Moderate Means Program, limited license legal technicians (LLTs) for family law issues, and limited practice officers (LPOs) for real estate closings. Some counties within Washington state are attempting to provide more access to low bono services for pro se clients in need. For example, King County Superior court has Family Law Facilitators who provide information on how to start certain

jurisdictions throughout the country to adopt new regulations that would enable the growth of civil legal aid services working to end the access to justice gap. Specifically the ABA recommends regulations that ensure the public can receive “legal counsel as a matter of right ... when basic human needs or loss of physical liberty are at stake.”³

This resolution is one step in the right direction. Encouraging regulations that promote low bono

operate a successful small law firm through a mentorship relationship with Stan Perkins. Additionally, the program grants these attorneys access to CLEs, office space, and more; and in exchange, the attorneys agree to dedicate 60 percent of their practice to provide low bono services to Washington residents in need.⁴

The Incubator Program is another step in the right direction. The



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family law actions; what forms are needed and where to get them; court rules, procedures, and case schedules; and more.

Additionally, King County has a Protection Order Advocates office to assist individuals in requesting a protection order from the court.²

Despite the options that currently exist for moderate-income individuals needing legal assistance at low bono rates, the American Bar Association (ABA) has recently recognized more must be done. On April 1, 2020, the ABA House of Delegates passed Resolution 115; this resolution encourages

practice for individuals facing a loss of basic human needs or loss of physical liberty is noble—but it is not enough. Regulations must be implemented in combination with programs and opportunities that provide information, assistance, and guides for attorneys who wish to practice in the low bono field.

One university in Washington is doing just that; in 2014, Seattle University School of Law’s Access to Justice Institute launched an Incubator Program. This program works with several new attorneys each year to assist them in creating their own solo practice or small firm. The incubatees learn how to

program provides mechanisms for new attorneys to succeed in their field while engaging with notoriously underserved communities. In order to expand low bono practice and address the access to justice gap, the Incubator Program model must be implemented with vigor throughout the entire state and the nation.

Attorneys speculate the growth of the low bono field was fueled by the economic recession of 2008. As the economy improved, interest in providing low bono services subsided, which further invigorated the lack of access to legal services moderate-income individuals



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currently face. Looking forward, it is important to recognize our current environment. As a result of COVID-19, our national economy is in much worse condition than it was during the 2008 recession. Further, the current unemployment rate is not representative of how many individuals have actually lost employment due to COVID-19; the national unemployment rate is determined by individuals who are actively searching for work, a privilege most do not currently have.

To compare, the National Bureau of Economic Research has projected 20 million U.S. jobs were lost by April 6, 2020; this is a far greater loss than was recorded over the entirety of the 2008 recession.⁵

Will this public health and economic disaster encourage new attorneys to open low bono practices? Will economic disparities that propel many more families into moderate or low-income status be addressed by new interest in providing low bono service?

While the COVID-19 pandemic has created a global catastrophe, perhaps a silver lining exists. The pandemic might result in a dramatic increase of attorneys not only passively willing to provide limited low bono services, but also an increase of attorneys who have the desire to change people's lives through access to a wide range of low bono options.

1 Kaiser Family Foundation, Distribution of Total Population by Federal Poverty Level (2018). <https://www.kff.org/other/state-indicator/distribution-by-fpl/?currentTImeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D>.

2 King Cty. Court, <https://www.kingcounty.gov/services/courts.aspx> (last visited April 27, 2020).

3 Am. Bar Ass'n, Resolution 115: Encouraging Regulatory Innovation, ABA House of Delegates (2020).

4 Sea. Univ. Sch. of Law: Access to Justice Inst., Incubator, <https://law.seattleu.edu/centers-and-institutes/>

[access-to-justice-institute/public-interest-and-social-justice/incubator](https://www.access-to-justice-institute.org/public-interest-and-social-justice/incubator) (last visited April 27, 2020).

5 Nat'l Bureau for Econ. Res., Working Paper No. 27017, Labor Markets During the COVID-19 Crisis: A Preliminary Review (2020).



Cecily Jurman is a rising 3L at Seattle University School of Law and completed her Bachelor of Arts at Michigan State University. She strives to create equitable access to justice in the legal field and plans to pursue a career that supports community members in need of legal assistance.



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UPCOMING EVENTS

Executive Committee Monthly Meeting

Section members are encouraged to attend any Executive Committee Meeting! Click on or dial in and learn more about what's happening with our Section.

September 15, 2020

Regular meeting: 4:00 - 5:00 p.m., virtual happy hour: 5:00 - 6:00 p.m.

October 20, 2020

Regular meeting: 4:00 - 5:00 p.m., virtual happy hour: 5:00 - 6:00 p.m.

November 17, 2020

Regular meeting: 4:00 - 5:00 p.m., virtual happy hour: 5:00 - 6:00 p.m.

The Low Bono Section is committed to justice for all and invites participation by everyone involved in serving moderate income individuals.

Join our section!

Visit <https://wsba.org/legal-community/sections/low-bono-section>

New CLE October 6, 2020!

Interested in the new Uniform Guardianship Act as it relates to minors? Check the Low Bono Section's webpage on WSBA.org for details about the CLE on October 6, 2020, titled Guardianship of a Minor: The New Law Replacing Nonparent Custody, January 1, 2021.