

David Udell
Executive Director

February 1, 2023

Members of the North Carolina General Assembly
Legislative Building
16 West Jones Street
Raleigh, NC 27601

Re: LOOKING BEYOND LAWYERS TO
BRIDGE THE CIVIL ACCESS TO JUSTICE
GAP: Petition for Redress of Grievances
Pursuant to N.C. Const. Art. I, § 12, Policy
Analysis & Legislative Proposal

Dear Assembly Members:

We are writing in support of the legislative petition, referenced above, that would respond to North Carolina's Justice Gap by establishing a pilot project to authorize and test two models of service that would: a) license legal practitioners to provide designated legal services at reduced fees, thereby providing needed assistance to people with moderate financial means, and b) authorize legal practitioners under the guidance of nonprofit civil legal aid organizations and pro bono initiatives to provide designated legal services at no charge, thereby providing needed assistance to low-income individuals.

The National Center for Access to Justice at Fordham Law School

The National Center for Access to Justice ("NCAJ") is a non-profit organization based at Fordham University School of Law that brings rigorous research and analysis to the task of expanding access to justice – the ability of people to learn about their rights, assert their legal claims and defenses, and obtain a fair resolution under the rule of law. See "What is Access to Justice" in NATIONAL CENTER FOR ACCESS TO JUSTICE, <https://ncaj.org/what-access-justice>. NCAJ advocates for policies such as requiring provision of counsel, promoting use of plain language in courts, assuring quality interpreting and translating services, providing notice of the right to accommodations for disabilities, and deploying innovative technologies such as e-filing. To that end, NCAJ collects, analyzes and publishes data, researches and writes reports, convenes experts, and engages with reformers and regulators, including through formal comment on proposed regulatory and legislative reform.

Our flagship project, the Justice Index, analyzes and ranks states on their adoption of expert-endorsed best policies for access to justice. See "State Scores and Rankings" in *Justice*

Index, NATIONAL CENTER FOR ACCESS TO JUSTICE, <https://ncaj.org/state-rankings/2021/justice-index>. NCAJ's state by state comparisons are used by reformers, officials, members of the public, and other stakeholders as factors that inform debate and help lead to changes in policy. Among the criteria contained in the Justice Index, NCAJ compiles an attorney access index that ranks the states on: i) number of civil legal aid lawyers per 10,000 poor, ii) progress toward adopting selected best laws for pro bono legal services, and iii) progress toward recognizing categorical civil rights to counsel. *See Attorney Access*, NATIONAL CENTER FOR ACCESS TO JUSTICE, <https://ncaj.org/state-rankings/justice-index/attorney-access>.

In recognition of the fact that many people have no prospect of obtaining legal help from lawyers (despite the changes brought about by ongoing reform efforts), NCAJ also supports responsible initiatives to reconsider the scope and sweep of states' Unauthorized Practice of Law rules to ensure that these laws, which are intended to protect the public from harm, do not instead operate to keep people from receiving the help they need. We chaired the subcommittee of the New York City Bar that authored [Narrowing the "Justice Gap: Roles for Nonlawyer Practitioners \(2013\)](#), a report recommending changes in the UPL laws. We co-authored [New Roles for Non-Lawyers to Increase Access to Justice \(2014\)](#), an article reviewing landscape of UPL laws and calling for change in the laws. We also wrote [Working With Your Hands Tied Behind Your Back: Non-Lawyer Perspectives on Regulatory Reform \(2021\)](#), a report on the views of social services providers on how UPL rules interfere with people's efforts to address their legal needs, and [UPL Enforcement in California: Protection or Protectionism \(2022\)](#), a report on the views of non-lawyer practitioners who the California Bar had commanded to "cease-and-desist" engaging in the alleged unauthorized practice of law.

Discussion

In the Justice Index, NCAJ's researchers found that North Carolina has fewer than 1 full time attorney per 10,000 low income people in the state, establishing the state's ranking as 25th among all states, DC, and Puerto Rico in this regard. When this finding is considered alongside the state's performance on other benchmarks that track each state's pro bono laws and civil right to counsel laws, North Carolina's ranking slips to 49th. With this awareness, it is easy to appreciate that innovative legislation aimed at meeting the legal needs of North Carolina residents offers an important opportunity for the state to take needed steps forward.

More specifically, the proposed bills would authorize a pilot project to test the performance of two valuable proposals: the first with its promise of low cost services for people of moderate means, the second with its plan to allow nonlawyer practitioners to work in legal aid and pro bono organizations providing assistance to the poor. Critics routinely raise concerns about the potential harm of proposals that would make changes in state UPL laws. But, in this instance, the plan to introduce the proposals in the context of a pilot project is a safeguard that neutralizes the familiar critique, altering the dialogue. The reliance on a pilot project would allow for evaluation and improvement of the tested models in the earliest phases of their implementation, assuring safest deployment, and offering opportunity (otherwise unavailable) to learn about their effects.

NCAJ respectfully urges Members to consider that North Carolina would not be acting in isolation here. Similar changes are underway and being evaluated in other parts of the country. A recent report, “The Landscape of Allied Legal Professional Programs in the United States,” INSTITUTE FOR THE ADVANCEMENT OF THE AMERICAN LEGAL SYSTEM (NOV. 2022), https://iaals.du.edu/sites/default/files/documents/publications/landscape_allied_legal_professionals.pdf, catalogues emerging models of “Allied Legal Professionals” in the states. See also Aeberle Coe, “Where 5 States Stand on Nonlawyer Practice of Law Regs,” LAW360 (Feb. 5, 2021), <https://www.law360.com/access-to-justice/articles/1352126/where-5-states-stand-on-nonlawyer-practice-of-law-regs>.

Arizona and Utah offer examples of new models coupled with evaluation. Arizona is testing a limited license for “legal paraprofessionals” (“LPs”) who provide an array of legal services and advice historically offered only by lawyers. The LPs in Arizona must meet eligibility requirements (including skills and subject-matter examinations), satisfy education and experience combination requirements, and follow a code of conduct. See “News Release”, Arizona Supreme Court Administrative Office of the Courts, Arizona Supreme Court Leads Nation in Tackling Access to Justice Gap with New Tier of Legal Services Providers (December 9, 2021), <https://www.azcourts.gov/Portals/201/120921LSP.pdf>; see also *Legal Paraprofessional Program*, ARIZ. CTS, <https://www.azcourts.gov/Licensing-Regulation/Legal-Paraprofessional-Program>. Similarly, Utah is operating a “regulatory sandbox” in which an office of the Utah Supreme Court reviews and approves (or denies) applications for the experimental provision of legal services (including by nonlawyers) that would otherwise be prohibited under Utah’s UPL laws. See *What We Do*, OFF. OF LEGAL SERVS. INNOVATION, <https://utahinnovationoffice.org/about/what-we-do/>.

The new programs are proving to be successful without having introduced significant issues of safety. In *Legal Innovation After Reform: Evidence from Regulatory Change*, the authors found: “few reported complaints against service providers in Arizona or Utah,” and explained that “Data and information reported by Utah and Arizona regulators indicate that authorized entities do not appear to draw a substantially higher number of consumer complaints, as compared to their lawyer counterparts. In particular, Utah’s June 2022 data reported one complaint per 2,123 services delivered, and Arizona has received no complaints. This is generally on par with the number of complaints lodged against lawyers.” DAVID FREEMAN ENGSTROM, LUCY RICCA, GRAHAM AMBROSE, & MADDIE WALSH, *LEGAL INNOVATION AFTER REFORM: EVIDENCE FROM REGULATORY CHANGE* 7, Stanford Law School Deborah L. Rhode Center on the Legal Profession (Sept. 27, 2022), <https://law.stanford.edu/publications/legal-innovation-after-reform-evidence-from-regulatory-change/>.

Conclusion

At NCAJ we recognize that lawyers perform an essential role in our society. That is why NCAJ calls for increased support for the civil legal aid bar, strengthened pro bono representation, and expansion of civil rights to counsel. But, also, and at the same time, we support responsible innovation and change – accompanied by careful evaluation – that has the potential to empower people to obtain the legal help they need from individuals, not lawyers, who are prepared and

qualified to help. For all these reasons, we support the proposals introduced by the Justice for All Project that are pending before the North Carolina General Assembly.

Respectfully,

s/

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