



January 31, 2023

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

RE: In Support of the Recommendations Set Forth in the North Carolina Justice for All *Petition for Redress of Grievances Pursuant to N.C. Const. Art. I, § 12, Policy Analysis & Legislative Proposal*

Dear Members of the North Carolina General Assembly:

I am writing in support of the twin policy recommendations outlined in the North Carolina Justice for All Project (JFAP) *Petition for Redress of Grievances Pursuant to N.C. Const. Art. I, § 12, Policy Analysis & Legislative Proposal* [hereinafter *Petition*].

For more than 15 years, I conducted empirical research on access to justice issues at the University of Denver-based Institute for the Advancement of the American Legal System (IAALS). Much of this work has focused on the experience of self-represented litigants, including empirical research that directly engaged these litigants. One of these efforts included a multidisciplinary workshop in Raleigh, in partnership with the North Carolina Judicial Branch and the North Carolina Equal Access to Justice Commission.

The other piece of my work—at IAALS and now through my company, Access to Justice (A2J) Ventures—focuses on regulatory innovation. I have studied and advised state regulatory reform efforts and have closely watched the evolution of these programs. I have deep familiarity with the business and service models operating across states under new regulatory approaches.

Informed by my research and that of others, and my experience working with states on regulatory innovation, I am writing in strong support of the following recommendations contained in the *Petition*:

1. Liberalize the state statute on the unauthorized practice of law (N.C. Gen. Stat. § 84) for legal aid and pro bono services
2. Implement a Licensed Legal Practitioners program

I believe the North Carolina General Assembly is uniquely positioned to carry these recommendations forward. As a representative body that speaks and acts on behalf of the public in North Carolina, the General Assembly can appropriately assess reform recommendations under consideration by a self-regulating legal profession.

I. An Access to Justice Crisis That Is Worsening Under Traditional Solutions

The term “justice gap” does not even begin to reflect the human costs of this problem.

The numbers of people navigating the courts in North Carolina and elsewhere without legal help are astounding. A 2022 Legal Services Corporation (LSC) report, *The Justice Gap*, found that low-income Americans did not receive any or enough legal help for 92% of their civil legal problems. Aside from being shockingly high, this number is shocking for another reason: it has gone *up* from 86% in the prior study released in 2017.

Limitations of Traditional Access to Justice “Solutions”

One thing is for sure: in the five years between studies, there have been countless calls to increase funding to staff legal aid services and other traditional “solutions” as a means through which to bridge the justice gap. Yet here we are. Looking back even further, for well over half a century, subsidized legal services providers have been advocating for the rights of people and families living in poverty. But still, here we are. Traditional models of attorney-driven subsidized services have not, despite their rich history, made a demonstrable dent in the access to justice problem. The level of unmet legal needs is not even holding steady; it is getting *worse*.

Attorneys alone cannot reverse the course we are on. If they could, they would have by now. If they could, we would not be creeping dangerously close to a reality where 99% of legal needs remain unmet. This is not an indictment on the many dedicated attorneys—public and private—doing their best to serve as many people as possible. The problem is structural. The lawyer monopoly on nearly everything and anything that might constitute the practice of law has a stranglehold on the public—and not just those living in poverty.

Dangers of Making Access to Justice a Low-Income Issue

It is reasonable to assume that low-income populations cannot afford the high costs of attorney services. The cost of accessing traditional legal services is simply prohibitive for many people. But the converse—the assumption that people who are above technical poverty guidelines can afford an attorney—is erroneous, and dangerous.

In the 2022 LSC *The Justice Gap* study, just under half (45%) of low-income respondents felt confident in their ability to find a lawyer they could afford. The numbers rise to 59% and 73% for those between 125% and 400% of the Federal Poverty Guidelines (FPG) and for those at or above 400% of the FPL; respectively. That 41% of individuals living between 125% and 400% of the FPG, and one out of four at or above 400% of the FPG, were not confident they could find an affordable attorney highlights the dangers of assuming that access to justice is only a low-income issue, with “low-income” being defined arbitrarily at some static figure.

It is hard to imagine how a family of four with an annual household income of \$40,000 is better able to afford an attorney than a family at \$33,125. Or consider a “more affluent” person with an annual income of \$60,000 but who holds \$200,000 in student loan debt and \$100,000 in medical debt. We all have a friend or family member who is in this situation. Defining access to justice as

only a low-income issue is too simplistic. Income does not equate to wealth. It does not account for the myriad ways in which an individual's unique financial circumstances renders vital legal help inaccessible.

II. Worsening Problems Call for New Solutions

It is critical that we diversify the legal profession.

A tiered service provider model is the gold standard in industries outside of law. As the *Petition* details, the great learned profession most analogous to law—medicine—has substantially diversified its professional workforce. Today, the idea that one would (or even could) see a surgeon for a routine physical would be met with laughter. Yet in law, we expect a divorcing couple with no children, limited marital assets, and no joint property to consult the same tier of provider as would handle a mass tort case. This makes for great career flexibility for attorneys but is a terrible model for consumers.

Attorneys and consumers would benefit from the introduction of new providers in the profession who can handle some subset of tasks traditionally reserved for licensed attorneys. The twin recommendations presented in the *Petition* would set the stage for a new legal services ecosystem that can extend critical legal services to low-income *and* middle-class consumer segments.

A. Increasing Access to Justice for Low-Income North Carolinians by Reforming N.C. Gen. Stat. § 84 (Unauthorized Practice of Law) for Legal Aid & Pro Bono Services

Subsidized legal services providers are on the frontlines of the access to justice problem. Day in and day out, these providers serve as many people as they logistically can. Importantly, these attorneys also must turn away scores of people who badly need legal help. Allowing legal aid and pro bono providers to train a non-lawyer workforce to undertake discrete legal tasks, under supervision, will extend the reach of existing services. And in doing so, this would decrease the substantial number of North Carolinians who must hear that there is no option available to them.

B. Increasing Access to Justice for Low- and Middle-Income North Carolinians by Licensing Legal Practitioners (Reducing Fees for Services)

In this provider ecosystem, Legal Practitioners sit between the new non-lawyer providers detailed in Section II.A. and licensed attorneys. The model detailed in the *Petition* appropriately adjusts for an expanded scope of practice by mandating a more robust legal education. The *Petition's* proposal envisions this as a market-based solution, but with these providers operating under a fee schedule that is less expensive than that of an attorney, the otherwise Missing Middle legal consumers will finally have an option for affordable legal advice.

III. The North Carolina General Assembly's Commitment to Regulatory Innovation

The North Carolina General Assembly is no stranger to regulatory innovation, particularly the evolution of N.C. Gen. Stat. § 84. The access to justice community closely followed as *LegalZoom.com v. North Carolina State Bar* unfolded in the Wake County Superior Court. The provisions in the Consent Judgment that later became part of N.C. Gen. Stat. § 84-2.2 were a welcome and measured response amidst reactions in other states that overlooked the interests of the public in favor of market incumbents. This new exemption provides valuable guidance and opportunity for providers who have since entered the North Carolina legal services market to deliver legal information.

Due to the rapidly deteriorating state of access to justice, it is time, again, to revisit the constraints of the state's unauthorized practice of law statute. Laws are designed to evolve with the needs of the public, as the North Carolina General Assembly recognized with LegalZoom. In the spirit of ensuring that the legal profession is serving—literally, not figuratively—the needs of the public, I strongly urge the General Assembly to redefine the practice of law to allow trained and qualified non-attorney providers to assist legal aid and pro bono organizations (by amending N.C. Gen. Stat. § 84) and to assist legal consumers (by licensing Legal Practitioners).

Thank you in advance for your consideration of these issues. And thank you for your service representing and advocating for the interests of North Carolinians above all.



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