



NORTH CAROLINA STATE BAR

# Issues Subcommittee on Regulatory Change: Report and Recommendations

January 2022



**NORTH CAROLINA  
STATE BAR**



# Introduction

**In January 2020, then-State Bar President Colon Willoughby announced the creation of a new subcommittee of the State Bar Council's Issues Committee tasked with studying the various efforts taking place in the United States and abroad aimed at examining and proposing potential changes to the regulatory structure of the legal profession, with a focus on how regulatory changes could improve access to justice.**

At the conclusion of its study, the subcommittee was expected to offer an opinion on what changes, if any, were worthy of the State Bar Council's further consideration. Mark Henriques, Councilor for the 26th Judicial District Bar (Mecklenburg County), was appointed to chair the subcommittee.

At its first meeting in June 2020, Mr. Henriques proposed and the subcommittee adopted the following purpose statement regarding the subcommittee's work:

**"Several states have adopted or proposed substantial changes to the structure of legal practice and delivery of legal services. This subcommittee will review and discuss these changes, with a focus on the actual impact these changes have had on lawyers and clients. We will consider how these changes may impact North Carolina and whether any of the changes should be considered for implementation in North Carolina. The subcommittee expects to issue one or more reports summarizing and assessing regulatory changes in other states. It does not plan to recommend specific changes for adoption by the Council."**

The members of the subcommittee consisted of both lawyers and nonlawyers from across the state who also represented different practice areas and practice structures.

The following members of the State Bar Council were appointed to serve on the subcommittee:

- Heidi C. Bloom (District 10/Wake County)
- A. Todd Brown (District 26/Mecklenburg County)
- Joshua D. Malcolm (District 20/Robeson County)
- DeWitt F. "Mac" McCarley (District 26/Mecklenburg County)
- Stephen E. Robertson (District 24/Guilford County)

The following advisory members were also appointed to serve on the subcommittee:

- Ashley Campbell (Director, Community Law Clinic, Campbell University School of Law)
- Lakisha Chichester (North Carolina Certified Paralegal; Paralegal Member of the North Carolina State Bar Board of Paralegal Certification)
- Warren Hodges (Paralegal Educator; Lawyer Member and Chair of the North Carolina State Bar Board of Paralegal Certification)
- Jeffrey M. Kelly (Lawyer, Nelson Mullins; Raleigh)
- S.M. Kernodle-Hodges (North Carolina Certified Paralegal; North Carolina Justice for All Project)
- Alicia Mitchell-Mercer (North Carolina Certified Paralegal; North Carolina Justice for All Project)
- Camille Stell (President and CEO, Lawyers Mutual Consulting and Services)
- Jeff Summerlin-Long (Teaching Associate Professor of Public Policy; University of North Carolina-Chapel Hill)

# Subcommittee Meetings

The subcommittee met twelve times between June 2020 and December 2021. As noted above, the primary theme in the subcommittee’s study and related discussions was how regulatory change could improve access to justice – broadly defined as both access to an appropriate level of legal services and access to a fair and efficient legal system or resolution process – in North Carolina. To that end, at each meeting the subcommittee focused its attention on specific regulatory change initiatives and invited guests from across the United States and Canada to share their experiences and ideas for improving legal services through a variety of innovations. The subcommittee also received reports on the various regulatory change discussions and actions taking place in other jurisdictions.

Nearly all of the subcommittee’s meetings – listed below with a brief description of meeting topics and invited guests – took place via video conference, were livestreamed, and are available for viewing through the State Bar’s YouTube page ([www.youtube.com/northcarolinastatebar](http://www.youtube.com/northcarolinastatebar)). Where possible, the dates for each meeting listed are hyperlinked to the livestreamed meeting video. Meeting agendas, minutes, and presentation slides are included in Appendix A.

MEETING DATE	TOPIC(S) DISCUSSED
<a href="#">June 4, 2020</a>	Overview of Regulatory Change
<a href="#">July 27, 2020</a>	The Legal Landscape Market Report; Bill Henderson, Stephen F. Burns Professor of Law, Indiana University Maurer School of Law
<a href="#">September 2, 2020</a>	Discussion with Representatives of the Legal Services Community in North Carolina; George R. Hausen, Jr., Executive Director, Legal Aid of North Carolina; Jennifer Lechner, Executive Director, North Carolina Equal Access to Justice Commission; Ken Schorr, Executive Director, Charlotte Center for Legal Advocacy
<a href="#">September 29, 2020</a>	Discussion with Jeff Ward, Director of the Duke Center on Law and Technology
<a href="#">November 19, 2020</a>	The Utah Office of Legal Services Innovation (e.g., Utah’s Regulatory Sandbox); Lucy Ricca, Executive Director of Utah’s Office of Legal Services Innovation
<a href="#">January 26, 2021</a>	Alternative Business Structures and the Legal Paraprofessional Program in Arizona; Dave Byers, Administrative Director of the Courts in Arizona
<a href="#">March 23, 2021</a>	The Ontario Law Society’s Licensed Paralegal Program: Jessica Weiss, Counsel and Acting Team Lead for Licensing and Accreditation, and Peninah Brickman, Senior Counsel and Team Manager, Entry-Level Compliance; The North Carolina Justice for All Project’s Proposal for Limited Practice by Paralegals: Alicia Mitchell-Mercer, S.M. Kernodle-Hodges, Rachel Royal, Shawana W. Almendarez, Morag Polaski; and New York City’s Court Navigators Program
<a href="#">May 26, 2021</a>	The North Carolina Legal Needs Assessment; Jennifer Lechner, Executive Director, North Carolina Equal Access to Justice Commission; Mary Irvine, Executive Director, NC IOLTA
<a href="#">June 23, 2021</a> <a href="#">July 27, 2021</a> <a href="#">August 24, 2021</a> <a href="#">December 15, 2021</a>	Discussion and Development of Recommendations

# Background on Regulatory Change

The push for regulatory change in the legal profession is not a new idea. For decades, academics and practitioners have debated the effectiveness of the current regulatory structure of the practice of law, ranging from the prohibitions on the unauthorized practice of law to the ethical parameters within which lawyers must operate. The argument is that the current structure for practicing law stifles innovation, unnecessarily prohibits capable individuals from providing legal services to those who cannot afford to retain a lawyer, and limits lawyers in their abilities to expand services, both in terms of quantity and quality. The hope is that changes made to the regulation of the practice of law – including the Rules of Professional Conduct and the law regarding the unauthorized practice of law – will empower legal service providers (some of which are currently prohibited from operating in this state) to better serve the people, particularly the populations that cannot afford legal services as they exist today. These debates, however, have rarely produced any meaningful change inside the United States. Other foreign jurisdictions, such as the United Kingdom, Australia, and Canada, have implemented changes to their regulatory structures for the practice of law, including permitting fee sharing with nonlawyers, permitting law firms to be publicly traded, and permitting paraprofessionals to engage in the practice of law, albeit in a limited manner. Although these changes do not appear to have harmed clients, the impact these changes have on improving access to legal services remains unknown.

One thing, however, is clear: Those who need legal services cannot always meaningfully obtain those services. Reports from national organizations such as the American Bar Association (see Appendix B) and the Legal Services Corporation (see Appendix C), as well as jurisdiction-specific reports such as California's Legal Market Landscape Report (see Appendix D) and North Carolina's recent Civil Legal Needs Assessment (see Appendix E) provide ample evidence of the current and likely continuing failure of the legal profession to be fully accessible to those in need of legal services, particularly those of lesser means.

The subcommittee proceeded through its exploration of different regulatory change initiatives to determine if a particular idea a) had the potential to improve access to justice, if not a demonstrated record of improving access to legal services, and b) would not result in client harm. After its study, the subcommittee's broad conclusion is that the current regulatory structure of the legal profession in North Carolina likely stifles the innovation needed to provide quality legal services to all, including by means of technological advances and new legal service providers to serve particular areas of legal need. Accordingly, the subcommittee recommends the State Bar, the Courts, and the General Assembly work together to implement certain regulatory change initiatives to test these innovations and their impact on access to justice for the benefit of the people of North Carolina.

Myriad other jurisdictions have issued reports on regulatory change initiatives, including thorough summaries describing the history of and need for regulatory change in the legal profession. This report will not regurgitate those histories here, but instead recommends that those interested in learning more about the history of regulatory change in the legal profession review the reports from jurisdictions such as Arizona, New York, and Utah. See Appendices F through H.

# Recommendations

## 1 Pursue a Limited License for Nonlawyers/Paraprofessionals

The subcommittee spent more time discussing the creation of a separate licensing structure that would empower qualified nonlawyers to provide limited legal services than any other regulatory change idea. A number of other jurisdictions have implemented or are currently exploring limited licenses for paraprofessionals, and the subcommittee reviewed these programs in its exploration of whether a similar license would be viable for North Carolina. Most notably, Ontario (Canada) created a licensed paralegal program over ten years ago. Despite initial resistance by the legal profession, representatives of the Ontario Law Society report that licensed paralegals have successfully integrated into the legal profession in Ontario and are relied upon by lawyers to handle a variety of matters; as a result, lawyers have been able to focus on larger, more significant issues for their clients. In the United States, Utah and Arizona recently created licensed paralegal programs, and Minnesota has just begun a pilot/temporary paralegal licensing program. Due to these programs being in their infancy, none have sufficient data to gauge the success of the programs, particularly their impact on access to justice. It is also notable that Washington State implemented a “limited license legal technician” program in 2014 that was ultimately sunset in 2020 when a split Washington Supreme Court concluded that the program was not cost effective.

Although there is only one program with a demonstrated history of successful integration into the local legal profession (Ontario), the subcommittee concluded that, even if lawyers significantly reduced their fees and/or provided exponential numbers of pro bono hours, lawyers acting alone could not address all needs for legal services in the state. To this end, the subcommittee felt strongly that qualified nonlawyers could provide limited but adequate and less costly legal services, with potential services ranging from document preparation to limited representation in small claims court or eviction cases. The subcommittee was persuaded, in part, by the presentation of the North Carolina Justice for All Project that proposed a license structure for paralegals and other nonlawyers to provide limited legal services based upon successful qualification through rigorous education and examination standards.

**The subcommittee unanimously recommends the State Bar Council pursue the development and eventual implementation of a separate license for qualified nonlawyers to provide legal services.** The subcommittee recognizes that the creation and implementation of such a license requires the cooperation and input of the State Bar Council, the Court system, the General Assembly, and the Governor, particularly with regard to the statutory amendments necessary to authorize these purported licensees to provide legal services in this state. Accordingly, the subcommittee respectfully requests the State Bar Council take the lead in presenting and exploring this idea with all stakeholders for the benefit of the public. (Continued on next page.)

# Recommendations

## Limited License for Nonlawyers/Paraprofessionals (cont.)

Areas of law and activities within those areas of law in which the licensee might provide services remain a debatable issue. However, the subcommittee relied upon the Legal Needs Assessment (see Appendix E) as an indicator of what areas of law and what specific services the public needs most. The Assessment, among other things, surveyed members of the public regarding the areas of legal services in largest need. The subcommittee used these identified areas of legal need as the framework for its own recommendation on what areas of law should be prioritized for the limited license. With the exception of civil rights/discrimination matters, the subcommittee agreed that the top areas of need as identified by the Assessment should be considered for inclusion in the limited license, particularly certain family law matters and housing matters (e.g., landlord/tenant disputes and housing/homeowner issues). The subcommittee's vote on whether specific areas of law should be considered for inclusion in the limited license was as follows:

- Family law (unanimous)
- Landlord/tenant (unanimous)
- Housing/homeowner issues (split vote; 11-1)
- Immigration (split vote; 8-5)
  - The subcommittee questioned whether immigration matters should be included, as well as whether the limited license would actually authorize practice in this area of federal law. The subcommittee's vote in favor of inclusion remains, but a subsequent working group should explore this issue further.
- Elder law (split vote; 8-3)
- Healthcare (split vote; 9-2)
- Income maintenance (split vote; 9-3)
- Consumer rights (split vote; 8-4)
- Employment legal services (split vote; 7-5)
- Veteran/military benefits (split vote; 9-3)

Again, permitted activities within the recommended areas of law remain debatable; for example, some aspects of family law may very well be suited for practice by a limited licensee, while other aspects should be restricted to lawyers based upon the complexity and significance of the action. The subcommittee does not recommend the limited license encompass all areas of law identified above at the outset of the license; rather, the subcommittee recommends the limited license initially permit practice in one to three of the areas as determined by a subsequent committee acting under the supervision of the State Bar Council with input from representatives of the Court system, legal services organizations, and both the legal and paralegal professions.

# Recommendations

## 2 Pursue a Regulatory Sandbox

How consumers obtain legal services is in a constant change of flux, and will remain so as technology creates new, previously unimagined possibilities in the field of law. Many of these innovations are already accessed by consumers in North Carolina (and in some cases, preferred to the traditional model of obtaining legal services) despite qualifying as “the unauthorized practice of law” and being statutorily prohibited. The subcommittee strongly feels these new methods of delivering legal services should not be ignored, unquestionably prosecuted as the unauthorized practice of law, and/or remain unregulated. Rather, they should be evaluated for their effectiveness in providing adequate legal services to the public and, if possible, brought into the current regulatory framework for the legal profession to ensure public protection.

A “regulatory sandbox” is an experimental regulatory environment in which individuals, legal service entities, and other business arrangements/partnerships associated with the provision of legal services that have been traditionally prohibited are permitted to exist and operate. The sandbox exists for a set period of time and is heavily regulated to ensure public protection. Following successful completion of a rigorous application process, those participating in the “sandbox” are required to report extensive data to the supervising regulatory body to ensure clients are not harmed and access to justice efforts are pursued. Risk categories can be assigned to each participant to evaluate and protect against harm. Through the sandbox, other regulatory change recommendations may be vetted for future reforms, including alternative business structures, fee sharing arrangements with nonlawyers, and other methods of delivering legal services that run afoul of the current unauthorized practice of law statutes.

The subcommittee studied this issue by focusing on Utah’s current regulatory sandbox and proposed sandboxes in other jurisdictions, including Washington State (see Appendix I), Florida (see Appendix J), and British Columbia (see Appendix K). The subcommittee also spoke with representatives of the Duke Law Center for Technology and Innovation regarding the need for North Carolina to proactively explore different methods of delivering legal services, particularly those that are either currently prohibited under the unauthorized practice of law statutes or are otherwise unattainable by lawyers due to the restrictions on fee sharing/partnerships with nonlawyers. The subcommittee recognized that, similar to a limited paraprofessional license, a regulatory sandbox requires the input and cooperation of the State Bar Council, the Court system, the General Assembly, and the Governor. The subcommittee was encouraged to see the General Assembly and the Governor recently approve the “FinTech” sandbox in 2021, which creates a similar environment for testing innovative (and previously prohibited) financial and insurance services for the benefit of the public. **Accordingly, the subcommittee recommends the State Bar Council pursue the creation of a regulatory sandbox in North Carolina for legal services, with particular focus on increasing access to justice while protecting against client harm.**

The subcommittee also considered whether, in lieu of the aforementioned paraprofessional limited license, the idea of paraprofessionals and other nonlawyers providing limited legal services could be tested in the regulatory sandbox, similar to proposals in Florida and British Columbia. Specifically, the sandbox would permit individuals or organizations who desire to employ paraprofessionals to apply for participation in the sandbox and utilize nonlawyers to provide limited legal services to the people of North Carolina in specific areas of law as determined by the State Bar Council. The subcommittee, through a split vote, does not recommend this proposal and instead recommends the Council pursue both the limited license and a regulatory sandbox.

# Recommendations

## **3 Recommend a Court Navigator's Program to the Administrative Office of the Courts**

The subcommittee studied New York City's Court Navigators program, which provides training for nonlawyers to operate in courthouse and assist pro se parties in understanding courtroom procedure, locating pertinent offices/division, and so forth. Notably, court navigators do not provide legal advice, but may be allowed to respond on behalf of a pro se party to requests for factual information by a judge or attorney in a proceeding.

While the subcommittee concluded that a program similar to the New York City Court Navigators program would serve as an excellent resource for pro se parties and improve the efficiency of the justice system when pro se parties are involved, the subcommittee also concluded that the implementation of such a program fell outside the purview of the State Bar Council. Instead, the subcommittee recommends the Council request the Administrative Office of the Courts consider implementation of such a program.

## **4 Refrain from Pursuing Alternative Admission to the Bar at this Time**

The subcommittee reviewed and discussed the possibility of alternative admission to the bar, e.g., permitting additional pathways to obtaining a law license. Two alternative pathways implemented to some degree in a few other jurisdictions include qualifying for the bar exam without obtaining a juris doctor (e.g., substituting a law school degree with extended apprenticeship in law office); and diploma privilege (e.g., a law license is granted based upon successful completion of law school). The subcommittee concluded that these ideas did not warrant further consideration as potential solutions to increasing access to justice, and recommends the State Bar Council not pursue the creation of alternative pathways for bar admission at this time.

# Recommendations

## 5 Explore Necessary Changes to Permit Alternative Business Structures and Fee Sharing with Nonlawyers

Alternative Business Structures consist of any business model through which legal services are delivered that is different from the traditional sole proprietorship or partnership model for law firms. Examples include a law firm or legal service entity with either nonlawyer minority ownership interest or no restriction on nonlawyer ownership interest; a business entity providing legal and non-legal services with either nonlawyer minority ownership interest or no restriction on nonlawyer ownership interest; or a publicly traded law firm.

Similarly, but distinguished, is the idea of fee sharing with nonlawyers, to wit: granting authority to lawyers/law firms to share fees with nonlawyers, including staff and other third parties, but not permitting nonlawyer ownership interest(s) in the law firm or legal service entity. To permit either alternative business structures or fee sharing with nonlawyers, Rule 5.4's prohibition on fee sharing with nonlawyers must be eliminated, along with other potential statutory amendments regarding the corporate practice of law.

The underlying idea for these fee sharing structures is that the current prohibition on fee sharing with nonlawyers stifles innovation in legal services and otherwise limits a lawyer's/law firm's ability to expand, evolve, and improve services provided to clients. By eliminating the prohibition on fee sharing with nonlawyers or otherwise permitting alternative business structures, lawyers could access capital resources that could be used to expand and improve legal services, partner with an allied professional to offer more complete services (e.g., a tax lawyer partnering with a CPA; or a family lawyer partnering with a mental health professional), and recognize, reward, and inspire dedicated service by nonlawyers by offering a limited interest in the fees collected by the lawyer or law firm.

Of the different jurisdictions studied, Arizona seems to have taken the boldest steps in this regard with its elimination of the prohibition on fee sharing with nonlawyers and its acceptance of alternative business structures; it was reported that, despite initial skepticism, lawyers in Arizona are embracing the idea of alternative business structures. New York, however, voted in 2020 against permitting nonlawyer fee sharing/alternative business structures at this time, as they are waiting for more evidence of these structures' success prior to implementation. Utah, on the other hand, is exploring the effectiveness of alternative business structures and fee sharing with nonlawyers through its regulatory sandbox (see Recommendation #2, above). The subcommittee intends its recommendation of a regulatory sandbox in North Carolina to incorporate both alternative business structures and fee sharing with nonlawyers to test these arrangements' impact on the practice of law and on the issue of access to justice, as well as the impact such structures would have on increasing efficiency in the delivery of quality legal services.

# Recommendations

## 6 Explore the Possible Liberalization of the Unauthorized Practice of Law Statutes

What constitutes the practice of law in North Carolina is defined by statute. Throughout its exploration of different regulatory change ideas, the subcommittee discussed how a particular change would require statutory amendment to ensure that the activity does not constitute the statutorily prohibited unauthorized practice of law. As a stand-alone idea, the subcommittee discussed whether the State Bar Council should re-evaluate the current statutory structure and prohibitions on the practice of law; in essence, the subcommittee explored whether it would be worthwhile – if not necessary and appropriate – to redefine what constitutes the practice of law. For example, the subcommittee discussed whether, regardless of any other regulatory change, it would be appropriate to rewrite the definition of the practice of law to permit:

- nonlawyer assistance in drafting certain documents
- nonlawyer activity in certain matters (e.g. municipal or tax issues);
- pro bono nonlawyer activity in certain matters;
- nonlawyer partners/managers/employees of business entities to represent the entity; or
- nonlawyers at local indigent service organizations to advise individuals on legal needs and opportunities (e.g. social workers at non-profits offering legal advice, etc.).

On a related note, the subcommittee also considered whether the scope of the current unauthorized practice of law prohibitions should be limited to individuals who are acting in a representative capacity or who are acting for financial or personal gain. While the subcommittee does not have a specific recommendation on how, if at all, the statutory parameters on the practice of law should be rewritten, the subcommittee concluded and recommends that, regardless of any other regulatory change idea studied, the State Bar Council should study whether – and what – changes should be made to the statutory structure for the benefit and protection of the public. The subcommittee further notes that the results experienced through the aforementioned and recommended regulatory sandbox should provide valuable insight on this topic.

# Appendix

**Appendices included in this report consist of pertinent materials reviewed and generated by the subcommittee during its 18-month study that contributed to the subcommittee's recommendations. Links to each appendix can be found below.**

Not all materials reviewed by the subcommittee are included in this report. Copies of full agendas from the subcommittee meetings can be obtained through staff counsel Brian Oten (boten@ncbar.gov).

- **Appendix A – Meeting Agendas, Minutes, and Presentation Slides (if applicable)**
  - [June 4, 2020](#) – Overview of Regulatory Change
  - [July 27, 2020](#) – The Legal Landscape Market Report; Bill Henderson, Stephen F. Burns Professor of Law, Indiana University Maurer School of Law
  - [September 2, 2020](#) – Discussion with Representatives of the Legal Services Community in North Carolina; George R. Hausen, Jr., Executive Director, Legal Aid of North Carolina); Jennifer Lechner, Executive Director, North Carolina Equal Access to Justice Commission; Ken Schorr Executive Director, Charlotte Center for Legal Advocacy
  - [September 29, 2020](#) – Discussion with Jeff Ward, Director of the Duke Center on Law and Technology
  - [November 19, 2020](#) – The Utah Office of Legal Services Innovation (e.g., Utah’s Regulatory Sandbox); Lucy Ricca, Executive Director of Utah’s Office of Legal Services Innovation
  - [January 26, 2021](#) – Arizona’s Alternative Business Structures and Legal Paraprofessional Program; Dave Byers, Administrative Director of the Courts in Arizona
  - [March 23, 2021](#) – The Ontario Law Society’s Licensed Paralegal Program: Jessica Weiss, Counsel and Acting Team Lead for Licensing and Accreditation, and Peninah Brickman, Senior Counsel and Team Manager, Entry-Level Compliance; The North Carolina Justice for All Project’s Proposal for Limited Practice by Paralegals: Alicia Mitchell-Mercer, S.M. Kernodle-Hodges, Rachel Royal, Shawana W. Almendarez, Morag Polaski; and New York City’s Court Navigators Program
  - [May 26, 2021](#) – The North Carolina Legal Needs Assessment; Jennifer Lechner, Executive Director, North Carolina Equal Access to Justice Commission; Mary Irvine, Executive Director, NC IOLTA
  - [June 23, 2021](#) – Discussion and Development of Recommendations (focus on Limited License Paraprofessionals and Court Navigators)
  - [July 27, 2021](#) – Continued Discussion and Development of Recommendations
  - [August 24, 2021](#) – Continued Discussion and Development of Recommendations (focus on Regulatory Sandbox)
  - [December 15, 2021](#) – Continued Discussion and Development of Recommendations

# Appendix (cont.)

**Appendices B through K are hyperlinked below.**

Copies of referenced documents can also be obtained through staff counsel Brian Oten (boten@ncbar.gov).

- **Appendix B** – American Bar Association, Report on the Future of Legal Services in the United States (2016)
- **Appendix C** – Legal Services Corporation, The Justice Gap: Measuring the Unmet Civil Legal Needs of Low-Income Americans (2017)
- **Appendix D** – William D. Henderson, Legal Market Landscape Report (July 2018)
- **Appendix E** – North Carolina Equal Access to Justice Commission & North Carolina Equal Justice Alliance, In Pursuit of Justice: An Assessment of the Civil Legal Needs of North Carolina (2021)
- **Appendix F** – Arizona Task Force on the Delivery of Legal Services: Report and Recommendations (2019)
- **Appendix G** – New York Working Group on Regulatory Innovation: Report and Recommendations (2020)
- **Appendix H** – Utah Work Group on Regulatory Reform: Report and Recommendations, Narrowing the Access-to-Justice Gap by Reimagining Regulation (2019)
- **Appendix I** – Washington Courts Practice of Law Board, Blueprint for a Legal Regulatory Sandbox in Washington State (2021)
- **Appendix J** – Florida Special Committee to Improve the Delivery of Legal Services: Final Report (2021)
- **Appendix K** – The Law Society of British Columbia, Licensed Paralegal Task Force Report (2020)