

February 1, 2023

Dear Members of the North Carolina General Assembly:

We write to strongly support the policy recommendations proposed by the North Carolina Justice for All Project: licensing non-lawyer legal practitioners and relaxing rules governing unauthorized practice of law (UPL). These recommendations reflect thoughtful and serious attention to one of this country's most pernicious crises: the civil justice gap. Not only will the policy recommendations help address the justice gap in North Carolina, they will establish North Carolina among a growing group of states leading thoughtful reform of outdated and excessive restrictions. We urge you to implement these reforms to help millions of North Carolinians who currently lack access to meaningful legal help.

The severity of the justice gap in North Carolina is sobering. More than two-thirds of low-income families in North Carolina experience at least one civil legal problem in a given year. Yet, of these legal needs, the overwhelming majority—a staggering 86%—are not met.¹ And the problem is getting worse, not better. Indeed, all indications are that the legal ramifications of multiple pandemic-exacerbated issues, including rising household debt, a surge in evictions, and a possible uptick in family problems, are only beginning to ripple through North Carolina's courts.

North Carolinians want legal help. But they're not getting it. Citizens seek two things they aren't receiving: advice and advocacy. Advice helps consumers solve problems through issue-specific information; advocacy helps consumers solve problems through the actions of a proxy. When seeking formal assistance with civil justice problems, nearly two-thirds of consumers want advice, while nearly half want advocacy.² The overwhelming majority of studies present a clear consensus that advocacy—whether from lawyers or nonlawyer advocates—significantly increases a litigant's chance of success as compared to self-representation.³

By dint of their training, lawyers are first-rate problem-solvers. But lawyers do not have a monopoly over the skills and knowledge needed to help North Carolinians address certain legal problems. And, critically, North Carolina simply does not have enough lawyers at affordable fees to help those in need. The two proposals recommended by the North Carolina Justice for All Project—licensing non-lawyer legal practitioners and liberalizing N.C. General Statute Section 84 (Unauthorized Practice of Law)—directly target this gap. In particular, licensing paraprofessionals will create new lower cost legal service providers in areas of high need for middle-class North Carolinians and will ensure quality of legal service through carefully tailored licensing and oversight requirements. The proposal to liberalize the UPL ban will enable nonprofit legal aid and pro bono organizations to

¹ IN PURSUIT OF JUSTICE: AN ASSESSMENT OF THE CIVIL LEGAL NEEDS OF NORTH CAROLINA, N.C. EQUAL ACCESS TO JUSTICE COMM'N & N.C. EQUAL JUSTICE ALLIANCE 3 (2021).

² Rebecca L. Sandefur, *Legal Advice from Nonlawyers*, 16 STAN. J. C.R. & C.L. 283, 293 (2020). Some wanted both, which is why the numbers add up to more than 100%.

³ Rebecca L. Sandefur, *Elements of Professional Expertise: Understanding Relational and Substantive Expertise through Lawyers' Impact*, 80 AM. SOC'L REV. 909, 922-24 (2015).

offer more free services to more low-income North Carolinians using trained and supervised nonlawyer expert staff.

Licensed Paraprofessionals Will Help Consumers

Licensing independent paraprofessional advocates will make a significant impact for people with justice needs. The takeaway from decades of independent and rigorous research across multiple jurisdictions is that trained non-lawyer advocates do a very good job in providing advocacy before courts and other tribunals. Nonlawyers have been found to be effective advocates in domestic violence proceedings, in housing courts, and in child welfare proceedings.⁴ Consumers are not the only beneficiaries; as a recent study of lay domestic violence advocates noted, judges see benefits as well.⁵ In Ontario, which has allowed independent paralegals since 2007 and in which over 10,600 licensed paralegals operate, consumers report high satisfaction with the services received.⁶ In the U.S., lay representatives *already* represent people in certain administrative agencies and specialized courts, including, for example, unemployment benefits appeals, labor grievance arbitration, some state workers' compensation tribunals and tax courts, Social Security appeals, the United States Patent Office, and immigration courts. And they generally perform as well as or better than lawyers.⁷

Numerous states are recognizing that, by licensing independent legal paraprofessionals, they can help millions of people unable to pay the high and usually indeterminate fees needed to hire an attorney. Utah and Arizona both have programs licensing independent paraprofessionals; Minnesota, Oregon, New Mexico, and Colorado are all moving toward similar regulation.⁸

Relaxing the Ban on UPL Will Allow More Poor People to Get Help

Relaxing the broad ban on the unauthorized practice of law (UPL) in this narrow context—to permit legal aid and pro bono organizations more flexibility in serving their communities—will help the poorest North Carolinians. Legal aid and pro bono service providers are already equipped with the professional and interpersonal skills that consumers want and need. These organizations are embedded in the communities they serve. They know the substantive law. They know what's at stake.

The relaxation of UPL rules for this narrow band of service-providers will help close the justice gap for those communities by permitting more providers to offer limited legal assistance under supervision. Although nearly 2 million North Carolinians are eligible for legal aid services, there is a

⁴ For an effective recap of the research, see Nora Freeman Engstrom, *Effective Deregulation: A Look Under the Hood of State Civil Courts*, JOTWELL LEGAL PRO. (Oct. 31, 2022),

<https://legalpro.jotwell.com/effective-deregulation-a-look-under-the-hood-of-state-civil-courts/>.

⁵ Jessica K. Steinberg, Anna E. Carpenter, Colleen F. Shanahan & Alyx Mark, *Judges and the Deregulation of the Lawyer's Monopoly*, 89 Fordham L. Rev. 1315, 1338 (2021) (quoting one judge as observing that the advocates “take the weight off of us.”).

⁶ L. SOC'Y ONTARIO, LAW SOCIETY OF ONTARIO 2021 ANNUAL REPORT (2022),

<https://lawsocietyontario.azureedge.net/media/lso/media/annualreport/documents/statistics-licsee-2021.pdf>; Lisa Trabucco, *What Are We Waiting For? It's Time to Regulate Paralegals in Canada*, 35 Windsor Yearbook on Access to Justice 149, 171 (2018).

⁷ Sandefur, *Legal Advice from Nonlawyers*, at 304-05.

⁸ Washington's program was sunsetted by the state supreme court in 2020. A study performed by the Rhode Center found that the actual drivers for the termination of the program were primarily political. JASON SOLOMON & NOELLE SMITH, *THE SURPRISING SUCCESS OF WASHINGTON STATE'S LIMITED LICENSE LEGAL TECHNICIAN PROGRAM*, DEBORAH L. RHODE CENTER ON THE LEGAL PROFESSION (2021).

dearth of legal help—currently in North Carolina, there is only one legal aid attorney for every 8,000 citizens in need.⁹ UPL liberalization at legal aid organizations will get to the heart of this shortage—and it will free up valuable talent already within these organizations to provide real, meaningful, experience-supported assistance.

Public Protection Favors These Proposals

Those who object to the above common-sense reforms often invoke the specter of consumer harm or the regulatory aim of “public protection.” These are important aims, and we share concern for how regulatory changes might affect public access to, and success in, the justice system. But these concerns actually *support* the changes proposed by the Justice for All Project.

As we explain above, independent paraprofessionals represent clients in the United States in numerous administrative agencies and specialized courts—and, thanks to recent regulatory reform, they represent clients *throughout* Arizona and Utah. They represent clients in Ontario where, as noted, more than 10,600 independent paralegals provide legal advice.¹⁰

Research indicates that, in circumstances similar to the ones proposed here, both the quality of outcomes and numbers of complaints for nonlawyer advocates are as good as, or even better than, lawyers.¹¹ One recent Stanford study, for instance, surveyed the landscape of new legal service providers in Utah and Arizona. The report concluded that, though it is still early, reform efforts there don’t appear to pose a substantial risk of consumer harm.¹² Moreover, in comparing non-lawyer advocates to bona fide J.D.s, however, it is important not to suggest a false choice. In reality, most low-income citizens are not choosing between a lawyer and a non-lawyer—they are choosing between the help of a lawyer they cannot afford and no help at all.

As a result, the “public protection” or consumer harm rationale cuts the other way. In preventing more affordable options from coming onto the market, we harm the public by forcing them to handle legal problems on their own. In other words, status quo hurts consumers. Unable to afford an attorney, citizens give up trying to solve their legal problems at all. The possible risks to consumers of reform include a worse outcome than the next best alternative, failure to exercise a legal right, overpaying or purchasing unnecessary legal services. But the balance of risks of harm is significantly greater in a world *without* realistic, affordable alternatives to lawyers.

Failure to initiate these reforms would continue to harm the public by preventing more affordable options from entering the legal services market.

Expectations Should Be Modest

⁹ IN PURSUIT OF JUSTICE: AN ASSESSMENT OF THE CIVIL LEGAL NEEDS OF NORTH CAROLINA, N.C. EQUAL ACCESS TO JUSTICE COMM’N & N.C. EQUAL JUSTICE ALLIANCE 3 (2021).

¹⁰ L. SOC’Y ONTARIO, LAW SOCIETY OF ONTARIO 2021 ANNUAL REPORT (2022), <https://lawsocietyontario.azureedge.net/media/lso/media/annualreport/documents/statistics-licensee-2021.pdf>

¹¹ This is true in all but the most complex cases. Deborah Rhode, *Professional Integrity and Professional Regulation: Nonlawyer Practice and Nonlawyer Investment in Law Firms*, 39 HASTINGS INT’L & COMPAR. L. REV. 111, 115 (2016) (citing HERBERT KRITZER, LEGAL ADVOCACY: LAWYERS AND NONLAWYERS AT WORK (1998); Sandefur, *Legal Advice from Nonlawyers*, at 305 (quoting and citing study by Genn and Genn)).

¹² DAVID FREEMAN ENGSTROM ET AL., LEGAL INNOVATION AFTER REFORM: EVIDENCE FROM REGULATORY CHANGE 7 (2022), <https://law.stanford.edu/wp-content/uploads/2022/09/SLS-CLP-Regulatory-Reform-REPORTExecSum-9.26.pdf>.

Enacting the North Carolina Justice for All Project’s proposals would be an important step in closing the justice gap in North Carolina. Yet we should not overstate the potential for change. Our expectations must be modest and realistic. First, it may be difficult for paraprofessionals in rural areas to build sustainable practices, although this concern might be mitigated in part by the opening of legal aid and pro bono service to UPL. Moreover, paraprofessionals are best suited to certain kinds of consumers and areas of law. As a recent British Columbia report on a similar program put it: “The problem faced by the justice system, to which the licensed paralegal initiative directs itself, is that a large portion of the public (a) experience serious, difficult to resolve, legal problems, and want help from a professional, (b) have some money to spend, but (c) are not getting help from lawyers.”¹³ Family law is an excellent example of an area that meets these criteria—with many unrepresented consumers who are able to pay for legal services, so long as affordable, on critical issues affecting their lives.

In other areas, it may be more difficult to establish models for serving consumers. For example, the one place in North America where paraprofessionals are providing representation in housing cases is in Ontario. And the best available data indicates that paraprofessionals there overwhelmingly represent landlords, and they rarely represent tenants.¹⁴ So we should not expect tenants facing eviction will start hiring paraprofessionals in large numbers. This is why the Justice For All Project’s proposal on liberalizing the rules around UPL for legal aid and pro bono organizations is a key complement to the paraprofessional licensing proposal.

Conclusion

These two proposals are terrific first steps toward closing the justice gap. The United States has one of the most restricted legal services market in the world, and our citizens are increasingly harmed by the lack of affordable, accessible sources of legal help. Through approving the proposals presented by the North Carolina Justice for All Project, licensing legal practitioners and liberalizing N.C. General Statute Section 84 (Unauthorized Practice of Law), North Carolina can lead in putting its citizens first. We urge the General Assembly to approve it as soon as possible.

Sincerely,

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¹³ L. SOC’Y BRITISH COLUMBIA, LICENSED PARALEGAL TASK FORCE REPORT § 8, p. 4, <https://www.lawsociety.bc.ca/Website/media/Shared/docs/initiatives/2020LicensedParalegalTaskForceReport.pdf>.

¹⁴ David Wiseman, “Paralegals and Access to Justice For Tenants: A Case Study,” in *The Justice Crisis: The Cost and Value of Accessing Law* (Jacobs & Farrow eds. 2020).