

February 1, 2023

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

Re: Making the Civil Legal System Work for the People of North Carolina

To the Honorable Members of the North Carolina General Assembly:

I write to express my strong support for the Petition for Redress of Grievances Pursuant to N.C. Const. Article I, Section 12 filed by the North Carolina Justice for All Project (NCJAP).

The petition asks the General Assembly to revise N.C. Gen. Stat. § 84 (governing the Unauthorized Practice of Law) to permit the licensing of trained, regulated professionals who are not lawyers to provide some legal services that only lawyers can currently provide. The proposal would expand access to critical legal services in a manner analogous to the way the health care system works, where consumers' medical needs are addressed not solely by doctors, but by nurse practitioners, physician's assistants, medical technicians, and pharmacists as well.

My views are based on my experience with the civil legal system in the United States. I am currently Distinguished Lecturer and Director of the Future of the Profession Lab at the University of Pennsylvania Carey Law School. I am also President Emeritus of the Legal Services Corporation (LSC), the United States' largest funder of civil legal aid for low-income people; I served as President of LSC from 2011 to 2020. I practiced law with the international, Washington-based firm of Arnold & Porter for thirty years and was the firm's Managing Partner for a decade. I am a past President of the 110,000-member District of Columbia Bar and a former General Counsel of the District of Columbia Public Schools. I chaired the American Bar's Association's Task Force on Legal Needs Arising from the COVID-19 Pandemic.

I have seen in my career how the civil legal system works for the privileged and the wealthy. For them, it works reasonably well. I have also seen how that same system flat-out fails tens of millions of low- and middle-income people every year. For them, the system is unaffordable, inaccessible, and does not allow them to assert their legal rights effectively. The system

protects the exclusive franchise of lawyers to provide legal services at the expense of serving the needs everyday individuals.

NCJAP's petition aims to make the civil legal system reflect the just, proper, and rightful interests of the people of North Carolina.

I. The Civil Legal System Is Not Meeting the Needs of the Public.

By every measure, the civil legal system is not meeting the civil legal needs of everyday people. "Civil legal needs" include matters relating to housing (protection from unlawful evictions and foreclosures), family stability (child custody, child support, guardianships, and adoptions), personal safety (protection against domestic violence), and economic subsistence (access to unemployment insurance, protection against unlawful debt-collection practices). Numerous studies have documented the magnitude of public's unmet civil legal needs. I am not aware of a single study that has found the system to be working well.

Consider these facts:

- According to *In Pursuit of Justice: An Assessment of the Civil Legal Needs of North Carolina*, issued by the North Carolina Equal Access to Justice Commission and the Equal Justice Alliance in June 2020, 86 percent of the civil legal needs of low-income families who are financially eligible for legal aid go unmet. The resources available for civil legal aid providers are inadequate to meet the needs of those who qualify.
- Legal aid is available only for the very poor. Income-eligibility caps generally limit legal aid to people with incomes no greater than 200 percent of the Federal Poverty Guidelines. In 2023, that means an individual with an income greater than \$29,160 is ineligible for legal aid. But the high cost of lawyers' services means that even middle-class people with incomes well above that cutoff cannot get the legal help they need.
- The types of matters for which people need the most help involve housing and family law – particularly evictions, foreclosures, domestic violence, and child custody. These are high-stakes matters.
- The National Center for State Courts estimates that both parties have lawyers in only 24 percent of civil cases in state courts, where about 95 percent of civil cases are heard. In more than three-quarters of civil cases, at least one party is struggling to navigate a legal system that is incomprehensible to them – a system created by lawyers, for lawyers, and built on the assumption that everybody has a lawyer.
- The World Justice Project's Rule of Law Index ranks the countries of the world every year on their compliance with various indicators of the rule of law. One indicator is the affordability and accessibility of civil justice. On that measure, the United States

currently ranks 115th of 140 countries. Among the 43 wealthiest countries in the world, the United States ranks 43rd.

II. Limitations on the Unauthorized Practice of Law Constrict the Supply of Helpers to Assist the Public with Their Civil Legal Needs.

Our current civil legal system was designed for a world that ceased to exist sometime in the last century – a world in which the vast majority of civil litigants had lawyers. Our rules for regulating the legal system have not adapted to the profound changes that have caused an explosion in self-represented parties since at least 1975.

By limiting the providers of legal services to the monopoly of lawyers, N.C. Gen. Stat. § 84 is contributing to, not ameliorating, a failure in the market for legal services. It is constricting the supply of helpers who might assist North Carolinians with their civil legal needs. Prohibiting *anyone* who is not a lawyer from providing legal services consigns those who need legal advice but cannot afford a lawyer to getting no help at all. The current system has let the perfect become the enemy of the good: our preference for a lawyer for everyone has left a substantial percentage of the population on their own to try to deal with a legal system that is complex, confusing, and arcane. Compelling people who cannot afford a lawyer to play by the rules of a system designed only for those who can is not justice. It is wrong.

N.C. Gen. Stat. § 84 has resulted in a dysfunctional market. Those to whom the statute has granted a monopoly to serve the market for legal services – lawyers – are leaving a significant portion of the market with no service at all. That is bad regulation.

III. Other States Have Permitted Professionals Who Are Not Lawyers to Provide Some Legal Services.

Other states are leading the way in expanding the supply of professionals authorized to help people with their civil legal problems. Utah, Arizona, Oregon, and Alaska, for example, have recently created licensing programs that allow trained and regulated professionals who are not lawyers to provide specified services in some kinds of cases – typically cases involving housing and family law, where the stakes are high and so many people do not have lawyers. More states are considering similar initiatives. These new licensing systems require that licensees meet rigorous educational and experience requirements and subject licensees to regulatory oversight. These safeguards protect the public against potentially incompetent or unethical service providers.

North Carolina need not start from scratch in designing a system to permit well-trained, competent, ethical, and regulated professionals who are not lawyers to provide some legal services. Existing models in other states provide blueprints for North Carolina to consider making its civil legal system serve the public better.

IV. The Process for Revising N.C. Gen. Stat. § 84 Should Provide a Meaningful Opportunity for Public Input.

In considering a revision of N.C. Gen. Stat. § 84, the General Assembly should provide a meaningful opportunity for public input. The legal system belongs to the people, not to lawyers. The people are perfectly capable of speaking for themselves in identifying what they want and need and what is in the public interest.

For too long, lawyer regulation has been left exclusively to lawyers. It has been conducted in the private councils of the bar, in meetings and hearings the public cannot find, with “public comment” solicited on court and bar websites that few members of the public are likely to access. Not surprisingly, lawyers overwhelmingly dominate proceedings to consider reforms to regulation of the profession. Also not surprisingly, lawyers tend to oppose relaxing restrictions on the unauthorized practice of law. They almost always couch their opposition in terms of protecting the public. But when the public has a meaningful opportunity to have input into the very same proposals, they tend to favor them by supermajorities. The public needs to be engaged and heard from on matters of such importance to them.

V. NCJAP’s Petition Is About the Most Important Function of Government – Ensuring Justice.

The Petition before you is intended to make North Carolina’s legal system work for the public. It is about good government. It is about good constituent service.

The founders of our Nation and the framers of the Constitution of the United States emphasized over and over again that their first and most important goal was justice. Alexander Hamilton wrote, “The first duty of society is justice.” Thomas Jefferson wrote, “The most sacred of the duties of government is to do equal and impartial justice to all its citizens.” James Madison wrote in Federalist No. 51, “Justice is the end of government. It is the end of civil society. It ever has been and ever will be pursued until it be obtained, or until liberty be lost in the pursuit.” *The very first line of the Constitution identifies justice as a premier national goal:* “We the People of the United States, in order to form a more perfect union, establish justice” The framers cited establishing justice as their goal even before they mentioned providing for the common defense or ensuring domestic tranquility. Their ordering was no accident.

NCJAP's Petition presents a very thoughtful and reasonable proposal for improving justice in North Carolina. I urge you to grant the petition and amend N.C. Gen. Stat. § 84.

Respectfully yours,

A handwritten signature in blue ink, appearing to read "James J. Sandman". The signature is fluid and cursive, with a long horizontal stroke at the end.

James J. Sandman
Distinguished Lecturer and
Director of the Future of the Profession Lab