

**Brown
& Associates**
Attorneys & Counselors at Law

Park South Professional Center
10440 Park Road, Suite 200
Charlotte, NC 28210
www.browncattorneys.com

Phone + 1 704 542 2525
Fax + 1 704 541 4751
don@brownattorneys.com
brownandassociatespllc@gmail.com

February 6, 2023

The Honorable Phil Berger
President Pro Tempore – N.C. Senate
16 West Jones Street
Raleigh, NC 27601

The Honorable Tim Moore
Speaker – N.C. House of Representatives
16 West Jones Street
Raleigh, NC 27601

Re: Letter of Support Regarding *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, Feb. 2023*

Dear Senator Berger, Speaker Moore, and distinguished Senators and Representatives:

I hope this letter finds you well.

I am writing to express my support of two policy recommendations proposed by the North Carolina Justice for All Project (JFAP) in their legislative proposal, *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, Feb. 2023* (hereinafter “JFAP Legislative Proposal”). Specifically, I support the following two policy alternatives: (1) licensing legal practitioners (reducing fees for services) and (2) liberalizing N.C. Gen. Stat. § 84 (Unauthorized Practice of Law) for legal aid and pro bono services.

To provide some background, I am from Plymouth, North Carolina, and I received my B.A. from the University of North Carolina at Chapel Hill and my J.D. from Campbell Law School. I spent five years as a military attorney in the Navy JAG Corps and practiced law as a JAG Officer in California, Washington D.C., and in private practice in North Carolina and South Carolina. I have been a member of the North Carolina and South Carolina bars for over 35 years. Additionally, I have been the owner of my small firm in Charlotte, North Carolina, for 24 years, focusing primarily on civil litigation.

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A significant portion of my practice includes family law, estate planning, and probate. While practicing in these areas for many years, I have witnessed unfortunate barriers to accessing legal services and the resulting outcomes. I have first-hand knowledge of the types of civil legal problems individuals and families face and the impact on their lives when they have nowhere else to turn to for help. As is the case in our criminal courts, in the civil arena, and especially in family law matters, many citizens need basic legal services but often can't afford counsel.

This is especially true in this most recent inflationary spiral, where many single moms and other hard-working North Carolinians have to scrape by just to put groceries on the table. I was in Harris Teeter the other day, shocked to see the price of eggs starting at \$6.00 a carton. I don't know where they are now, but that was a stunner. And, of course, we know what's happening with gasoline prices and nearly every other consumer good, especially since the beginning of 2021.

FINDINGS FROM AN ASSESSMENT OF THE CIVIL LEGAL NEEDS OF NORTH CAROLINA - JUNE 2021

Through my own experiences, some personal and some professional, I've always had a basic understanding of access to justice concerns. However, I only recently became aware of the severity of the access to justice crisis in North Carolina. In 2021, the NC Equal Access to Justice Commission, the Equal Justice Alliance, and UNC Greensboro's Center for Housing and Community Studies produced the report, *An Assessment of the Civil Legal Needs of North Carolina - June 2021* (hereinafter "NC Civil Legal Needs Assessment").

The study provided comprehensive information concerning civil legal needs in North Carolina by analyzing how various factors such as race, gender, age, and disability impact the nature and extent of civil legal problems faced by North Carolina residents. I was not surprised that my practice areas were among the greatest civil legal needs for low- and middle-income individuals and families.

According to the study, North Carolina's population has grown and diversified in the past two decades, with the white population increasing by 22%, the African American population rising by 27%, the Asian population growing by 163%, and the Hispanic population growing by 158%. The state's educational attainment was just below the national average, with 87.8% of adults completing high school or a GED and 31.3% holding a bachelor's degree or higher.

The state's median household income was nearly \$10,000 lower than the national average, significantly varying across the state. In 2018, 249,340 individuals lived in subsidized housing, and 14.1% of households received food stamps/SNAP. Moreover, 20.7% of homeowners and

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44.1% of renters were cost-burdened, spending over 30% of their income on housing-related expenses.

In North Carolina courts, over 1.7 million civil legal cases of 26 different issue types were recorded between 2015 and 2019, amounting to 340,761 cases annually. Of the 366,356 civil legal cases in the state annually, less than 1% are handled in superior court, 40% in district court, 45% by magistrates, and the rest primarily through special proceedings. Over half of the cases are housing-related, with 46% being summary ejectments and 10% being foreclosures.

Family-related civil legal issues account for 30% of the cases, including divorce, domestic violence, custody issues, and others. Family law, particularly custody proceedings, was the area with the highest unmet legal needs, followed by immigration. The study highlights the significant shortfall in fulfilling legal needs for North Carolinians, particularly those with low incomes. These cases highlight the legal needs of North Carolina's communities.

In 2019, eight civil legal organizations in the state reported impacting over 93,692 individuals and closing over 33,805 cases, preventing 1,897 evictions, 284 foreclosures, and serving 2,111 veterans. The organizations reported that their clients were mostly non-white, with 40.0% being African American, compared to 21.4% of the state's population. However, the demand for civil legal services far outweighs the available resources, and residents often struggle to access them.

REMEMBERING THE MIDDLE-INCOME POPULATION

While the report focused primarily on low-income individuals and families, middle-income individuals often struggle to have their civil legal needs met because the cost of hiring a lawyer can be prohibitively expensive, and they may not qualify for free legal assistance. This group of people earns too much to qualify for free legal services provided to low-income individuals through organizations like Legal Aid of North Carolina but cannot afford the fees charged by private attorneys. Additionally, legal services can be complex, and navigating the legal system can be challenging, making it difficult for middle-income individuals to advocate for themselves effectively. Many civil legal issues go unrepresented and unresolved, affecting their personal and financial well-being.

My experience has shown that middle-income individuals who do not meet the criteria for legal aid but cannot afford a legal retainer are particularly affected. However, although the cost of attorney's fees can be impossible for some, a significant portion of middle-income individuals can typically afford to pay *something* for legal services. Over the years, I've had plenty of middle-income clients request sliding scale payments, deeply discounted rates, or payment plans.

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Often, we attempt to take on pro bono cases. But unfortunately, when we are only one firm, that is not enough to cover the gap.

In my opinion, there are far more middle-income citizens out there in need than can be accommodated, even with the best intentions of lawyers who occasionally offer special-situation reduced rates and pro bono services. All this tells me that a significant population would benefit immensely from a more affordable legal services delivery model to complete discreet legal tasks.

Like many other small-firm attorneys, I have strived to make a positive impact throughout my career. Over the years, I have written off hundreds of thousands of dollars in legal fees and provided pro bono representation to hundreds of clients. I think it's fair to say that to remain financially viable, most law firms can only afford to take on a certain percentage of reduced-fee/pro bono cases. Unfortunately, when my office must direct folks to legal aid organizations or lawyer referral services, it is often on my mind that they may still struggle to find the assistance they need.

LICENSING LEGAL PRACTITIONERS

This is why licensing legal practitioners, such as they do with the Utah Licensed Paralegal Practitioner (LPP) program, is so important. LPPs can fill the gap and provide affordable legal services to middle-income individuals who often can't afford private attorney fees and don't qualify for free legal services for low-income individuals. This helps ensure that individuals in the middle-income group have access to quality legal representation, at least in certain defined areas, for their civil legal needs, promoting fairness and equality in the legal system. As I understand them, these types of programs have also been adopted by several other states in addition to Utah and have shown positive results.

MY EXPERIENCE WORKING WITH PARALEGALS

Throughout my 35-year career, I have mentored many talented paralegals. After some training and under my supervision, many have displayed an exceptional ability to independently draft legal documents and complete assigned tasks to a high standard, requiring minimal input from me. Their work has often only needed minor stylistic adjustments before being signed off by me as the supervising attorney. I firmly believe that with the proper training and education, paralegals and other community advocates can play a crucial role in addressing the shortage of legal services in certain areas, thus increasing access to justice for the general public. Access to a network of legal practitioners offering limited-scope representation would greatly benefit those needing legal assistance.

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RELAXING UNAUTHORIZED PRACTICE OF LAW (UPL) STATUTES FOR LEGAL AID ORGANIZATIONS

Additionally, I understand that the current UPL statutes limit the effectiveness of Legal Aid of North Carolina (LANC) and other pro bono organizations by restricting their ability to utilize the full potential of their non-lawyer staff. This is a hindrance to their efforts to serve those in need. By loosening UPL regulations, these organizations can better tap into the expertise of their non-lawyer staff, thereby increasing their capacity to provide vital legal services to those in need. This could be done at a nominal cost to taxpayers by changing N.C. Gen. Stat. § 84, and giving these organizations some autonomy to create appropriate training programs, as we now see in Alaska and Delaware.

TAKING ACTION IS IMPORTANT TO THE PEOPLE OF NORTH CAROLINA

I understand the North Carolina State Bar has been examining regulatory reform for several years, but to date, little real progress has been made. I'm not sure why. I suppose some may believe that these types of programs will negatively impact lawyers' business models and revenue streams. But I don't see it that way. I see this as filling a gap for folks who could not or would not walk into the lawyer's offices, to begin with. Perhaps some may be concerned about public harm caused by legal practitioners who have not been to a law school performing limited legal services. But there is no evidence to suggest this, at least not in the states where these programs have been tried. Therefore, I don't see that as a worry.

By analogy, we have nurse practitioners and physician assistants who can prescribe medication, like a medical doctor, but wouldn't be licensed to perform heart or brain surgeries. We also have therapists and counselors who would not be licensed to provide psychiatric services. Likewise, the roles carved out for these folks would be limited to more basic legal tasks that are often considered perfunctory. There's no concern that they would be licensed to perform highly complex litigation matters or tax matters, nor would they infringe on, in any appreciable way, the practice areas of most lawyers in this state, in my opinion.

In fact, the JFAP Legislative Proposal and other supporting letters show that public harm has been nearly non-existent in other states where reform has already been implemented. The states where legal practitioner programs are underway include Washington, Arizona, Minnesota, and Utah. As I understand them, many of these programs were modeled after Ontario's Licensed Paralegal program, which has been around for about 15 years. Additionally, Arizona had Legal Document Preparers (LDPs) practicing law for 15 years before they started licensing legal practitioners a couple of years ago to appear in court in that state. I understand that many other states, like Texas and South Carolina, are also exploring these types of regulatory reform as well.

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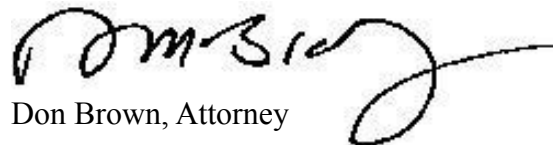
So, despite opposition perhaps from some bar leaders and lawyers in areas such as family law and estate planning over competition and potential public harm, our professional obligation as legal practitioners, according to the Rules of Professional Conduct, requires us to support all efforts to address the shortage of legal services. This is a way to do just that. The way I look at it, this proposal is a way to help a lot of people, a lot of middle-income people, without spending a lot of public money and without any meaningful negative impact on lawyers and the legal profession in this state since this is a population that cannot afford traditional legal fees.

I urge you to explore the far-reaching benefits of the recommendations outlined in the JFAP Legislative Proposal. Their request for the North Carolina General Assembly to establish a legislative committee and pilot program to support a proof of concept for these proposals seems very reasonable to me. More importantly, these changes have the potential to make a real difference in the lives of those seeking legal assistance and finding it nowhere else.

We've got nothing to lose by trying this approach.

I would be delighted to answer any questions or address any concerns you may have. Please feel free to reach out to me anytime. Thank you for your time and consideration.

Best regards,

A handwritten signature in black ink, appearing to read "Don Brown", with a long, sweeping flourish extending to the right.

Don Brown, Attorney

DMB:tg