



# National Center *for* Access to Justice

AT FORDHAM LAW SCHOOL

National Center for Access to Justice  
150 W 62<sup>nd</sup> St, Suite 7-165  
New York, NY 10023  
(646) 636-6997  
info@ncforaj.org

## **Comment on Petition to Restyle and Amend Supreme Court Rule 31; Adopt New Rule 33.1; and Amend Rules 32, 41, 42 (Various ERs from 1.0 to 5.7), 46-51, 54-58, 60, and 75-76**

The National Center for Access to Justice ([www.ncforaj.org](http://www.ncforaj.org)) is an independent, non-profit organization housed at Fordham Law School. We define “access to justice” as the meaningful opportunity to be heard, secure one’s rights and obtain the law’s protection. Using research, data and analysis, we identify ways the justice system fails to stand up for that ideal, and we support the most promising policy solutions.<sup>1</sup>

We write to express our strong support for the Task Force on the Delivery of Legal Services’ proposal that Arizona move forward toward creating a new, authorized class of Limited Licensed Legal Practitioners (LLLPs). We believe that this model of non-lawyer service delivery should be taken up in all states as a key component of the broader efforts that are necessary to increase access to legal services. Careful deliberation will be needed when defining the areas of practice that will be open to LLLPs, and the specific qualifications necessary to obtain a LLLP license in Arizona. The rule changes currently under consideration would establish the basic infrastructure necessary to allow consideration of the model to move forward.

NCAJ takes no position at this time on the proposal to eliminate rule 31 or on the larger question of whether to permit non-lawyer ownership of or investment in law practices.

In modern life, “the law is all over.”<sup>2</sup> The law mediates people’s interactions with government, corporations, and each other. The Task Force’s report summarizes the literature establishing

<sup>1</sup> One of NCAJ’s flagship projects is the Justice Index, a comprehensive effort that maps the laws and policies of all 50 states against more than 100 best practice benchmarks on fair and accessible justice. See [www.justiceindex.org](http://www.justiceindex.org).

<sup>2</sup> Austin Sarat, “The Law Is All Over”: Power, Resistance and the Legal Consciousness of the Welfare Poor, 2 Yale J.L. & Human. (1990), <https://digitalcommons.law.yale.edu/yjlh/vol2/iss2/6>. See also Sandefur

that access to legal services, whether from the private bar or the legal aid community, is beyond the reach of millions of Americans. Lawyers alone could never meet the tremendous scale of unmet need. It is intolerable that existing rules so broadly prohibit others—no matter how well equipped, and no matter how pressing the need—from stepping into the breach.

In 2019, when California invited public comment on proposals for licensing non-lawyer providers, we read and analyzed hundreds of lawyers’ comments, most of them opposing the idea (we have not seen any non-lawyers oppose the proposed reforms in either state).<sup>3</sup> In both California and Arizona, there have been three main lines of argument made against the licensing of non-lawyer providers. None are backed by any sort of evidence or data, and all are unpersuasive.

First, opponents argue that an LLLP model will lead to dangerously incompetent legal assistance. Although this is an important concern, no empirical evidence establishes that a JD degree is essential to provide competent assistance with all legal problems. In Washington, the only state with a longstanding limited license practitioner program, there is no evidence of incompetence or unethical behavior by LLLTs.<sup>4</sup> An LLLP program would not dispense with rigorous training but would tailor it to specific, urgent and relatively uncomplicated forms of legal assistance in defined areas of law.

Second, opponents argue that a LLLP model will be *ineffective* as a response to unmet legal need. Somewhat ironically, many of these opponents point to Washington State, whose pioneering Limited License Legal Technician (LLLT) program has attracted fewer than 50 active practitioners. However, the LLLT program’s growth appears to have been curtailed because of its extremely burdensome licensing requirements—framed in part to assuage lawyers’ concerns about the competence of non-lawyer practitioners. The LLLT program’s requirements put a license beyond reach for many, and limit the prospects for low-cost or not for profit models of LLLT service delivery.<sup>5</sup> The lesson, though, is that Arizona should take care to impose credentialing requirements that are truly necessary to LLLPs’ work.

Third, some lawyers argue that the creation of an LLLP program will expose them to harmful economic competition. We agree with the Task Force that there is absolutely no evidence of this in either Washington or Utah—the only two states that have already adopted similar programs. We also believe that this view, insofar as it elevates concerns about lawyers’ incomes

<sup>3</sup> Chris Albin-Lackey, “California Should Embrace Non-Lawyer Providers,” Law 360, October 20, 2019, <https://www.law360.com/articles/1211183/california-should-embrace-nonlawyer-providers>.

<sup>4</sup> See Thomas Clarke and Rebecca Sandefur, “Preliminary Evaluation of the Washington State Limited License Legal Technician Program,” March 2017, [http://www.americanbarfoundation.org/uploads/cms/documents/preliminary\\_evaluation\\_of\\_the\\_washington\\_state\\_limited\\_license\\_legal\\_technician\\_program\\_032117.pdf](http://www.americanbarfoundation.org/uploads/cms/documents/preliminary_evaluation_of_the_washington_state_limited_license_legal_technician_program_032117.pdf).

<sup>5</sup> See National Center for Access to Justice, “Comments Regarding ATILS’ 16 Concept Options for Possible Regulatory Changes,” September 23, 2019, <https://ncforaj.org/wp-content/uploads/2019/09/NCAJ-Final-Comment-on-California-Bar-Recommendation-2.0-pdf-as-submitted-9-23-19.pdf>; Responsive Law, Comments on Proposed Regulatory Reform Options, September 23, 2019, [https://www.responsivelaw.org/uploads/1/0/8/6/108638213/responsive\\_law\\_atils\\_comments.pdf](https://www.responsivelaw.org/uploads/1/0/8/6/108638213/responsive_law_atils_comments.pdf).

over concerns of people who are certain to be harmed because they are denied access to the courts, is irrelevant. The law does not belong to lawyers, and the ability of ordinary people to access legal help is a far weightier policy goal than the economic interests of the legal profession.

An LLLP program would not “solve” the justice gap in Arizona. It represents one modest and essential step towards building the larger, multi-layered policy approach states need if they want to address the access to justice crisis. Some comments in response to the present petition argue that instead of embracing an LLLP program, the state should make its laws and its courts less mystifying and more accessible to ordinary people. Additionally, a growing movement urges (as the law in Arizona has already begun to recognize) the importance of providing a right to counsel in civil matters implicating people’s basic life needs. But there is no tension between these ideas and approaches—they are each core components of a larger reform agenda.

Arizona need not look far to find an inspiring example of the kind of potential the LLLP program hopes to tap into. The state’s own pilot Licensed Legal Advocate (LLA) program is training and empowering advocates who already work with victims of domestic violence to provide legal advice.<sup>6</sup> The program is an excellent example of how states can authorize, train and empower appropriately qualified non-lawyers to address people’s urgent, unmet legal needs. Plans to carefully evaluate the LLA program’s impact will allow states across the country to draw lessons from it as well.

[submitted 3-30-20]

<sup>6</sup> See “Report to the Arizona Supreme Court Task Force on the Delivery of Legal Services: Designing a New Tier of Civil Legal Professional for Survivors of Domestic Violence,” University of Arizona James E. Rodgers College of Law, University of Arizona Law School, <https://law.arizona.edu/sites/default/files/Final%20Report%20with%20Appendices%20May%2024%202019.pdf>; “New ‘Licensed Legal Advocates’ Program Aims to Close Justice Gap for Domestic Violence Survivors, Provide New Path for Legal Support,” <https://law.arizona.edu/news/2020/02/new-licensed-legal-advocates-pilot-program>.