

# LEGAL PROFESSIONALISM

## COMMITTEE REPORT

In September 2015, Chief Justice Mark Martin convened the North Carolina Commission on the Administration of Law and Justice (NCCALJ), a sixty-five member, multidisciplinary commission, requesting a comprehensive and independent review of North Carolina's court system and recommendations for improving the administration of justice in North Carolina. The Commission's membership was divided into five Committees: (1) Civil Justice, (2) Criminal Investigation and Adjudication, (3) Legal Professionalism, (4) Public Trust and Confidence, and (5) Technology. Each Committee independently made recommendations within its area of study.

This is the report of the Legal Professionalism Committee. To access the full report of the NCCALJ, including all five of the Committee reports, visit [www.nccalj.org](http://www.nccalj.org).

# LEGAL PROFESSIONALISM COMMITTEE REPORT

*This report contains recommendations for the future direction of the North Carolina court system as developed independently by citizen volunteers. No part of this report constitutes the official policy of the Supreme Court of North Carolina, of the North Carolina Judicial Branch, or of any other constituent official or entity of North Carolina state government.*

**THE ACCESSIBILITY AND FAIRNESS OF OUR COURT SYSTEM DEPEND, TO A SIGNIFICANT DEGREE, ON THE STRUCTURE AND PERFORMANCE OF THE LEGAL PROFESSION.**

## INTRODUCTION AND CHARGE OF THE COMMITTEE

This report states the recommendations of the Legal Professionalism Committee of the North Carolina Commission on the Administration of Law and Justice (NCCALJ).

The following charge has guided the work of this Committee:

*The mission of the North Carolina Commission on the Administration of Law and Justice is to consider how North Carolina courts can best meet our 21st century legal needs and the expectations of*

*the public, ensuring that we can continue to provide justice for all.*

*The role of the Legal Professionalism Committee is to consider and evaluate possible changes in our system of delivery of legal services. The Committee will explore ways to address structural challenges that affect access to justice, including the barriers that create a lack of affordable legal services for large segments of our population, the costs and debt*

*associated with a legal education, and the challenges of developing and sustaining a legal career.*

*Democratic societies are founded on a shared belief in the rule of law and the integrity of the judiciary. Any change that the Committee considers must take into account the core values of our*

*system of justice, including the exercise of independent judgment on behalf of clients, the absence of conflicts, and the confidentiality of client communications.*

*The Committee will also consider the need to protect the public from unskilled advisors and the effects of unrepresented parties on the court system.*

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## SPEAKERS WHO APPEARED BEFORE THE COMMITTEE

Multiple speakers generously shared their time and insights with the Committee. The Committee heard live or videotaped comments from the following speakers:

- Professor William Henderson, Indiana University Maurer School of Law
- Alice Mine, North Carolina State Bar
- Peter Bolac, North Carolina State Bar
- Dan Lear, Director of Industry Relations, Avvo
- Chas Rampenthal, General Counsel, LegalZoom
- Dean Andrew Perlman, Suffolk University School of Law
- Jaye Meyer, Chair, North Carolina Board of Law Examiners
- Lee Vlahos, Executive Director, North Carolina Board of Law Examiners
- Jim Leipold, Executive Director, National Association for Law Placement
- Paul Carr, President, Axiom
- Kelly Zitzmann, General Counsel, Axiom
- Reid Phillips, outside counsel for Capital Associated Industries
- Jennifer Lechner, Executive Director, North Carolina Equal Access to Justice Commission
- Sylvia Novinsky, Director, North Carolina Pro Bono Resource Center

## BACKGROUND: ACCESS AND FAIRNESS

Court systems provide a forum to resolve criminal charges and civil disputes. To be effective, a court system must be accessible to people who have disputes. If a court system is to have the confidence of the public it serves, the system must apply fair processes and produce fair outcomes.

The accessibility and fairness of our court system depend, to a significant degree, on the structure and performance of the legal profession. Over the last decade, the market for law-related services has seen rapid change. The statutory framework that governs these services has not kept pace with these changes. This report recommends approaches to these issues that will promote access and fairness in our legal system.

Civil legal services are currently beyond the reach of many North Carolinians. Many of our fellow citizens cannot afford to hire a lawyer for even relatively inexpensive services, such as a will or an uncontested divorce. In a recent North Carolina poll, 73% of respondents disagreed with the statement that most people can afford to bring a case to court.<sup>1</sup>

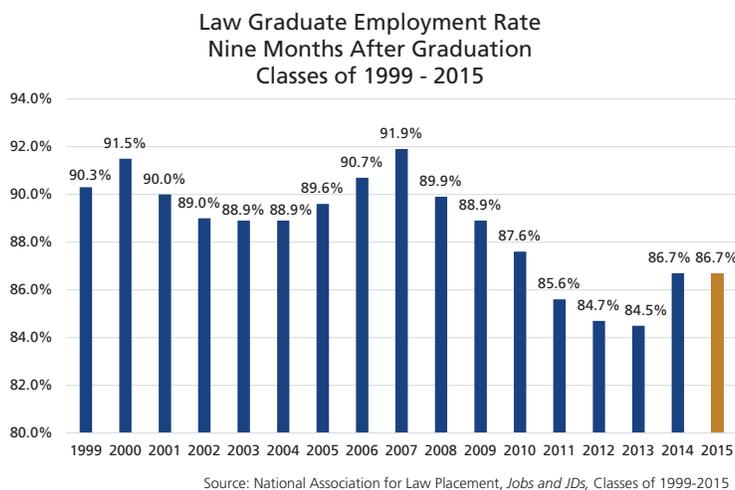
This lack of affordability affects more than indigent people. Small- and medium-sized businesses, for example, find it increasingly unaffordable to hire lawyers to address the legal issues that inevitably arise in a modern business.

These problems have led many parties to try to represent themselves — not only in transactions, but in court as well. A 2015 study by the National Center on State Courts found that “at least one party was self-represented in more than three-

quarters of civil [non-domestic] cases.”<sup>2</sup> Although some of these parties might represent themselves for idiosyncratic reasons, most of them do so because they cannot afford a lawyer (or believe that they cannot).

Access to lawyers has non-economic dimensions as well. Rural areas of North Carolina are losing lawyers to retirement and relocation. From 2004 to 2015, four of the state’s thirty judicial districts saw a net decrease in their populations of practicing lawyers. Over this period, one judicial district lost 60.7% of its lawyers.<sup>3</sup> Further, many non-English-speaking North Carolinians have trouble finding lawyers who can advise them in their own languages.

Paradoxically, many clients’ legal needs are going unmet at the same time that many lawyers cannot find stable legal employment. The ranks of these unemployed and underemployed lawyers span the generations. As the following graph illustrates, employment rates for new law graduates in the United States lag behind the rates that prevailed before the 2008 recession:



In addition, many lawyers carry heavy debt burdens that make it untenable for them to offer low-cost legal services.<sup>4</sup> Law school debt also deters many lawyers from practicing in rural areas of North Carolina.

Opinions vary on the causes of the reduced demand for lawyers. Some of the reduced demand, however, reflects an increasing gap between the services that clients are seeking and the services that lawyers are offering. Because of the Internet, the days when a client had to consult a lawyer to get even basic information on a legal problem are over. In addition, new types of providers are offering law-related services that, at least in some respects, compete with lawyers' services.

For these and other reasons, fewer clients are seeking — or can afford — the customized legal

services that most law graduates are trained to provide. This mismatch between client needs and the services lawyers are offering requires careful study and creative solutions.

The legal profession and the court system have a shared duty to promote access to justice. The Committee recognizes that people who cannot afford essential legal services should still be able to access these services. Similarly, people who lack lawyers should still have access to the courts.

Likewise, the legal profession and the court system have a shared duty to ensure that the legal system produces fair outcomes. Protecting the public from incompetent legal services promotes fair processes and fair outcomes in our legal system.

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## RECOMMENDATIONS

The Committee finds that the delivery of law-related services affects the access and fairness goals discussed above. Thus, the Committee has studied the delivery of law-related services in North Carolina and nationwide.

The Committee has identified several issues that are affecting, and will continue to affect, the dynamics of law-related services and the needs of the public. On these issues, the Committee makes the following recommendations:

- **A NEW NORTH CAROLINA LEGAL INNOVATION CENTER SHOULD BE CREATED**

The innovation center should study (and, if appropriate, propose changes to) the definition of the practice of law in North Carolina and the entities with the authority to adjust that definition. The innovation center's proposals should account for the evolving needs and expectations of the public, as well as the impact of technology on law-related services.

The innovation center should also study whether North Carolina should license or certify any additional categories of providers of law-related services. If the center recommends licensing or certifying any additional categories of providers, the recommendations should address how these providers should be regulated.

### REASONS FOR RECOMMENDATION ONE

Currently, large numbers of North Carolinians

with law-related needs are not having those needs met by lawyers. The demand for law-related services in North Carolina and the available supply of those services are not aligned.

In our state, the majority of legal services continue to be provided by lawyers in small partnerships or solo practices. In the United States more generally, however, technology and other market forces are expanding the law-related services that are available. Technology companies and entrepreneurs are making efforts to meet the demand for affordable law-related services in new ways.

These technology-based providers offer a variety of services. Some address discrete legal problems, such as preparing wills, deeds, or contracts. Others take on larger projects, such as providing short-term lawyers to corporations, helping companies analyze high-volume contracts, and helping people comply with government regulations.

In addition, some states are experimenting with licensing independent non-lawyers to provide law-related services. These limited-license legal technicians are not admitted to the bar and generally do not have a law degree. Even so, they are authorized to help clients with a strictly defined range of law-related tasks. The goals of allowing and licensing these services include (1) offering an alternative to lawyers' services in discrete areas and (2) regulating the alternative services in the interest of consumer protection.

Chapter 84 of the North Carolina General Statutes defines the practice of law in North Carolina, limits the entities and persons who can provide services within that definition, and provides for the regulation of those persons and entities. The definition of the practice of law is broad: it includes "performing any legal service for any

other person, firm or corporation, with or without compensation." N.C. Gen. Stat. § 84-2.1 (2015).

The definition of the practice of law, as well as the statutes that control who can deliver services within that definition, limit the quantity and types of law-related services that are available in North Carolina. Although these statutes affect the balance of supply and demand, the statutes exist for good reasons — most notably, to prevent incompetent or unfit practitioners from harming the public.

In recent years, North Carolina has witnessed intense litigation regarding whether certain online services, such as LegalZoom, involve the unauthorized practice of law. To resolve this litigation, the General Assembly recently amended Chapter 84. These amendments, however, are mostly a tailored response to the issues raised in the *LegalZoom* cases.<sup>5</sup>

In sum, despite the evolution of the market for law-related services, North Carolina's definition of the practice of law has stayed largely unchanged. A comprehensive reexamination of Chapter 84, in the Committee's view, will be one that (1) addresses the unmet legal needs of many North Carolinians and (2) decides the status of emerging providers of law-related services.

The issues associated with the delivery of legal services are complex. They require a balance between important interests. Further, the social and economic realities that influence the market for legal services are continuing to change. For these reasons, possible changes to the regulation of law-related services in North Carolina require in-depth analysis.

The Committee recommends that North Carolina create a Legal Innovation Center to analyze these

and related issues. Such a center could parallel the American Bar Association’s recently created Center for Innovation: a center that seeks new ways to close the civil justice gap and to improve the delivery of law-related services. North Carolina’s Legal Innovation Center might be a purely private organization — perhaps an arm of the North Carolina Bar Association — or it might be a public-private hybrid.

However the North Carolina Legal Innovation Center is composed, it should study possible updates to Chapter 84. Appropriate updates would seek to address the changing nature of law-related services and would seek a better long-term match of supply and demand. In considering possible statutory updates, the center should address the effects of technological change on law-related services, as well as the wide range of law-related services that now exist or are likely to emerge. In addition, any recommended updates to Chapter 84 must protect the public from incompetent or unfit practitioners and from deceptive practices and other forms of exploitation.

- **A NEW NORTH CAROLINA LEGAL INNOVATION CENTER SHOULD STUDY (AND, IF APPROPRIATE, PROPOSE CHANGES TO) THE CHOICE OF THE ENTITIES WITH THE AUTHORITY TO REGULATE ENTRY INTO THE PRACTICE OF LAW**

Likewise, the innovation center should study (and, if appropriate, propose changes to) the choice of the entities with the authority to regulate the professional conduct of lawyers. If North Carolina decides to regulate any new types of providers of law-related services, the innovation center should study these same questions in relation to the new providers.

## **REASONS FOR RECOMMENDATION TWO**

As noted earlier, Chapter 84 of the North Carolina General Statutes provides that only licensed lawyers can practice law. Chapter 84 also creates the framework for the regulation of law-related services in North Carolina. However, the precise effects of Chapter 84 depend on more than the text of the statutes. Those effects also depend on the choice of the institutions that implement Chapter 84, as well as the decisions and actions of those institutions.

Chapter 84 is implemented by the North Carolina State Bar, the North Carolina Board of Law Examiners, and the courts. The State Bar and the Board of Law Examiners are state agencies.

The State Bar regulates the professional conduct of lawyers by handling disciplinary matters, issuing ethical opinions, and offering information to lawyers and the public. The State Bar is governed by the State Bar Council, which is composed of fifty-nine licensed North Carolina lawyers and three members of the public. The lawyer councilors are elected, within geographic districts, by other licensed lawyers. The State Bar, through its Authorized Practice of Law Committee, makes decisions on whether to pursue unauthorized-practice charges or lawsuits against people or companies that provide law-related services.

The State Bar investigates complaints of professional misconduct, then prosecutes cases

before a statutorily created tribunal called the Disciplinary Hearing Commission. Twelve of the twenty members of this commission are lawyers appointed by the State Bar Council. The other eight members are non-lawyer citizens of North Carolina who are appointed by the Governor and the General Assembly. Each panel of the Disciplinary Hearing Commission consists of two lawyers and a public member.

The North Carolina courts, too, play a role in regulating the practice of law in this state. The courts have inherent authority to regulate the conduct of lawyers who appear before them. This authority operates in parallel with the authority of the State Bar. In addition, the North Carolina courts play a role in shaping the law on professional conduct when they decide appeals from decisions of the Disciplinary Hearing Commission, as well as lawsuits that are filed in the state trial courts in the first instance. Lawsuits alleging unauthorized practice are generally filed in the North Carolina trial courts. Decisions in those cases, as well as decisions of the Disciplinary Hearing Commission, are appealable to the North Carolina appellate courts.

The State Bar adopts rules that govern the practice of law. These rules include the Rules of Professional Conduct. The Supreme Court of North Carolina has the authority to approve, change, or reject these rules. The State Bar also administers certain programs that the Supreme Court of North Carolina has created, such as the Interest on Lawyers' Trust Accounts program and the Client Security Fund.

In the wake of *North Carolina State Board of Dental Examiners v. FTC*, 135 S. Ct. 1101 (2015), courts and federal antitrust agencies are scrutinizing the makeup, authority, and actions of state agencies that regulate licensed professionals. Our

Committee expresses no opinion on how North Carolina's entities that regulate entry into the practice of law would fare under the standards in the *Dental Board* decision.

The prospect of a *Dental Board* analysis, however, makes it appropriate to study the makeup, roles, and histories of the entities involved and what steps they can take to manage and avoid potential antitrust risks. Those who study these issues should consider whether there is a policy basis for recommending any change in the interaction of these entities. This study will complement possible changes to Chapter 84.

The Committee recommends that the new North Carolina Legal Innovation Center study these issues as well. The institutional roles discussed in Recommendation Two overlap with the regulatory issues discussed in Recommendation One. In view of these overlaps, it will be most efficient for the same body to study these issues together.

- **AN APPROPRIATE ORGANIZATION SHOULD STUDY THE STANDARDS AND METHODS THAT NORTH CAROLINA SHOULD USE IN THE FUTURE TO ASSESS CANDIDATES FOR THE PRACTICE OF LAW, AS WELL AS THE ENTITIES THAT SHOULD CARRY OUT THESE ASSESSMENTS**

This study should address the evolving scope of the practice of law, recent and future changes in the dynamics of law-related services, and the legal needs of the public. If North Carolina decides to regulate any new types of providers of law-related services, an appropriate organization should study these same questions in relation to the new providers.

### REASONS FOR RECOMMENDATION THREE

Another factor that affects the supply and quality of law-related services in North Carolina is the way that the state assesses new candidates for law practice.

With narrow exceptions, all candidates for law licensure in North Carolina must be graduates of law schools approved by the State Bar Council. This list of law schools is limited to law schools accredited by the American Bar Association.

The North Carolina Board of Law Examiners administers a two-day written exam that seeks to ensure that a law graduate has a reasonable level of competence as a lawyer. One day of this exam consists of essays on selected aspects of North Carolina substantive law. The other day consists of the multiple-choice Multistate Bar Examination. Bar applicants must also pass the Multistate Professional Responsibility Examination. Further, they must undergo an extensive background check and must demonstrate good character to the satisfaction of the Board of Law Examiners.

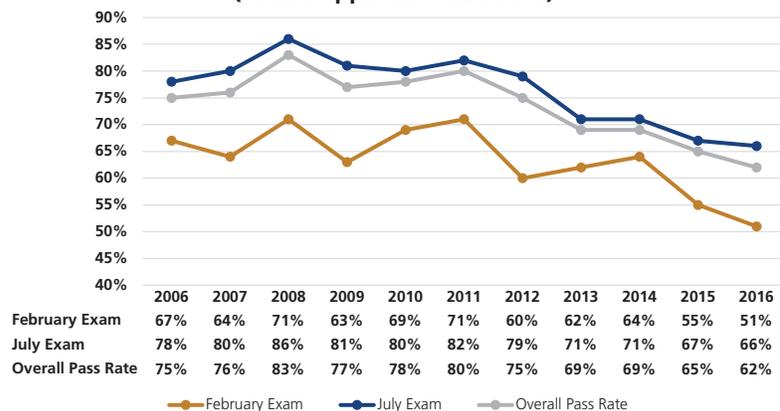
North Carolina allows licensed lawyers from thirty-six states and the District of Columbia to

apply for admission by comity — that is, without taking the North Carolina Bar Examination. These admissions require an extensive application process. Rulings on comity applications often take several months.

In contrast, under Chapter 84A of the General Statutes, North Carolina allows lawyers whose only law license is from another country (or from Puerto Rico, Guam, or the U.S. Virgin Islands) to practice law independently in this state. To do so, these foreign legal consultants, as they are called, need not be admitted to the bar of any U.S. state. However, the statute limits them to a scope of practice that is narrower than the scope allowed for North Carolina-licensed lawyers.

North Carolina’s methods of assessing candidates have remained essentially the same for decades. Over the past few years, however, the percentage of candidates who have passed the bar exam has been falling. The following table illustrates the drop:

**North Carolina Bar Examination  
First-Time Test Takers Pass Rate 2006 - 2016  
(sealed applicants excluded)**



Source: North Carolina Board of Law Examiners

There has also been a sharp increase in the percentage of candidates who have experienced problems during character-and-fitness inquiries.

For example, the following table compares, from 2012 to 2015, the percentage of North Carolina bar applicants who have a nondisclosure issue on their bar applications, incidents of DWI or driving after consuming alcohol, or multiple DWIs.<sup>6</sup>

**Character and Fitness Issues Among North Carolina Bar Applicants, 2012-15**

Character and Fitness Issue	Percentage of 2012 Applicants	Percentage of 2015 Applicants	Change from 2012 – 2015
Nondisclosure	30%	52%	+22%
DWI / DUI Incident	23%	43%	+20%
Multiple DWIs / DUIs	5%	18%	+13%

Source: North Carolina Board of Law Examiners, Dec. 2015

State Bar Council and the Supreme Court of North Carolina.

Many states have begun reassessing their methods for assessing candidates for the practice of law. Currently, twenty-five states have adopted the Uniform Bar Examination. Each state that adopts the Uniform Bar Examination has the option of adding a state-specific component to the exam. The Uniform Bar Examination is administered and graded according to uniform guidelines created by the National Conference of Bar Examiners. The exam results in a score that is portable among any of the participating states.

Some states require bar candidates to take assessments at specified points during law school.

In addition, some states are experimenting with performance-based methods of testing bar applicants. For example, a majority of states administer the Multistate Performance Test, an exam that requires an applicant to carry out simulated lawyering for a simulated client.

In October 2016, the North Carolina Board of Law Examiners recommended that North Carolina begin administering the Uniform Bar Examination, including the Multistate Performance Test, in 2019.<sup>7</sup> The Board also recommended that North Carolina supplement the Uniform Bar Examination with North Carolina-specific components that will be specified in the future. To take effect, this recommendation will need the approval of the

The criteria and methods for admission to the practice of law must balance a number of important considerations, such as:

- The criteria must bear a reasonable relationship to the knowledge and skills that today’s and tomorrow’s clients should expect their lawyers to have.
- The criteria and methods must be calibrated to screen out applicants who would become incompetent, unfit, or dishonest lawyers. Although perfect calibration is impossible, the criteria and methods must never slight the consumer-protection function of bar admissions.
- At the same time, the criteria and methods must be fair and reasonably objective.
- The criteria and methods must be practical and cost-effective.
- The criteria and methods must be transparent. The legal profession must be able to predict — and explain — the results produced by the criteria and methods.

For many years, North Carolina has used essentially the same criteria and methods to assess candidates for the practice of law. This fact suggests that it would be beneficial to study, and possibly update, those criteria and methods. Recent circumstances reinforce that conclusion:

- Clients are seeking a wider range of services from lawyers. In some cases, they are seeking new or more limited services, such as “unbundled” strategic and technical advice, document review, or form completion.
- As shown above, pass rates on the North Carolina Bar Examination have dropped in recent years. The pass rates have dropped even though the bar exam is, in a sense, graded on a curve.
- More bar candidates present serious issues with character and fitness than in earlier eras.
- Many states are considering alternatives to the traditional bar exam, including performance-based exams and apprenticeship-like systems.

If the definition of the practice of law in North Carolina changes, this change will call for further adaptation of the skills and other characteristics required of lawyers. Moreover, if North Carolina decides to license or certify any non-lawyer providers of law-related services, the state will need to find ways to assess candidates for those roles.

Finally, the above changes suggest that an appropriate body should also study the choice of the entity that assesses candidates. Applying new standards and methods, and assessing non-lawyer providers of law-related services, might require expertise beyond the current capabilities of the Board of Law Examiners.

Bar examiners and lawyer regulators nationwide are currently studying the policy issues in this area. A qualified body — one with expertise in legal education and test methods — should study these issues in North Carolina as well.

A new North Carolina Legal Innovation Center might or might not have the above expertise. If it does, the innovation center would be a good choice to carry out this analysis. If not, another appropriate body should be chosen or created.

- **THE COMMITTEE  
ENDORSES THE  
WORK OF THE  
NORTH CAROLINA  
EQUAL ACCESS  
TO JUSTICE  
COMMISSION**

The Committee recommends that the Equal Access to Justice Commission explore ways to increase the help offered to self-represented litigants throughout North Carolina. The Committee also endorses the work of the related North Carolina Pro Bono Resource Center, which seeks to increase pro bono services provided by North Carolina lawyers.

## REASONS FOR RECOMMENDATION FOUR

As an unfortunate side effect of North Carolina's current system for delivery of legal services, many North Carolinians have law-related needs but cannot afford lawyers.

Accommodating self-represented litigants is one of the most pressing challenges that face the North Carolina courts. Most aspects of the court system are not designed for use by people who litigate without the help of a lawyer. Most self-represented litigants have only a limited understanding of the substantive law involved in their cases, the meaning of legal terms, the rules of evidence and procedure, and filing deadlines. They face challenges at every step, including filing a lawsuit, serving process, conducting and responding to discovery, and more. These litigants are often tripped up by procedural rules and other features of our complex legal system. In sum, the absence of a lawyer makes it unlikely that unrepresented parties can achieve their objectives in court. These difficulties can erode public trust and confidence in the court system.

As another concern, when unrepresented parties try to file papers, interact with court officials and opposing counsel, and appear in court, their efforts often strain the resources of the court system and cause difficulties in the litigation process. Judges and court officials often face difficult choices about how much they can help unrepresented parties.

Self-represented litigants in North Carolina also face problems because of county-to-county variations in trial courts' forms and local rules. For example, a 2016 study found that, across a sample of twelve North Carolina counties, child custody cases triggered a total of twenty-eight different local rules.<sup>8</sup> These local rules applied over and above the statewide rules that govern these cases.

The number and complexity of these rules make it extremely difficult for self-represented litigants to understand and comply with court procedures. The variations also make it difficult for pro bono lawyers to represent litigants across county lines.

Further, North Carolina court forms are not as readily accessible as they might be, especially for self-represented litigants.

To ease these challenges, courts in some states have started efforts to make the court system more user-friendly for self-represented litigants. For example, the state courts of Utah and California have launched self-help websites that provide forms, explanations of basic procedural steps, and links to the most commonly encountered substantive law.<sup>9</sup> These types of resources are useful for many litigants, but less useful for litigants with limited education, English skills, or computer skills.

Courthouse navigators are an even more useful resource for self-represented litigants. These programs, currently in place in New York and Arizona, allow trained non-lawyers to help self-represented litigants without giving legal advice. Courthouse navigators use computers to retrieve information, research information about the law, collect documents needed for individual cases, and, if needed, respond to judges' or court officials' questions about a particular case. Navigators reduce the confusion of self-represented litigants, but they do more than that. They also help cases flow more efficiently through the court system. Further, navigators insulate judges and court clerks from the dilemmas that they face when self-represented litigants turn to them for advice.

After hearing about these initiatives in other states, the Committee discussed a wide range of

possible direct initiatives to fill the justice gap in North Carolina. The Committee received especially valuable information from the North Carolina Equal Access to Justice Commission. For several years, the Equal Access to Justice Commission has been studying the causes of the justice gap and possible solutions. Our Committee considers it important for North Carolina to speak with one voice on these issues. Thus, we endorse the work and recommendations of the Equal Access to Justice Commission.

Although all of the Equal Access to Justice Commission's work is important, the Committee would like to highlight and endorse the Equal Access to Justice Commission's initiatives in two areas: meeting the needs of self-represented litigants and increasing lawyers' pro bono services.

### ***Finding Ways to Accommodate Self-Represented Litigants***

The Committee encourages the Equal Access to Justice Commission to recommend measures that will reduce the burdens faced by self-represented parties and volunteer lawyers. Although the Committee defers to the Equal Access to Justice Commission on the best choice of measures, worthwhile efforts might include those listed in Exhibit 1 of this report.

None of these measures, however, should be viewed as a substitute for trained, competent counsel in appropriate cases. Through technology-enhanced tools and case management orders, the court system should notify self-represented litigants, as early as is practical in a given case, what free or low-cost legal services might be available and how to obtain them. These systems should be designed to direct legal-aid resources and volunteer lawyers' services to

the litigants who need them the most and would benefit from them the most.

Many of the initiatives recommended here, of course, cost money. This reality highlights the need for adequate funding of the North Carolina court system.

### ***Advancing Pro Bono Efforts***

Although pro bono lawyering alone is unlikely to fill the entire civil-justice gap, it has the potential to fill part of the gap.

Rule 6.1 of North Carolina's Rules of Professional Conduct affirms that each lawyer has a professional obligation to provide legal services to those who are unable to pay. The rule urges all lawyers, regardless of their professional roles, "to render at least (50) hours of pro bono public legal services per year."

Since the adoption of Rule 6.1 in 2010, however, there have been only limited efforts to educate North Carolina lawyers on their ethical duty to provide pro bono legal services. Although pro bono lawyers alone cannot serve the needs of all clients who seek help, pro bono programs and dedicated pro bono volunteer lawyers can play a crucial role in bridging the justice gap and helping legal aid organizations serve those most in need.

In 2014, the Equal Access to Justice Commission surveyed lawyers across the state to identify current pro bono activities and barriers to increasing pro bono services. According to the survey, the resources that would be most likely to encourage pro bono services include (1) an online portal to review and select pro bono opportunities, (2) manuals on skills and best practices, and (3) a statewide agency to connect

lawyers with organizations that administer pro bono activities.<sup>10</sup>

In 2016, the Equal Access to Justice Commission established the North Carolina Pro Bono Resource Center with the goal of increasing pro bono participation statewide. The initial activities of the Pro Bono Resource Center include:

- Providing support for existing pro bono activities through recruitment, training, and opportunities for collaboration;
- Communicating to lawyers statewide about pro bono projects;

- Developing pro bono projects, with an initial focus on projects to deploy recent law school graduates to meet unmet legal needs in Wake and Mecklenburg counties;
- Implementing voluntary pro bono reporting; and
- Recognizing lawyers' pro bono service statewide.

The Committee endorses these efforts. In Exhibit 1 of this report, the Committee suggests further possible initiatives for the Pro Bono Resource Center.

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1. 2015 survey of the High Point University Survey Research Center. A summary of the results of this survey is available at <http://bit.ly/2hWGgLW>. Published December 15, 2015. Accessed December 20, 2016.
  2. National Center for State Courts, *The Landscape of Civil Litigation in State Courts*, 2015. Available at <http://bit.ly/2i7rEFS>. Accessed December 20, 2016.
  3. Comments of representatives from the North Carolina State Bar in their presentation, "Active Lawyers by Judicial District vs. District Population," NCCALJ Legal Professionalism Committee Meeting (Raleigh, NC), October 6, 2015.
  4. *See, e.g.*, Noam Scheiber, "An Expensive Law Degree, and No Place to Use It," *New York Times*, June 17, 2016. Available at <http://nyti.ms/1UHnEKX>. Accessed January 12, 2017.
  5. *See* Act of June 30, 2016, Ch. 60, §§ 1-2, 2016 N.C. Adv. Legis. Serv. 198, 198-99 (codified at G.S. 84-2.1(b)-2.2).
  6. Comments of representatives from the North Carolina Board of Law Examiners in their presentation at the NCCALJ Legal Professionalism Committee Meeting (Raleigh, NC), December 1, 2015. Presentation materials available at <http://bit.ly/2ioElSp>. Accessed January 12, 2017.
  7. Minutes of the October 2016 meeting of the North Carolina Board of Law Examiners. Available upon request.
  8. Comments of representatives from the North Carolina Equal Access to Justice Commission in their presentation at the NCCALJ Legal Professionalism Committee Meeting (Raleigh, NC), May 3, 2016. Presentation materials available at <http://bit.ly/2jbEtWl>. Accessed January 12, 2017.
  9. *See* Utah Courts Self-Help Resources / Self-Represented Parties, available at <https://www.utcourts.gov/selfhelp>. Accessed November 22, 2016; and The California Courts Self-Help Center, available at <http://www.courts.ca.gov/selfhelp.htm>. Accessed November 22, 2016.
  10. Results of the online "North Carolina Pro Bono Participation Survey," conducted by the North Carolina Equal Access to Justice Commission, May 2014.

## **EXHIBIT 1**

### ***Suggested Initiatives for the North Carolina Equal Access to Justice Commission***

- Analyzing whether the North Carolina court system is accessible to and usable by self-represented litigants. This analysis should consider whether the current level of access raises any due process issues.
- Urging the North Carolina courts to implement a “courthouse navigator” system statewide.
- Creating a statewide action plan for self-represented litigants.
- Identifying ways to streamline commonly encountered court processes to make them easier for self-represented litigants to handle.
- Standardizing forms and templates for self-represented litigants across North Carolina.
- Studying trial courts’ local rules and identifying ways to standardize or consolidate these rules as much as is reasonable.
- Creating websites with user-friendly court information and online forms, with links to live assistance from court personnel.
- Providing online triage services that give self-represented litigants routes for pursuing their cases and, at the same time, help the courts process and track cases.
- Offering standard training to help judges and court personnel work with self-represented litigants.
- Forging agreements with law schools’ clinical programs, in an effort to involve law students (under supervision) in client services.
- Developing court assistance offices, self-help centers, and courtroom-based resources to help self-represented litigants.
- Collaborating with public libraries and law libraries to help self-represented litigants.
- Collecting and analyzing data on the barriers facing unrepresented litigants, how unrepresented litigants fare in court, and the impact of efforts to help them.

### ***Suggested Initiatives for the North Carolina Pro Bono Resource Center***

- Developing a statewide campaign to educate North Carolina lawyers about their responsibility to provide pro bono legal services under Rule 6.1 of North Carolina’s Rules of Professional Conduct.
- Working with local bar organizations to develop pro bono projects throughout North Carolina.
- Expanding training opportunities for lawyers who volunteer to provide pro bono legal services.
- Supporting efforts to track and recognize North Carolina lawyers’ pro bono service.

## EXHIBIT 2

### ***Materials Reviewed by the Committee***

*(All links below were last accessed on October 7, 2016.)*

- I. American Bar Association (ABA) Documents
  - a. ABA Commission on the Future of Legal Services, Report on the Future of Legal Services in the United States (2016), <http://abafuturesreport.com/2016-fls-report-web.pdf>.
  - b. ABA Issue Papers
    - i. ABA Commission on the Future of Legal Services, Issue Paper on the Future of Legal Services (Nov. 3, 2014), [http://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/reports/2014\\_11\\_03\\_issues\\_paper\\_future\\_legal\\_services.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/reports/2014_11_03_issues_paper_future_legal_services.authcheckdam.pdf).
    - ii. ABA Commission on the Future of Legal Services, Issue Paper Concerning New Categories of Legal Services Providers (Oct. 16, 2015), [https://www.americanbar.org/content/dam/aba/images/office\\_president/delivery\\_of\\_legal\\_services\\_completed\\_evaluation.pdf](https://www.americanbar.org/content/dam/aba/images/office_president/delivery_of_legal_services_completed_evaluation.pdf).
    - iii. ABA Commission on the Future of Legal Services, For Comment: Issues Paper Concerning Legal Checkups (Mar. 22, 2016), [http://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/reports/2016\\_legal\\_services\\_call\\_for\\_comments.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/reports/2016_legal_services_call_for_comments.authcheckdam.pdf).
    - iv. ABA Commission on the Future of Legal Services, For Comment: Issues Paper Concerning Unregulated LSP Entities (Mar. 31, 2016), [http://www.americanbar.org/content/dam/aba/images/office\\_president/final\\_unregulated\\_lsp\\_entities\\_issues\\_paper.pdf](http://www.americanbar.org/content/dam/aba/images/office_president/final_unregulated_lsp_entities_issues_paper.pdf).
    - v. ABA Commission on the Future of Legal Services, For Comment: Issues Paper Regarding Alternative Business Structures (Apr. 8, 2016), <http://src.bna.com/eeX>.
- II. New Models for the Delivery of Legal Services
  - a. William Henderson, Professor, Ind. Univ. Maurer School of Law, Adapting to a World that Wants a Better, Faster, Cheaper Legal Solution (Dec. 5, 2014), <http://nccalj.org/wp-content/uploads/2015/pdf/henderson-nba-presentation.pdf>.
  - b. Legal Zoom and Avvo Presentation Videos
    - i. N.C. Commission on the Administration of Law & Justice, Legal Professionalism Presentation by Chas Rampenthal (Nov. 25, 2015), <https://www.youtube.com/watch?v=6WkJn5tW0YE>.
    - ii. N.C. Commission on the Administration of Law & Justice, Legal Professionalism Presentation by Dan Lear (Nov. 25, 2015), [https://www.youtube.com/watch?v=-AyDd\\_k11Co](https://www.youtube.com/watch?v=-AyDd_k11Co).

- iii. N.C. Commission on the Administration of Law & Justice, Legal Professionalism Panel Discussion (Nov. 25, 2015), <https://www.youtube.com/watch?v=nUHQwJ1MdY4>.
  - c. Axiom Global Inc., About Axiom (Feb. 2, 2016), <http://nccalj.org/wp-content/uploads/2016/01/Axiom-NCCALJ-Legal-Professionalism-Committee-Presentation.pdf>.
  - d. Raymond H. Brescia, *Uber for Lawyers: The Transformative Potential of a Sharing Economy Approach to the Delivery of Legal Services*, 64 Buff. L. Rev. 745 (2016).
  - e. Non-Lawyer Ownership in Law Firms
    - i. Nick Robinson, *When Lawyers Don't Get All the Profits: Non-Lawyer Ownership, Access, and Professionalism*, 29 Geo J. of Legal Ethics 1 (2016).
    - ii. Tahlia Gordon & Steve Mark, *Access to Justice: Can You Invest in It?* (April 2015), [https://www.researchgate.net/publication/275608762\\_Access\\_to\\_Justice\\_Can\\_you\\_invest\\_in\\_it](https://www.researchgate.net/publication/275608762_Access_to_Justice_Can_you_invest_in_it).
    - iii. Utah State Courts & Utah State Bar, *Non-Lawyer Legal Assistance Roles Efficacy, Design, and Implementation* (2015), [https://www.utcourts.gov/committees/limited\\_legal/NonLawyer%20Legal%20Assistance%20Roles.pdf](https://www.utcourts.gov/committees/limited_legal/NonLawyer%20Legal%20Assistance%20Roles.pdf).
  - f. Alternative Business Structures
    - i. Stephen Roper et al., Enterprise Research Centre, *Work Organization and Innovation in Legal Services: Analysis from a "Deep Dive" Study* (2015), <http://www.enterpriseresearch.ac.uk/wp-content/uploads/2016/05/ERC-ResPap45-RoperLoveBourke.pdf>.
    - ii. Solicitors Regulation Authority, *Research on Alternative Business Structures (ABSs)* (2014), <http://www.sra.org.uk/sra/how-we-work/reports/research-abs-executive-report.page>.
  - g. Limited-License Legal Technicians (LLLTs)
    - i. Wash. R. Gen. Application APR 28 ("Limited Practice Rule for Limited License Legal Technicians").
- III. Changes in the Practice of Law
- a. Mark A. Cohen, *The Future Keeps Happening to Legal Services*, Law360 (Mar. 24, 2016), <http://www.law360.com/articles/775358/the-future-keeps-happening-to-legal-services>.
  - b. Georgetown Law Center for the Study of the Legal Profession, 2016 Report on the State of the Legal Market, [https://www.law.georgetown.edu/news/upload/2016\\_PM\\_GT\\_Final-Report.pdf](https://www.law.georgetown.edu/news/upload/2016_PM_GT_Final-Report.pdf).
  - c. Andrew M. Perlman, *Toward the Law of Legal Services*, 37 Cardozo L. Rev. 49 (2015).
  - d. Andrew M. Perlman, Dean & Professor of Law, Suffolk Law Sch., *Improving Access to Justice Through Technology and Regulatory Innovation* (Dec. 1, 2015), <http://nccalj.org/wp-content/uploads/2015/12/North-Carolina-Access-to-Justice.pdf>.

#### IV. Regulation of the Practice of Law

- a. Reid Phillips, Brooks, Pierce, McLendon, Humphrey & Leonard, LLP, *Do the North Carolina Unauthorized Practice of Law Statutes Serve Their Purpose?* (May 3, 2016), [http://nccalj.org/wp-content/uploads/2016/05/NCCALJ\\_Unauthorized\\_Practice\\_of\\_Law\\_Presentation.pdf](http://nccalj.org/wp-content/uploads/2016/05/NCCALJ_Unauthorized_Practice_of_Law_Presentation.pdf).
- b. Clifford Winston & Quentin Karpilow, *Should the U.S. Eliminate Entry Barriers to the Practice of Law? Perspectives Shaped by Industry Deregulation*, 106 *Am. Econ. Rev.* 171 (2016).
- c. *LegalZoom.com, Inc. v. North Carolina State Bar*, No. 11 CVS 15111, 2015 WL 6441853 (N.C. Bus. Ct. Oct. 22, 2015).
- d. Bobbi Jo Boyd, *Mapping Inter-Organizational Boundary Bureaucracy and the Need for Oversight*, 45 *Sw. L. Rev.* 631 (2016).
- e. Memorandum from Joni Nichols & Anne Evangelista to Luke Bierman regarding current regulation of the practice of law and best practices of regulation (Apr. 27, 2016).
- f. *N.C. State Board of Dental Examiners v. FTC*, 135 S. Ct. 1101 (2015).
- g. Andrew Strickler, *N.Y. Bar Hammers ABA Plan for Legal Services Oversight*, Law360 (Feb. 5, 2016), <http://www.law360.com/articles/755705/ny-bar-hammers-aba-plan-for-legal-services-oversight>.
- h. Grant B. Osborne, *Contemplations on "An Act to Further Define ... 'Practice [of] Law,'" "Requirements for Web Site Providers" and Chapter 84 of the North Carolina General Statutes*, NCBA Blog (Aug. 24, 2016), <http://ncbarblog.com/2016/08/contemplations-on-an-act-to-further-define-practice-of-law-requirements-for-web-site-providers-and-chapter-84-of-the-north-carolina-general-statutes/>.

#### V. Legal Education

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- c. Memorandum from Luke Bierman to Committee regarding Commission's review of the bar examination (May 3, 2016).
- d. Victor Li, *Florida Supreme Court Approves Mandatory Tech CLE Classes for Lawyers*, *ABA Journal* (Sept. 30, 2016), <http://www.abajournal.com/news/article/florida-supreme-court-approves-mandatory-tech-cles-for-lawyers>.

## VI. Assisting Self-Represented Litigants

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- b. Judicial Council of California, Fact Sheet: Programs for Self-Represented Litigants (2015), <http://www.courts.ca.gov/documents/proper.pdf>.
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- f. Memorandum from Jennifer M. Lechner, Executive Director, Equal Access to Justice Commission on Recommendations from the ABA Report on the Future of Legal Services in the U.S. to Legal Professionalism Committee (Sept. 26, 2016).

## VII. Data and Research

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- b. N.C. State Bar, Statistics Regarding the Discipline Program, 2014 and 2015 (2016).
- c. N.C. State Bar, DHC Appellate Decision Summary, 2005-16 (2016).
- d. N.C. Board of Law Examiners, Presentation to the Legal Professionalism Committee of the N.C. Commission on the Administration of Law and Justice (Dec. 1, 2015).
- e. James Leipold, Executive Director, NALP, The New Legal Employment Market (Feb. 2, 2016), <http://nccalj.org/wp-content/uploads/2016/01/NC-CALJ-February-2016.pdf>.
- f. N.C. Equal Access to Justice Commission, Local Rules/Forms Project (May 3, 2016), <http://nccalj.org/wp-content/uploads/2016/05/handouts-for-May-3.pdf>.
- g. Rebecca L. Sandefur, *Accessing Justice in the Contemporary USA: Findings from the Community Needs and Services Study* (2014), [http://www.americanbarfoundation.org/uploads/cms/documents/sandefur\\_accessing\\_justice\\_in\\_the\\_contemporary\\_usa\\_aug\\_2014.pdf](http://www.americanbarfoundation.org/uploads/cms/documents/sandefur_accessing_justice_in_the_contemporary_usa_aug_2014.pdf).
- h. N.C. Board of Law Examiners, North Carolina Bar Examination First-Time Test Takers Pass Rate 2006-16 (2016).

*This report contains recommendations for the future direction of the North Carolina court system as developed independently by citizen volunteers. No part of this report constitutes the official policy of the Supreme Court of North Carolina, of the North Carolina Judicial Branch, or of any other constituent official or entity of North Carolina state government.*