

## MEMORANDUM

To: NCCALJ Legal Professionalism Committee

From: Catharine Arrowood and Matt Sawchak

Date: April 4, 2016

Re: Synthesis of subcommittee proposals

This memo discusses and synthesizes the proposals offered by our subcommittees in preparation for our April 5 meeting.

Before we state those proposals, we offer the following as a possible framing of the issues our committee is analyzing:

Technology and other market forces have dramatically changed the environment in which legal services are provided in North Carolina. We now have a citizenry that is increasingly resorting to “do it yourself” methods to meet its legal needs, coupled with a surplus of unemployed and underemployed lawyers. Despite changes in clients’ needs, the majority of legal services in North Carolina continue to be provided by individual lawyers who practice in traditional partnerships or LLPs. These circumstances suggest a need for change.

Presently, the supply of lawyers in North Carolina is controlled by the requirements of Chapter 84 of the North Carolina General Statutes, as implemented by the North Carolina State Bar and the North Carolina Board of Law Examiners.

In most states, the State Bar or equivalent agency is housed in the judicial branch. In those states, the judicial branch has at least some ability to change who can provide legal services and how legal services may be provided. These changes typically do not require approval by other branches of government.

North Carolina does not currently have that flexibility. A change in the definition of the unauthorized practice of law in Chapter 84, as well as the implementation of more specific consumer protections for North Carolina consumers, currently requires an act of the legislature, as illustrated by the need to seek legislation to settle the *LegalZoom* case.

These points suggest that basic structural changes are needed.

The balance of this memo presents the essential questions and proposals that our subcommittees have framed.

**1. What kinds of structural, regulatory reforms could help North Carolina deal with the rapid changes and growing innovation in how legal services are delivered?**

- a. Would North Carolina be better equipped to meet future regulatory challenges if the Supreme Court (or its designee) were responsible for defining what constitutes “the practice of law”? For example, would it be helpful to have a judicial branch commission of visionaries examine whether the delivery of future services falls within that definition?
- b. Would there be benefits to the Supreme Court (or its designee) increasing its supervision of the State Bar? For example, would it be helpful to have a judicial-branch oversight commission supervise and approve the final decisions of the State Bar in the areas of ethics rules and lawyer discipline?
- c. What structure is best able to deal with and address issues 2-6 below?

**2. What are the impediments to: (a) pursuing a career in legal and law-related services; (b) providing services to those whose needs are not currently being met; and (c) persons who need legal or law-related services obtaining service from persons who have the ability to deliver the needed services? How can those impediments be lessened?**

- a. What is North Carolina’s current approach to: (1) out-of-state lawyers; (2) nonlawyer providers of law-related services; and (3) online-only providers? How has this approach changed over time?
- b. To the extent that North Carolina limits these providers, do the limits have a favorable cost/benefit profile?

**3. What methods could North Carolina use to improve the interaction of supply and demand?**

- a. Might a solution be a “Peace Corps”-type institution that matches unemployed or underemployed persons in the law-related services field with people who need services at low or no cost?
- b. Would one solution be to change the rules concerning business models for law firms and other entities that can deliver legal or law related services?
- c. Would another solution be to create a continuing organization, possibly part of the North Carolina government, charged with ensuring a robust supply of legal resources?

#### 4. How can North Carolina make technological improvements to help the public get access to law-related information?

- Use of telepresence, webex and other electronic technologies, located in public spaces (see below), for attorney-client communications, pre-trial proceedings, Small Claims hearings, ADR and Collaborative meetings, and all other appropriate instances requiring consumers to interact with counsel and/or the Courts, to assist consumers unable to travel or who are located in under-served legal markets and remote locations throughout the State, and to permit attorneys to provide services to or from remote locations where appropriate.
- Develop comprehensive statewide self-help resource for consumers, such as:
  - Use of “Legal Kiosks”, (essentially web-enabled databases with user friendly interfaces), located in public spaces (see below), to provide information to consumers without internet access (e.g., dockets, scheduling, court directories, forms, legal process information)
- Study programs in Utah and California (see attached information)
- Louisiana has placed self-help kiosks in libraries and has trained librarians as resources
- Expansion of use of virtual legal offices by lawyers to reduce the cost of providing legal services and expand scope of coverage to serve consumers unable to travel or who are located in rural and urban under-served legal markets or remote locations throughout the State.
- Inclusion in the updates to the NCCourts.org website the capability/functionality for NC consumers to access and interact with various court offices via mobile technology (now existing and capable of being updated for future mobile technologies), including:
  - the ability to accept secure payments, such as for traffic infractions, and other fines, fees, that are uncontested;
  - schedule appointments with parole officers and other court personnel;
  - respond to email correspondence from the courts; and
  - all other appropriate instances of consumer interactions with the courts.
- Development of a set of NC Standard Forms for Civil and Criminal Practice (for use by both *pro se* consumers and lawyers and accessible electronically and at various resource centers) accepted by Clerks in all 100 NC counties.
  - Harmonization of civil and criminal practice throughout North Carolina and concurrent development of standardized practice forms will promote efficiency and effectiveness for lawyers with multi-county practices; increase ease of use and greater access to *pro se* consumers; promote uniformity and

consistency in the practice generally, as well as ease of oversight by the Supreme Court AOC (or other administering authority).

- This long-term initiative should review/analyze the types of matters addressed in standardized forms in use in other jurisdictions (best practices review) and be a collaborative effort with input received from all interested stakeholders, including the AOC, the NC Supreme Court, the NC State Bar, the Clerks of the various counties, Legal Aid and other organizations that provide services to indigent NC consumers, as well as members of the Bar.

**5. How can North Carolina use existing resources in different ways to help the public get access to law-related information?**

- Use of space at centralized, public transport-convenient locations throughout the State through collaboration with Public Libraries, Community Colleges and Courthouses for:
  - “Legal Kiosks,”
  - Technology-enabled attorney-client meeting rooms and pre-trial proceedings, Small Claims hearings, ADR and Collaborative meetings, and other consumer-lawyer-court interactions, and
  - Distribution of information and materials described below.
- Expansion of use of Collaborative Law services to offer consumers an additional avenue for problem avoidance, problem solving and legal redress, in addition to other forms of ADR and existing adversarial legal process.
- Expansion of existing Legal Hotlines-Attorney Referral Services to answer consumer questions and concerns, including a “triage services” component offered by trained paraprofessionals to assess consumers’ needs (do they need a lawyer? Some other service?), and to efficiently guide them to the services/information resources they need. (NM has an on-line triage system called “Together for Justice”)
  - Consider establishing one or more state-funded call centers.
  - Use existing law schools, paralegal schools etc. to train paraprofessionals or others who are providing resources

**6. How can North Carolina use educational methods to improve awareness and knowledge of law-related information?**

- Education of law students, lawyers and legal service providers re: the use of enhanced technology tools and methods, virtual legal office strategies, processes for cost reduction, and multiple fee structure options through the development of course materials for use by law schools, paraprofessional training programs and CLEs, offered state-wide to reach practitioners in each Judicial District.
  - CLE materials should be developed that provide descriptions of the range of permissible legal services providers, together with an analysis of the scope and limits of the services they are permitted to provide, as well as the certification/licensure/education requirements and governance of these legal service providers by the NC State Bar (or other administering authority).
- Development/distribution of information resource materials explaining the NC Court system, the variety of available legal services, and ALL points of consumer-legal system interactions for high school students and the general public offered at libraries and other appropriate public spaces.
  - Develop and distribute teaching materials for high schools, including the full range of legal services providers permitted in NC and the scope and limits of their services.
  - Materials for consumers should include information explaining the available types of legal service providers and the scope and limits of their services in a consumer-friendly manner, including “how to” determine if the person has been duly certified/licensed to perform legal services by the NC State Bar (or other administering authority).
  - Statewide marketing campaign targeting public awareness and use of “Legal Kiosks” and expanded “Legal Hotline” services and information resource materials described above.
  - Education of lawyers and the public in the Collaborative law process and circumstances under which current ethical rules will permit lawyers to assist multiple parties to resolve a dispute.