



**Legal Professionalism Committee
of the NC Commission on the Administration of Law and Justice**

Summary of Public Comments on Interim Report

Prepared by: Emily Portner, NCCALJ Research Associate

Overview of Total Comments Received on All Reports

- Detailed feedback received from **24** judicial branch stakeholder organizations, including:
 - NC Conference of Clerks of Superior Court
 - Equal Justice Alliance
 - NC Equal Access to Justice Commission
 - Legal Services of Southern Piedmont
 - The Criminal Justice Debt Working Group
 - NC State Bar (IOLTA)
 - NC Office of Indigent Defense Services
 - NC Conference of District Attorneys
 - Conference of Superior Court Judges of North Carolina
 - NC Conference of Court Administrators
 - NC Magistrates Association
 - Carolina Justice Policy Center
- **423** total attendees at four public hearings; **131** speakers at those hearings.
- Written comments received from **208** unique individual judicial branch employees and members of the general public.
- Four main areas of public interest include:
 - Raising the age of juvenile jurisdiction from 16 to 18
 - Increased funding for civil legal aid services and the North Carolina Legal Education Assistance Foundation (NC LEAF)
 - Family Court expansion
 - The method of judicial selection

Comments Specific to the Legal Professionalism Interim Report

1. Judicial Branch Stakeholder Organizations

a. NC Conference of Clerks of Superior Court

Training New Attorneys

- *Teach them how to dress*
- *Instruct them about how to talk respectfully in court*
- *Inappropriate use of cell phones*
- *Attorney needs to realize that in the foreclosure cases the clerk IS THE JUDGE*
- *Attorney fee issues (incomplete information, illegible handwriting, filed untimely)”*

b. NC Equal Justice Alliance

Candidates for Bar Admission

“The Equal Justice Alliance supports the Legal Professionalism Committee’s interim recommendation to identify an appropriate organization to study “the standards and methods that North Carolina should use in the future to assess candidates of law,” particularly in regards to the significant portion of candidates with criminal records. These “standards and methods” should ensure individualized assessments of candidates’ criminal records in a manner that minimizes the exclusion of capable candidates from the legal profession. To ensure that this review takes place in a timely manner the Committee should identify a specific agency or organization that will complete this important study as well as specific goals, research questions and a timeline for the study.”

c. NC Office of Indigent Defense Services

Law School Debt Repayment

“I am writing on behalf of IDS to support the recommendation of the Civil Justice Committee of NCCALJ regarding the restoration of funding for NC LEAF. Lawyers who wish to pursue a career as an Assistant Public Defender, Assistant District Attorney, Legal Aid attorney or other public service work are often burdened with large law school loans. Lawyers who wish to serve their communities in this fashion face modest pay and pressing caseloads, and the risk that they will eventually decide to leave the public service field is very real. Loan repayment assistance is one, very important way to relieving the stress of working as a public service lawyer. As Director of IDS I know how valuable loan repayment assistance is in helping us attract and keep qualified lawyers working in the field of public defense. IDS strongly endorses the recommendation that NC LEAF be fully funded.”

d. NC Conference of District Attorneys

Candidates for Bar Admission

“The Conference of District Attorneys also supports this committee’s further study of standards and methods that North Carolina uses to assess candidates for the practice of law

to ensure that those admitted to the bar are competent and of the highest level of ethical character and fitness.”

Law School Debt Repayment

“The Conference of District Attorneys strongly supports the recommendation to restore funding for legal assistance programs including loan repayment relief. Public interest law is especially vulnerable to the effects of crippling law school debt. The Conference recommends the Chief’s Commission support funding debt relief organizations like the North Carolina Legal Education Assistance Fund (NCLEAF). Only through this kind of support organization can public interest lawyers, like assistant district attorneys and assistant public defenders afford to concentrate and continue careers in public interest law. It is critical to both District Attorneys and Public Defenders that they can attract and maintain quality attorneys to handle cases within the criminal courts.”

e. Conference of Superior Court Judges of North Carolina

Superior Court Judges were surveyed for feedback by the Conference, yielding twenty-nine responses. The below is their commentary on *pro se* litigants.

“One half of responders recognize that self-represented litigants substantially and adversely affect the ability to manage caseload, and a more substantial majority (72 %) agree or strongly agree that more opportunities to receive legal assistance should be provided. Most also support providing training in how to interact with pro se litigants for judges and court personnel.”

f. Legal Services of Southern Piedmont

Support for Self-Represented Litigants

“In the ideal justice system, every civil litigant, like every criminal defendant, would have a lawyer to represent him or her. As that is far from current reality, we support the recommendations of the Civil Justice and Legal Professionalism Committees to assist self-represented litigants. Additional Forms that are readily available and easy to use will help persons without lawyers to access our justice system. These recommendations are similar to those of the Alliance presented to the Civil Justice Committee and we agree that the ever-changing local court rules that tend to be barriers for self-represented persons need to be addressed.”

Candidates for Bar Admission

“LSSP supports the Legal Professionalism Committee’s interim recommendation to identify an appropriate organization to study ‘the standards and methods that North Carolina should use in the future to assess candidates of law,’ particularly in regards to the significant portion of candidates with criminal records. These ‘standards and methods’ should ensure individualized assessments of candidates’ criminal records in a manner that minimizes the exclusion of capable candidates from the legal profession. To ensure that this happens in a timely manner the Committee should identify a specific agency or organization that will complete this important study as well as specific goals, research questions and a timeline for the study.”

g. NC Magistrates Association

“There are a few bullet points worth noting in this discussion that we take position on:

- *Alternative legal resources, i.e. Legal Zoom, etc., we take no issue with. These resources are available for common, typical legal filings and the expanded use of them by the public are a welcome relief.”*

2. Verbal Comments Provided at Public Hearings

First Name: Bruce

Last Name: Robertson

Public Hearing: Jamestown

Summary of Comments:

Mr. Robertson is an attorney and councilor for the 18th judicial district of the State Bar. He appreciates and supports the work of the Commission. He noted the attendance and participation of the State Bar at NCCALJ committee meetings. He believes the promotion of greater access and more targeted resources for self-represented litigants deserves support. He also indicated that the current regulatory structure of the State Bar works well, and if changes are suggested, then the burden of proof should be on those who advocate change.

First Name: Barbara

Last Name: Christy

Public Hearing: Jamestown

Summary of Comments:

Ms. Christy is an attorney and councilor for the 18th judicial district the State Bar. She indicated that the State Bar is not a self-interested agency. The State Bar has a high level of professionalism and dedication to the administration of justice. She noted that the current system works, and it is in place to protect the public not the profession. She also commented that after reviewing the dental board case, she feels strongly that the current structure is within statutory guidelines. She also noted the agency's collaboration with the legislature for Legal Zoom legislation. She encouraged the NCCALJ to move forward under the assumption that the current system works and it wants to make the profession better for the public.

First Name: Alex

Last Name: Dale

Public Hearing: Wilmington

Summary of Comments:

Mr. Dale noted that other states of comparable size to North Carolina have an average of 2.5 to 3.4 intermediate appellate courts, and the Commission should explore the need for additional appellate courts in North Carolina. He also encouraged the NCCALJ to look beyond the North Carolina State Bar's recommendation for judicial selection by examining other states such as Delaware.

First Name: Margaret

Last Name: Hunt

Public Hearing: Asheville

Summary of Comments:

Ms. Hunt is the president of the N.C. State Bar. She noted that the legislature charged the agency with regulating the legal profession in North Carolina. She also elaborated on the many programs of the State Bar. Representatives of the State Bar have been participating in the work of the NCCALJ to support its work of promoting greater access through technology, uniformity, more help for pro se litigants, etc. She outlined the current regulatory nature of the State Bar and noted that the Supreme Court already exercises a review and approval role. She commented that if changes are recommended, then the State Bar would be willing to work with those proposing change but the impacts to the system should be presented.

First Name: Evan

Last Name: Rawls

Public Hearing: Charlotte

Summary of Comments:

As a State Bar councilor, Mr. Rawls noted that the State Bar expresses its thanks to the Commission for taking up their task. He described the mission of State Bar as to protect the public, train and discipline lawyers, and move the field forward. As a private attorney, Mr. Rawls feels that technology is lacking in district and superior courts, that superior court judges need law clerks, and that the state should support raising the juvenile age (16 year olds go in as a rabbit and come out as a rattlesnake).

First Name: David

Last Name: Allen

Public Hearing: Charlotte

Summary of Comments:

Mr. Allen said that the NC State Bar supports the Commission. The Bar handles over 11,000 complaints against lawyers each year. They also advise on informal ethics inquiries and process formal grievances. IOLTA is important and successful. The current system is working hard and well under the management of the legislature. The Bar supports the Commission and would appreciate their support for the Bar.

First Name: Bobby

Last Name: Bowers

Public Hearing: Charlotte

Summary of Comments:

Mr. Bowers said that the State Bar supports the work of the Commission and wants to stand shoulder-to-shoulder with the Commission. He stated that the State Bar is functioning well under the supervision of the Supreme Court and that there is no reason to change the way the Bar is currently protecting the public.

3. Online Comments from the General Public and Judicial Branch Employees

First Name: Bruce

Last Name: Clarke

Email: bruce.clarke@capital.org

Affiliation: Attorney

Online comments:

I am an attorney and the CEO of a Raleigh and Greensboro based nonprofit, Capital Associated Industries, Inc. (CAI). We serve about 1200 NC employers with Human Resources related information, guidance and services. Our mission is to provide employers the confidence needed

to turn their risks and opportunities into practical actions and results. A large part of that mission is assistance and education on compliance with the thousands of complex workplace rules and regulations.

We are the plaintiff in *Capital Associated Industries Inc. v. NC Attorney General et al* (USDC, MDNC) for the purpose of challenging and declaring unconstitutional Chapter 84's prohibition on delivery of legal services, through licensed attorneys, when employed by a corporation. We want to provide employment law related advice to our member companies to close a huge service gap that now exists. As your report found, small and mid-sized business lack the legal services and expertise they need on such topics because:

1. The cost is too high
2. The time to seek and engage a new relationship with an experienced attorney is too long
3. The cost exceeds the risk or perceived value
4. The employer finds it more expedient and less costly to find a template or Google an answer
5. Self-service is rampant

Our nonprofit has licensed attorneys on staff who are prohibited by state law from completing the answer to an employer's problem if that answer involves legal advice. The unreasonably broad definition of legal advice also requires us to be conservative in our assessment of that line. The definition worked 100 years ago, and initially covered court representation and the preparation of documents effecting legal rights. Today's "law thick" world and overly-prescriptive regulators have created a problem for these businesses and those of us who serve them.

We also encourage the Committee and others to analyze the problems created by granting exclusive legal service delivery rights to solo practitioners and to law firms. So much good can be accomplished, and so many more lawyers employed, if we work together to fill the service gaps with licensed lawyers in new models.

Yes, redefining the practice of law in a modern way, allowing non-lawyers to do more allied services and service for the indigent and pro se are all good as well. But allowing legal services to be delivered in a corporate umbrella (in our case by a nonprofit) will do even more to democratize legal services and make quality legal work affordable and available. It works in states where this is allowed. Let's lead the way.

First Name: Shawana

Last Name: Almendarez

Email: nepconsultingsrvc@gmail.com

Affiliation: General Public / Private Citizen

Online comments:

North Carolina has expanded the practice of law to allow online legal commodities to provided legal forms to the general public. The state should continue to build public trust and confidence in civil justice by bridging the gap to equal access and understanding of court navigation through the use of Limited Licensed Legal Technicians [LLLTs] and technologies. Expanding legal professionalism to employee non-lawyers will bridge the unemployment gaps of legal students unable to pass the NC State Bar and meet the needs of the general public that choose to utilize online legal forms without any knowledge of the judicial system. The rule-makers of the legal profession [since the profession is a self-regulated industry] can and should revise rules of professionalism to ensure protection of the citizens and lawyers as well as limit the areas of the state that LLLTs are allowed to practice law. LLLTs can be used to assist with the backlog of Pro Se Litigation cases that have the trial courts overloaded with stagnate cases that cannot move

forward due to issues with service of process. There are legal professionals ready and willing to provide the legal support needed via non-profit associations and organizations only if our professional rules are changed to allow professionals to address the legal needs of the people without fear of prosecution or liabilities that insurance will cover. The talks or reshaping of the legal profession should not stop at allowing LegalZoom and other commodity dealers' access to the general public. We need organizations that will pick up where legal forms leave the public bewildered.

First Name: John

Last Name: Sarratt

Email: jsarratt@hshllp.com

Affiliation: Attorney

Online comments:

There is a solution already available that addresses many of the concerns of the Legal Professionalism Committee and the Commission as a whole. As articulated by the Committee's Interim Report, those concerns include providing affordable legal services to all citizens, as well as to small and mid-sized companies, relieving strain on the court system, and insuring that representation is available from trained, competent counsel in appropriate cases. In offering solutions, the Committee recommends looking at unbundled legal services.

The solution that is in place is called Collaborative Law Practice. In a nutshell, Collaborative Practice contemplates that all parties to a dispute are represented by licensed attorneys who are trained in the Collaborative method and who are retained for settlement purposes only; they are contractually bound not to take the dispute to court, though the parties themselves may still go to court if the Collaborative process impasses. The parties and their counsel meet face-to-face over a series of several sessions to discuss their common problem and to devise a solution that addresses the needs and interests of all. Compared to litigation or arbitration, even where mediation is employed, it is a far less expensive and time-consuming method of resolving disputes. Collaborative Law Practice has been around for 25 years, so far entirely in the family law context. There is a statute (NCGS 50-70 et seq.) and NC State Bar ethics opinions approving this approach to family matters. A committee of the North Carolina Bar Association is currently working to expand its use to business disputes. This work is being done now.

The Commission could support the use of Collaborative Practice by endorsing Collaborative Law Practice in its final report, or in follow-up efforts, for instance by including Collaborative Practice in the recommendation regarding notification of forms of low-cost legal services that might be available to self-represented litigants.

The Legal Professionalism Committee is encouraging amendments to chapter 84 of the General Statutes. An important step in advancing Collaborative Practice and the goals of the Commission would be to include in these amendments the adoption of the Uniform Collaborative Law Act. This Act has been enacted in its entirety or (as in North Carolina) in a form limited to family law in 17 states, and is being considered in others, including Virginia and South Carolina. Please let me know if I can provide the Committee or the Commission with any further information about Collaborative Law Practice.

First Name: Jackie

Last Name: Freeman

Email: jackiefreeman4@gmail.com

Affiliation: General Public / Private Citizen

Online comments:

Legal Assistance and Self-Represented Litigation-I would like to see a Pro-se clinic set up in every courthouse where self-represented people can get advice, i.e. court forms, assistance with completing forms, how to file the forms, what the cost of different legal matters cost and have an attorney or attorneys willing to provide legal services at a discount rate to indigent or low-income people. I am having this problem now and have been fighting this battle with the clerks, judges for the past two years. I filed what I thought should have been a simple registration of a judgment and motion to show cause for contempt but I have had to fight the clerk just to file their AOC forms or any other pleadings, then I have been put on this pro-se calendar ferris wheel where the judge would not allow me to get off even when I filed calendar request to get removed and place on the proper calendar. After two years of playing this game, I was finally given a hearing date but because the defendant had an attorney and I didn't the attorney files a motion to dismiss for lack of service and the judge grants it. How can an attorney and her client show up to court responding to motions for show cause, contempt and enforcement/registering a judgment for two years and then court to court and say your client was never served. I am applaud that Judge Jarrell allowed this to happen. My case has been hindered and discredited from what the defendant's attorney has done. I hope you implement this self-help clinic in Guilford County and I would love to supervise and manage this center.

Legal Professionalism Committee, I don't know how this committee operate or who is on the committee but I think there needs to a mixed of people on this committee from private citizens, court personnel, attorney & judges that can be impartial in their investigations and decisions. I have always been of understanding that no department or agency should be in charge of policing itself because of the personal connection of those involved. The attorney has not been professional throughout my case and the judges have allowed this unprofessional & unethical behavior as well as the inappropriate behavior of judges in my case.