



Justice we can believe in

Comments Regarding the Texas Access to Justice Commission Access to Legal Services Working Group's Recommendations

We write on behalf of IAALS, the Institute for the Advancement of the American Legal System, regarding the Texas Access to Justice Commission Access to Legal Services Working Group's Recommendations ("Recommendations"). IAALS is a national, independent research center at the University of Denver dedicated to continuous improvement of the civil justice system. IAALS identifies and researches issues in the legal system; convenes experts, stakeholders, and users of the system to develop and propose concrete solutions; and then goes one step further to empower and facilitate the implementation of those solutions to achieve impact. We are a nonpartisan organization that champions people-first reforms to the legal system and the legal profession. Since 2019, IAALS has had an Unlocking Legal Regulation initiative through which it has worked with leaders in states across the country to rethink how we deliver and regulate legal services.

We applaud the Texas Access to Justice Commission and its Access to Legal Services Working Group for their leadership in regulatory reform efforts in Texas. We hope these recommendations are just the first step in a new era of legal regulatory innovation in the state.

Defining the "Access to Justice Gap"

As the legal profession continues to have discussions about closing the justice gap and ensuring that all Americans have access to the legal help they need, it is important that we first use a common definition for the "access to justice gap" so that we are all on the same page. It is unclear from the report and recommendations how the Texas Access to Legal Services Working Group ("Working Group") defines the access to justice gap. Some legal professionals, including one cited in the Working Group's report, define the access to justice gap as limited to people who qualify for free legal aid (usually people who have an income of 125% or less of the federal poverty guidelines and who are not able to access legal services). It is [well documented](#), however, that people above this income eligibility line—and far into the middle-class—also cannot access the legal help they need. Therefore, at IAALS, we include people

and small businesses who would be considered low- or middle-income in this “access to justice gap,” and we bring this perspective to our comments below.

The Access to Justice Gap Requires an Ecosystem of Legal Service Providers

The breadth and depth of the problem is alarming. It is so extensive and dire that even if all of the recommendations and all of the suggestions offered by stakeholder groups included in the Working Group’s report are accepted, it will still not be enough. The reality is that we need an entire ecosystem of legal service providers, which includes each of these recommended solutions and probably dozens more that we have not yet contemplated. Given this reality, perhaps the question is not which program(s) we should implement. It is which program(s) we should implement first, and what is the most effective and efficient way of doing so.

Launching a New Program Requires a Substantial Amount of Resources

In our experience talking and working with states that have implemented programs akin to the ones proposed in the Recommendations, states must be very intentional in allocating enough resources toward these programs to effectively develop, evaluate, and sustain them. This is true even when existing groups—such as the Judicial Branch Certification Commission—are used to fill the regulatory agency role. While the total amount of resources needed to launch a program is not unreasonably large, state resources that can be devoted to these programs are often finite. In determining which of these recommended programs to move forward with, IAALS urges that the Working Group and ultimately the Texas Supreme Court prioritize obtaining enough funding and resources to support each of these programs individually and as a collective.

Every Model Proposed Is Needed to Close the Access to Justice Gap, but Each Model Must Be Paired with the Right Framework to Succeed

As we shared above, it really is all hands on deck when it comes to closing the access to justice gap. The gap is massive, and we need an entire ecosystem of models and providers to close it. At this point, at least a few states have implemented each type of regulatory model recommended in the Working

Group’s report, and from these state efforts we’ve come to learn the frameworks needed for each model to be successful and achieve maximum impact.

The Community Justice Worker Proposal

The Supreme Court of Texas has identified low-income Texans as the target audience on which the Working Group should focus its efforts. Community justice worker models in [Alaska](#), [Utah](#), [Arizona](#), [Delaware](#), and [Hawai’i](#) are proving to be successful avenues through which to serve this particular population. By definition, low-income people have very little to no income. They do not have money to pay for legal services. They need the legal services to be free. Community justice worker models are non-profit models through which legal services can be delivered for free—a perfect fit for low-income Texans. IAALS recommends that the Supreme Court of Texas adopt a community justice worker program in Texas.

The Licensed Paraprofessional Proposal

Over the past three years, IAALS has devoted considerable time and energy to the advancement of these licensed paraprofessional (“LP”) programs. We developed a [Landscape Report](#) that examines why states have created these programs and the similarities/differences between them, we convened a group of expert stakeholders to discuss best practices and lessons learned from existing programs, and we published a [National Framework Report](#) that lists 18 recommendations on the creation of these programs based on discussions at the convening. Based on our research and the data supporting the successes of these programs, IAALS fully supports Texas creating an LP program. Our comments below on the LP recommendation are based on our general support of these programs coupled with our knowledge on what is needed for these programs to be successful.

To create a successful program where LPs can both make a living and help the millions of Texans who cannot afford an attorney, the 200% income cap must be removed. When Colorado’s Providers of Alternative Legal Services subcommittee developed their recommendations for an LP program, it too recommended an income cap. It considered a cap of 400% or below the federal poverty guidelines, but the Colorado Supreme court ultimately decided that an income cap was not appropriate. We agree with the Colorado Supreme Court. Data from Washington’s Limited Licensed Legal Technician (“LLLT”) program shows that many LLLTs bill on a sliding scale based on the client’s income. This allows them

to serve lower-income clients in addition to clients that earn above the 200% threshold that Texas is considering. Any income cap will unnecessarily restrict a huge portion of Texans who make more than 200% of the federal poverty guidelines but still cannot afford the services of an attorney. It will also unnecessarily limit for LPs their pool of potential clients and their ability to make a living since their work is not subsidized like that of community justice workers.

It is also essential to the success of an LP program that the scope of practice areas and responsibilities are not so limited that it dissuades people from becoming LPs and precludes any meaningful impact to closing the access to justice gap. The recommended limitation of divorce cases to only those that are uncontested, and the requirement of attorney supervision for suits affecting the parent-child relationship are too limiting. All the data that has come out of LP programs supports the expansion of scope of work, not its limitation. In 2022, the Minnesota Supreme Court expanded the scope of LPs to include cases involving allegations of domestic or child abuse so long as they fulfilled additional training requirements. This expansion came, in part, from supervising attorneys suggesting that LPs' roles be expanded into these areas of the law. This expansion by the Minnesota Supreme Court falls directly in line with Recommendation 5 of our Framework Report, that “instead of restricting the [LP] role, states should instead modify the education and testing requirements to ensure [LPs] are competent to handle a case from start to finish.” We fear that these limitations noted above will impede Texas' LP program from being successful and helping to close the access to just gap.

The Alternative Business Structure Proposal

Both Utah and Arizona permit alternative business structures (“ABSs”)—entities in which people who are not lawyers have an economic interest or decision-making authority in a firm. One lesson IAALS has learned from the Utah and Arizona efforts is that ABSs work best serving the group of people who make too much money to qualify for free legal aid but not enough to pay market rates for attorneys—the middle class. As stated above, it is well-documented that the middle class falls within the access to justice gap; therefore, ABSs are proving to be an effective model for closing the access to justice gap. While there are ABSs in Utah and Arizona that are serving low-income people, most of them are also serving a substantial number of people who fall above 200% of the federal poverty guidelines. It is unclear how many entities would be able to create a financially sustainable business model that did not include serving people who fall above 200% of the federal poverty guidelines. If the Supreme Court of

Texas approves this ABS recommendation, we recommend elimination of any income restrictions so entities can create financially sustainable business models that serve the greatest number of people in the access to justice gap.

One additional lesson IAALS has learned from the Utah and Arizona efforts establishing ABS programs is that the elimination of rules, waiver of rules, or rule changes is preferred to launching pilot projects. A pilot project can be a powerful model for civil reform and has been used by IAALS and others to achieve change. In the ABS space, however, unique challenges are presented when you have companies that are trying to decide whether to invest. The word “pilot” injects uncertainty into a program and uncertainty is scary to business owners and investors. Starting a business is a time- and resource-intensive endeavor. No one wants to invest a lot of time and money into a project that could theoretically end at a moment’s notice. If the Supreme Court of Texas decides to pursue a pilot project as opposed to a rule change (like in Arizona), we recommend that the pilot project has an end date at the outset, and that the timeframe for the pilot project be long enough for it and the entities participating in it to flourish. For example, the pilot project timeline for the Utah sandbox, which includes ABS models, is seven years.

IAALS is grateful to the Texas Access to Justice Commission for the opportunity to share our support for and concerns with the Working Group’s Recommendations. If the Working Group or Commission has any follow-up questions based on our comments, we welcome the opportunity to discuss in more detail IAALS’ extensive research and work in these areas.

Sincerely,

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