



NJSBA Task Force on the Future of the Legal Profession

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Overview

As the legal community and profession continue to evolve with the changes in technology and the market, the New Jersey State Bar Association (NJSBA) believes it is important to set forth its position on three key issues that continue to be debated and discussed both in New Jersey and on the national level.

Those issues are:

- The use of non-lawyers in providing legal services;
- The ownership of law firms by non-lawyers; and
- The overarching need to find creative ways to address the justice gap.

These issues have been addressed on an ad-hoc basis for over a decade. This policy paper sets forth the Association's commitment to certain core values based on the fundamental belief that the public deserves knowledgeable, trained and ethical guidance in navigating their legal needs.

In summary, the NJSBA is committed to:

(1) ensuring legal services are provided by licensed lawyers and its steadfast opposition to the provision of legal services by non-lawyers to ensure equal access to justice and fairness in its administration;

(2) adhering to the longstanding rules governing law firm ownership as the best way to preserve the ability of lawyers to exercise their independent professional judgment in zealously representing their clients, and to ensure the protection of the public in obtaining the legal guidance and representation they need; and

(3) continued exploration of new and innovative ways to make affordable and accessible attorney-provided legal information, guidance and representation available to individuals unable to afford it otherwise.

Use of Non-Lawyers Providing Legal Services

The NJSBA opposes the use of non-lawyers in providing legal services in New Jersey. The threat posed to the public and individual clients by non-lawyers practicing law and performing legal work outweighs the potential for good. Although the NJSBA remains mindful of the needs throughout New Jersey for affordable and low-cost legal services, inviting non-lawyers to practice law is not the solution.

In New Jersey, the practice of law is a highly regulated profession that requires a legal practitioner to graduate from an accredited law school, pass the bar exam (or waive in from another jurisdiction), complete 24 hours of mandatory continuing legal education programs every two years and maintain proof of attendance for compliance audits, complete an annual registration as a condition of licensing, understand and abide by the Rules of Professional Conduct, and contribute to the Judiciary's Lawyers' Fund for Client Protection for members of the public who suffer losses due to negligence or intentional wrongs committed by licensed attorneys.ⁱ Each of those requirements, and others, are intended to encourage high-quality legal work and to protect the public from individuals who have not demonstrated minimum competence in the practice of law.ⁱⁱ

A key part of the NJSBA's mission statement is to promote access to the justice system, fairness in its administration and the independence and integrity of the judicial branch.ⁱⁱⁱ A core value of meeting this goal is ensuring that legal services are provided by licensed lawyers, who are uniquely qualified to provide legal counsel.^{iv} A 2016 study by the NJSBA's Blue Ribbon Commission on Unmet Legal Needs chronicled lawyers' efforts to meet the legal needs of those not able to afford counsel, and suggested new ways to address those needs.^v The solutions proposed by the Blue Ribbon Commission all envisioned services provided by licensed lawyers and nothing less. The NJSBA, in response to an American Bar Association proposal in 2014, recognized that to do otherwise would create a second tier of legal providers, resulting in an unequal system of justice, contrary to the organization's mission statement.^{vi}

Proponents of expanding the use of non-lawyers in providing legal services highlight the prohibitive-to-some costs of quality legal services in the civil court system, the value of limited-scope legal assistance to a litigant who may wish to proceed on a self-represented basis, and a lack of private attorneys making their services available to low-income earners.^{vii} Some states have implemented limited license programs that allow non-lawyers to provide legal services in specific areas of the law where legal services are most needed.^{viii} Those programs are in their infancy, however, and insufficient data is available to make a full evaluation. On the other end of the spectrum, Washington, the first state to adopt a framework to regulate, license and authorize non-lawyers to practice law in limited areas has now reversed course, with the top court voting to sunset its Limited License Legal Technician program.^{ix} In fact, this program did not garner interest or consumers and as of July 31, 2023, the Washington State Bar Association will no longer be admitting LLLTs. Still other states, such as Florida and California, have explored such programs and voted to reject them or put them on hold in favor of other alternatives.^x

In New Jersey, we have seen the consequences of legal services provided by non-lawyers. The legal status of immigrant residents has been endangered by the missteps of untrained notaries, commonly referred to as *notarios*, who hold themselves out as attorneys familiar with immigration processes and procedures.^{xi} These *notarios* often convince members of our immigrant communities in New Jersey to pay exorbitant fees for the application of immigration benefits for which they were never eligible, which applications often result in the issuance of a notice to appear in U.S. Immigration Court for removal proceedings from the country, not only devastating otherwise trusting individuals financially, but also breaking up families, taking parents away from their natural-born U.S. citizen children.^{xii} Divorces have

been delayed and made more costly because of improperly prepared paperwork by low-cost non-attorney divorce services. And families navigating the Medicaid eligibility maze can risk losing eligibility by receiving poor guidance by non-lawyer advisors.^{xiii} Poorly drafted contracts, wills, and promissory notes create huge burdens on the courts when errors lead to litigation. The non-lawyer providers of those poorly rendered legal services are not required to carry – and are not eligible to carry – malpractice insurance, and their victims are not eligible for compensation from the Lawyers’ Fund for Client Protection.^{xiv}

New Jersey has a large population of highly skilled and competent attorneys.^{xv} Attorney- driven solutions such as “low-bono” and reduced-rate legal services through programs such as Legal Edge may be the best option for reducing costs without reducing quality.^{xvi} Expanding the use and funding of non-profits, government-funded legal services, and law school legal clinics may also serve to assist those who cannot achieve equal access to justice in our civil legal system.^{xvii} Non-lawyer legal service providers cannot provide the same level and quality of services with ethical obligations and a peer-funded reimbursement fund as safeguards, no matter what regulations and limitations are put in place.^{xviii}

Also worth noting, New Jersey’s legal system has long relied upon a tiered system of non-lawyers participating in legal services, including paralegals, legal assistants, law clerks, law students and legal interns.^{xix} Work performed by those individuals is usually billed at an hourly rate far lower than that of an attorney, but – at all times – their work is performed under the supervision of a licensed attorney who is responsible for overseeing their work and is held accountable for their errors.^{xx} Similarly, other highly regulated professions use a hierarchical system under which individuals of various titles work under the supervision of a licensed professional. As one example, the medical profession’s use of physician assistants and nurse practitioners has been praised for expanding access to healthcare and addressing the increased needs of certain underserved communities. Physician assistants and nurse practitioners are required to undergo their own training and licensing processes, and there is a growing national debate about expanding the scope of practice for these professionals;^{xxi} however, in New Jersey, the healthcare system maintains in place the safeguards and oversight of having all patient treatment overseen by a trained physician.^{xxii} As the legal and healthcare industries strive to expand access to their respective services, changes must be responsibly implemented without experimenting on clients and their families and sacrificing the quality of the services they receive.

For these reasons, the NJSBA’s mission statement and long-standing core value of ensuring equal access to justice and fairness in its administration demand nothing less than a commitment to a policy of ensuring legal services are provided by a licensed lawyers and steadfast opposition to the provision of legal services by non-lawyers.

Non-Lawyer Ownership of Law Firms

The NJSBA is steadfast in its support of New Jersey Rule of Professional Conduct 5:4 (and its ABA counterpart Rule 5.4) that prohibits non-lawyer ownership interests in law firms.

The NJSBA firmly believes that the public has been well-served by the traditional and longstanding relationship that exists between the Judiciary and the bar, and the responsibilities imposed on attorneys in the ownership of law firms as a result. We see great value in the parameters provided by our Rules of Professional Conduct, the ethical obligations they impose upon us in all matters and the regulation of conflicts, financial and otherwise, that could threaten the interests of the clients we serve. (Jan. 31, 2012, Letter to ABA Comm'n on Ethics 20/20; NJSBA testimony before ABA Comm'n on Future of Legal Services, Feb. 7, 2015)

The overarching goal of our system is to ensure that every client is afforded a just, fair and impartial system where lawyers zealously advocate their clients' interests within the boundaries of ethics rules and where judges decide matters based on the facts of the case and the laws of the land.

Opening law firm ownership to non-lawyers raises serious concerns that the professional independence of attorneys will be diluted and ultimately eviscerated in such a fundamental way that lawyers will be forced to place the interests of their corporate sponsors above the duties and responsibilities of their professional obligations. (NJSBA testimony before ABA Comm'n on Future of Legal Services, Feb. 7, 2015) The loss could be profound and there is no proof or guarantee that it will decrease legal costs for the public or increase the availability of quality legal representation.

On the contrary, there is a great risk that allowing non-lawyers to own law firms will put undue emphasis on profit motives instead of the zealous representation of clients. All of the safeguards in place to protect the public would be rendered meaningless, as non-lawyer owners are not governed by the Rules of Professional Conduct, are not covered by malpractice insurance and are not governed by trust accounting rules. Allowing non-lawyer owners could lead to a decrease in *pro bono* efforts, which law firms currently devote significant and meaningful resources to providing, as well as non-billable volunteer service to the Judiciary and bar associations.

While the ownership of law firms by non-lawyers is occurring in other countries, where it has been argued that there will be a resultant cost-savings in the delivery of legal services, the NJSBA believes the collateral fallout will diminish the quality of the legal services rendered given the competing interests this model injects.

In New Jersey, this idea has been tested in the narrow context established by the New Jersey Supreme Court to accommodate insurance companies having ownership in some law firms in *In Re Weiss. Health & Rea.* 109 N.J. 246, 250-254 (1988). This long-accepted arrangement permits appropriate handling of claims brought against the insured, but in which all financial costs are borne by the carrier and there is clear direction if there is any conflict between the insured and insurer. The carrier has no direct control over the law firm itself or legal strategy. There are procedures and firewalls to protect insured-client privileged information; and claims adjusters have oversight of cases only to the extent of the insurance contract entered into by the insured-client.

The European model has been similarly limited in scope to arrangements where large accounting firms owning interests in law firms have focused on delivering services to large corporate clients, not the general population. In these arrangements, the clients are sophisticated corporations who can verify confidentiality of their information and advocate for themselves on issues relating to their case, finances or other key issues.

Expanding these narrowly tailored exceptions to a broad-brush acceptance of any non-lawyer ownership interest in any type of law firm has the potential of imperiling the average, everyday client as described above, who needs the protections imposed by the current system the most. Indeed, it is already the case that attorneys and firms can bring in other experts and professionals, given the needs of a case. Those relationships have separate financial arrangements that provide necessary transparency and accountability.

We need only look to other professions, namely the medical field, that have allowed non-professionals to own practices, for an illustration of how those relationships could arguably compromise professionalism in a drive to cut costs and maximize profits.

Thus, it is important to acknowledge that there may eventually come to be other opportunities for development based on the changing character of our economy, but until those arrangements can be thoroughly vetted by the Courts, the NJSBA is deeply wary of changing the historic *status quo* without good and sound reason and without clear and strict safeguards and limitations. Until then, the NJSBA remains committed to the longstanding rules governing law firm ownership as the best way to preserve the ability of lawyers to exercise their independent professional judgment in zealously representing their clients, and to ensure the protection of the public in obtaining the legal guidance and representation they need.

Access to Justice

The NJSBA recognizes that there is a segment of the public that need legal representation but cannot afford to hire an attorney. Many of these litigants have a difficult choice to make: abandon the legal matter or attempt to navigate the legal system on their own.

The rise of self-represented litigants in our courts presents a challenge to our justice system on numerous fronts: self-represented litigants are ill equipped to navigate the complexities of litigation and judges are taxed with slower proceedings to ensure fairness when dealing with such litigants. Additionally, many litigants who proceed without counsel do so because while they fail to qualify for the assistance of New Jersey legal services or the state Office of the Public Defender, they still cannot afford to hire private counsel. Many of these litigants proceed as self-represented or seek the services of non-attorney practitioners on the internet. It is abundantly clear that addressing access to justice is a critical need facing society and one that the legal community takes seriously. It will require a web of programs, organizations and causes working in harmony to address the needs of the public. Some initial work has been done, as is described here, but more work will be needed to serve the diverse needs of society. The NJSBA is committed to bridging this gap.

Mindful of the need throughout the state for affordable legal services for these litigants, in 2016, the NJSBA established a Blue Ribbon Commission on Unmet Legal needs to analyze and recommend ways to address the needs of litigants not able to afford legal counsel. The Legal Edge program, which enables the referral of these litigants to county or affinity bar associations that operate reduced-fee referral programs, was born of the solutions recommended by the Blue Ribbon Commission. As originally conceptualized, Legal Edge would be a standalone website, which would filter litigants seeking lower cost representation to any county bar association that operated such a program. However, early stages of development demonstrated that to ensure the success of Legal Edge, and for Legal Edge to realistically compete with non-attorney online legal service providers, it would need to be matched with operational reduced fee programs within the counties to effectively take in and create referrals.

Simultaneous to the early development of Legal Edge, the Morris County Bar Association established the Morris/Sussex Vicinage Reduced-Fee Referral Program (RFP.) The RFP, administered by the bar association and staffed by various volunteer attorney bar association members in Morris and Sussex County, matched litigants with counsel who agreed to abide by a reduced rate fee schedule. The program operated in every division of the state Superior Court and Municipal Court in the vicinage. Litigants were referred by court personnel, including the ombudsperson and court staff who recognized litigants failing to qualify for legal services and intending to proceed unrepresented. Within the first two years, the program had successfully matched over 200 litigants with counsel.

Using this successful launch and the lessons learned from it, the NJSBA fine-tuned the platform and offered it for free to county and affinity bar associations to use. The program created a better, easier incentive for associations to develop a reduced fee program, particularly smaller associations with only one or part-time administrators. The software was also able to be customized to fit each association's unique needs, whether technological or substantive (recognizing that each bar association may choose different areas of law and economic eligibility limits). The Morris and Sussex County vicinage began using the Legal Edge software exclusively to run its program and saw both an uptick in referrals through the program and satisfaction among bar association staff with the program efficiency.

The continued expansion of Legal Edge would help members of the public who need to connect with

attorneys willing to accept a reduced fee. But that expansion will not happen without significant efforts of the NJSBA and other entities to advance its use. Some of the key hurdles that must be overcome include:

- Attorney recruiting will be key for success of the program, because while there are many practitioners who recognize and support the work of reduced-fee programs and are active participants, there are others who will not cut their hourly rate or are wary of reduced fee programs, in general.
- Gaining officially sanctioned and statewide support of the Judiciary will also be an essential recruitment tool for any county seeking to establish or sustain an RFP, as judges were the most reliable referral source for members of the public in Morris and Sussex counties.
- The program could benefit from further expansion of topic areas, possibly to encompass basic immigration matters, and needs to gain a foothold with other county and affinity bar associations to ensure that as many litigants as possible are matched with competent counsel, while at the same time assisting our courts and providing economic opportunity for underutilized attorneys.

For these reasons, it is important to recognize that Legal Edge is not a panacea. In addition to seeking to expand and grow the Legal Edge platform, it is also important to consider other modalities to address this need.

Among those are: developing and enhancing existing referral services; supporting the significant contributions of law firm *pro bono* efforts; law school, NJSBA and other bar association and legal entity clinics; and providing easy-to-navigate resources about the services available to the public to get legal assistance. The NJSBA believes citizens of New Jersey have a right to counsel in matters of magnitude and that legal assistance should be provided through the appropriate funding of the Public Defender's Office and legal services and will continue advocacy toward that goal.

The NJSBA is committed to continually exploring new and innovative ways to make affordable and accessible attorney-provided legal information, guidance and representation available to individuals unable to afford it otherwise.

Resources

Use of Non-Lawyers Providing Legal Services

- ⁱ See New Jersey State Bar Association’s “Guide for New Attorneys,” at pages 4-5.
- ⁱⁱ See Letter from NJSBA President Miles Winder to ABA President Katy Englehart dated December 28, 2015, at Paragraph 4.
- ⁱⁱⁱ See New Jersey State Bar Association’s Mission Statement on Leadership Page of Website:
- ^{iv} See New Jersey State Bar Association Resolution to the American Bar Association on the Future of Legal Services, dated December 16, 2015, at Paragraph 7; Letter from NJSBA President Miles Winder to ABA President Katy Englehart dated December 28, 2015, at Paragraph 4.
- ^v See New Jersey State Bar Association “Report of Blue Ribbon Commission on Unmet Legal Needs,” dated June 3, 2016
- ^{vi} See Letter of Miles S. Winder, III, President of the New Jersey State Bar to Judy Perry Martinez, Chair of the American Bar Association’s Commission on the Future of Legal Services dated October 27, 2015, at Paragraph 7.
- ^{vii} See American Bar Association, Commission on the Future of Legal Services, [Report on the Future of Legal Services in the United States](#), 2016.
- ^{viii} See American Bar Association, [How States are Using Limited License Legal Paraprofessionals to Address the Access to Justice Gap](#), Sept. 02, 2022.
- ^{ix} Washington State Bar Association, [Sunset of LLLT Program](#), last updated March 31, 2023
- ^x Florida Bar News, [Supreme Court Declines to Adopt Recommendations on Nonlawyer Ownership, Fee Splitting, and Expanded Paralegal Work](#), Mar, 8, 2022; The State Bar of California, [California Paraprofessional Program Working Group](#)
- ^{xi} See Legal Services of New Jersey website: [Warning to Immigrants: Beware of the Unauthorized Practice of Law by Notaries Public in New Jersey \(lsnjlaw.org\)](#)
- ^{xii} State of New Jersey, Office of the Attorney General, “Division of Consumer Affairs Takes Action Against Dozens of ‘Notarios’ Fraudulently Offering Immigration Services – DCA Aims to Protect Immigrant Communities from Fraud”: [Division of Consumer Affairs Takes Action Against Dozens of “Notarios” Fraudulently Offering Immigration Services - DCA Initiative Aims To Protect Immigrant Communities from Fraud - New Jersey Office of Attorney General \(njoag.gov\)](#)
- ^{xiii} See Florida Bar News, “Court Oks Medicaid Planning UPL Opinion,” March 1, 2015, [Court OKs Medicaid planning UPL opinion – The Florida Bar](#)
- ^{xiv} See Testimony of NJSBA President Paris P. Eliades to the ABA Commission on the Future of Legal Services, dated February 7, 2015, at p. 3.
- ^{xv} See ABA Lawyer Population Survey, “Lawyer Population by State 2022,” showing 40,078 lawyers in New Jersey in [2022 National Lawyer Population by State 2022 \(americanbar.org\)](#)
- ^{xvi} See American Bar Association Commission on the Future of Legal Services, “Report on the Future of Legal Services in the United States (2016), p. 39.
- ^{xvii} See Jane H. Aiken and Stephen Wizner (March 2010). Teaching and Doing: The Role of Law School Clinics in Enhancing Access to Justice. Fordham Law Review, 997 – 1011.
- ^{xviii} See Testimony of NJSBA President Paris P. Eliades to the ABA Commission on the Future of Legal Services, dated February 7, 2015, at p. 3.
- ^{xix} *Ibid*, p. 2.
- ^{xx} See RPC 5.3.
- ^{xxi} See Pew Research Center, “Some States May Allow Nurses to Do More Without Doctors,” Jan. 26, 2023, [pewtrusts.org/en/research-and-analysis/blogs/stateline/2023/01/26/some-states-may-allow-nurses-](#)

courts.wa.gov/court_rules/?fa=court_rules.proposedRuleDisplay&ruleId=6027

[to-do-more-without-doctors](#); American Medical Association “AMA successfully fights scope of practice expansions that threaten patient safety,” [ama-assn.org/practice-management/scope-practice/ama-successfully-fights-scope-practice-expansions-threaten](#).

^{xxii} See N.J.A.C. 13:35-2B-1, et seq. (Limited License: Physician Assistants), [njconsumeraffairs.gov/regulations/Chapter-35-Subchapter-2B-Physician-Assistant-Advisory-Committee.pdf](#); N.J.A.C. 13:37-7.1, et seq. (Certification of Advanced Practice Nurses), [njconsumeraffairs.gov/regulations/chapter-37-new-jersey-board-of-nursing.pdf](#).

Non-Lawyer Ownership of Law Firms

RPC 5.4

ABA Resolution 402

Arizona and Utah Opened the Door, But Firms Remain Skeptical of Alternative Business Structures, NJ Law Journal, February 20, 2023, p. 6

ABA Ethics Opinion Cracks Open Door to ABS, Keith Fisher, [americanbarassociation.org/groups/business-law/publications/blt/2021/12/aba-ethics-opinion/](#)

NJSBA Press Release "NJSBA Opposes Plans to Allow Non-Lawyers to Offer Legal Services and Own Firms Why Lawyers Reject Non-Attorney Firm Ownership, US Law Week, Sherry Levin Wallach, Opinion, September 30, 2022.

The Pitfalls and False Promises of Nonlawyer Ownership of Law Firms 19OCT

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