

Comments on: Non-Lawyer Ownership and LLLPs

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Responsive Law thanks the Arizona Supreme Court for the opportunity to present these comments. Responsive Law is a national nonprofit organization working to make the civil legal system more affordable, accessible, and accountable to its consumers. We advocate for policies that expand how and by whom legal services may be provided so that people of all income levels can get the legal help they need. **We support the recommendations of the Task Force on the Delivery of Legal Services and urge the Court to approve them.**

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Consumers at All Economic Levels Cannot Afford Legal Help

The United States is facing an access to justice crisis. While many calculations of the extent of this crisis focus on the poorest Americans, the scope of the crisis extends all the way to Americans of modest means and beyond, to encompass most of the middle class. Unfortunately, as we face a pandemic and likely recession, people's legal needs are likely to increase while their ability to pay for legal help will decrease.

The justice gap in the United States extends from the poorest Americans across the middle class. In the World Justice Project's 2020 report, the United States ranks 109th out of 128 countries (tied with Honduras, Bangladesh, and Sri Lanka) in the affordability and accessibility of its civil justice system.¹ Americans cannot afford to pay lawyers for assistance with everyday legal needs even though the average American household faces a significant legal problem every year.² More Americans do not address their legal problems

¹ World Justice Project, *WJP Rule of Law Index 2020*, available at <https://worldjusticeproject.org/rule-of-law-index/factors/2020/United%20States/Civil%20Justice>

² Gillian K. Hadfield & Jamie Heine, *Life in the Law—Thick World: The Legal Resource Landscape for Ordinary Americans in Beyond Elite Law: Access to*

due to lack of access to justice than their peers in countries such as England and the Netherlands, where there are fewer restrictions on how legal services can be offered.³ Small businesses also struggle with the gap in access to justice, with over half facing legal problems without legal assistance.⁴

Eliminating Rule 5.4 is a Necessary Condition for Making Legal Help Affordable

Allowing the corporate practice of law is a necessary condition to fill the gap in providing adequate legal help. Just as H&R Block and TurboTax have made navigating the tax code widely accessible and affordable on a national scale, a mass-market law firm could allow millions of Americans to affordably and accessibly navigate the legal system. The economies of scale that can only be achieved by outside investment would bring down the costs of legal services. Almost every law firm providing services to middle-income individuals and small businesses on issues such as family law, employment law, housing, and basic corporate and business law is a small business of no more than a dozen attorneys. A large national firm specializing in these issues could provide standardized training to the attorneys it works with, perform quality control on services offered to clients, and let lawyers focus on practicing law rather than finding clients, maintaining trust accounts, and collecting fees.

Opponents of eliminating Rule 5.4 have cited the importance of protecting lawyers' professional independence. But Rule 5.4 is not a good means of protecting that value. Lawyers' professional independence is already protected by other provisions of the Rules of Professional Conduct. Additionally, the frequent argument that non-lawyers would exercise improper influence over lawyers in their employ simultaneously overstates and understates lawyers' ethical propriety. It assumes that lawyers are saints who have no

Civil Justice for Americans of Average Means (Samuel Estreicher & Joy Radice eds., 2015) (observing that fifty to sixty percent of low- and moderate-income American households face an average of two legal problems annually).

³ Id.

⁴ LegalShield, *Decision Analyst Survey: The Legal Needs of Small Business* (2013), available at <https://www.le-galshield.com/news/legal-needs-american-families-0>.

possible motivation to exercise undue pressure on lawyers to act against their clients' best interests (e.g., padding of hours, pressure to settle a contingency-fee case). At the same time, it assumes that lawyers have so little backbone that they would ignore all their obligations to their clients if pressured by their corporate employer.

Consumers Can Also Benefit from Using Non-Lawyer Professionals to Assist with Their Legal Matters

Finally, we also support the proposal to allow LLLPs to provide legal services, as it can be a valuable method of increasing access to affordable legal help. Such arrangements are common in other professions. For example, nurse practitioners and physician assistants offer more affordable preventative health services than fully licensed physicians; the same can be said regarding IRS enrolled agents versus CPAs when it comes to tax services. There is no reason that this commonsense proposal should not work in the legal profession as well.

Conclusion

The access to justice crisis in America is growing and will not improve without systemic changes to who can provide legal services and the business models they may use to do so. On behalf of the overwhelming majority of Arizonans who can't currently afford legal help, **we urge the Court to adopt the recommendations of the Task Force.**