

RETHINKING REGULATION OF LEGAL SERVICES: Authorizing Community Justice Workers

AT A GLANCE:

- **In marginalized communities**, lawyers are often inaccessible due to financial, geographical, and cultural barriers.
- **Community Justice Workers (CJWs) are trained non-lawyers who provide limited legal services** under the supervision of community-based organizations. State law exempts them from unauthorized practice of law statutes.
- **Four states**, Alaska, Delaware, Utah, and Arizona, have implemented variations of CJW programs.
- Although empirical research on the impact of such programs is underway, early reports from legal aid organizations show that **CJWs have achieved positive outcomes for their clients.**

Executive Summary

Community Justice Workers (CJWs) have emerged as a grassroots solution to large amounts of unmet civil legal need. In four states, trained non-lawyers provide limited legal services to individuals facing civil legal issues, such as debt collection or eviction.¹ Whereas legal paraprofessionals must undergo a lengthy state-run licensure process in order to provide services without violating unauthorized practice of law rules, CJWs are issued a waiver that exempts them from enforcement of such rules so long as they operate under the supervision of an approved community-based or legal aid organization.² Their scope of practice is more limited than paraprofessionals and they must obtain the informed consent of clients, who agree to representation from a non-lawyer.³

Currently, Alaska, Delaware, Arizona, and Utah are the only states with laws that allow CJWs—or their equivalent—to provide legal services. However, such programs are being developed for Tribal communities in Oklahoma, Montana, Arizona and Minnesota.⁴ Additionally, access to justice leaders from Alaska and the Legal Services Corporation have joined forces to establish Frontline Justice, an organization that seeks to support the creation and implementation of CJW programs across the country.⁵

¹ Order Adopting Bar Rule 43.5, No. 1994 (Alaska 1994); DEL. R. SUP. CT. 57.1 (2023); In re: Application of Timpanogos Legal Center Certified Advocate Partners Program (Utah 2021); Authorizing a Housing Stability Legal Advocate Pilot Program, No. 2023-19 (Ariz. 2023).

² *Id.*

³ *Id.*

⁴ Director Rachel Rossi of the Office for Access to Justice Delivers Keynote Remarks at the Launch of the Alaska Legal Services Corporation's Community Justice Worker Resource Center, DEP'T OF JUST. OFFICE OF PUB. AFFS. (Oct. 25, 2023), <https://www.justice.gov/opa/speech/director-rachel-rossi-office-access-justice-delivers-keynote-remarks-launch-alaska-legal>.

⁵ FRONTLINE JUSTICE, <https://www.frontlinejustice.org/> (last visited Dec. 18, 2023).

As resources are directed to researching and implementing this solution, its efficacy and impact will become more known. For now, it is one promising way that states are seeking to serve low-income individuals in the civil legal system.

Case Studies

ALASKA

In addition to many of the access to justice challenges faced by other states, Alaska must contend with its vast geography (it is the size, in land mass, of the next three largest states combined) and the many barriers to legal services that brings.⁶ These include sparsely populated areas, some of which are not accessible by road, and internet connectivity issues.⁷ Alaska also boasts great diversity, with the highest proportion of indigenous population of any state in the country, adding another layer of complexity to the provision of legal services.⁸ Exacerbating these challenges, there are only 1.13 legal aid attorneys per 10,000 Alaskans in poverty.⁹

In response in 2019, the Alaska Legal Services Corporation (ALSC) partnered with medical workers at Alaska Pacific University and Alaska Native Tribal Health Consortium to incorporate legal services

into their community-based provision of healthcare services.¹⁰ In 2019, they developed asynchronous training modules for volunteers on issues such as debt collection avoidance, estate planning, and domestic violence, working with local communities to ensure that the materials were culturally competent.¹¹ Known as Community Justice Workers, the volunteers assisted clients on cases specific to the practice area in which they were trained, working under the supervision of ALSC staff.¹² The CJW program showed early success, with over 100 trained non-lawyers achieving positive outcomes for clients in 74 of the 88 cases they handled.¹³ Because the CJWs were not licensed to practice law, however, they could only help with a limited set of tasks, such as providing information for clients in court proceedings and advocating in administrative proceedings.¹⁴

Given the promise and popularity of the CJW program, ALSC sought a waiver from the Alaska Supreme Court that would allow CJWs to provide expanded legal services without violating unauthorized practice of law rules.¹⁵ In November 2022, the Alaska Supreme Court issued the waiver as Alaska Bar Rule 43.5.¹⁶ CJWs are permitted to work in the same legal areas as before the waiver and the program is

⁶ STACEY MARZ, MARA KIMMEL & MIGUEL WILLIS, ALASKA'S JUSTICE ECOSYSTEM: BUILDING A PARTNERSHIP OF PROVIDERS 1 (2017).

⁷ *Id.* at 15.

⁸ Talk Justice Podcast, *Using Supervised Non-lawyers to Provide Limited-Scope Legal Assistance*, LEGAL SERVS. CORP., at 4:09 (Jan. 17, 2023), <https://legaltalknetwork.com/podcasts/talk-justice/2023/01/using-supervised-non-lawyers-to-provide-limited-scope-legal-assistance/>.

⁹ ALASKA LEGAL SERVS. CORP., INTRODUCTION TO PROPOSED ALASKA BAR RULE 43.5, at 1 (2022).

¹⁰ *Id.*

¹¹ Talk Justice Podcast, *supra* note 8, at 11:30.

¹² ALASKA LEGAL SERVS. CORP., *supra* note 9.

¹³ *Id.* at 2.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Order Adopting Bar Rule 43.5, No. 1994 (Alaska 1994).

expanding into eviction defense and additional family law matters.¹⁷ They are required to obtain their client's informed consent and have the supervision of an attorney.¹⁸

The program has already grown to over 325 volunteers and continues to expand.¹⁹ So far, 100% of cases have resulted in outcomes that the client viewed as successful, such as restoring food stamps or drafting a will.²⁰ Though it is too early to judge their success, ALSA is currently partnering with the National Science Foundation on research to study the impact of CJWs.²¹

DELAWARE

A 2021 study of Delaware eviction proceedings found that approximately 2% of tenants had representation, compared to 86% of landlords.²² This vast disparity was in large part due to the state's rules allowing landlords—but not tenants—to be represented by non-lawyers.²³ In response to this inequity, in 2021 the Delaware Supreme Court established the Committee to Examine Amendment of the Supreme Court Rules

to Permit Non-Attorney Representation of Tenants in Residential Eviction Proceedings.²⁴ The Committee recommended a rule permitting non-lawyers to represent tenants in court, which the Delaware Supreme Court adopted in January 2022.²⁵ In November 2023, the state legislature also passed a law establishing a right to representation for renters facing eviction, which differs from a right to counsel in that it guarantees representation by a lawyer or qualified non-lawyer.²⁶

In order to be eligible to become a tenant advocate, one must be an employee or independent contractor of one of the state's legal aid organizations.²⁷ After completing a training from a supervising legal aid agency, advocates are permitted to support tenants throughout eviction and related proceedings, including providing advice regarding defenses, engaging in settlement negotiations, filing pleadings, and appearing before the court.²⁸ They must, however, obtain the informed consent of the client first, and they may not ask for any compensation from the tenant.²⁹

¹⁷ Telephone Interview with Nikole Nelson, Executive Director, Alaska Legal Servs. Corp. (Nov. 1, 2023).

¹⁸ Order Adopting Bar Rule 43.5, No. 1994 (Alaska 1994).

¹⁹ Director Rachel Rossi of the Office for Access to Justice Delivers Keynote Remarks, *supra* note 4.

²⁰ Telephone Interview with Nikole Nelson, *supra* note 17.

²¹ Director Rachel Rossi of the Office for Access to Justice Delivers Keynote Remarks, *supra* note 4.

²² STOUT, THE ECONOMIC IMPACT OF AN EVICTION RIGHT TO COUNSEL IN DELAWARE 11 (2021).

²³ *Id.*

²⁴ *Delaware to Allow Non-Lawyer Representation for Tenants in Eviction Cases*, NAT'L LOW INCOME HOUS. COAL. (Feb. 14, 2022), <https://nlihc.org/resource/delaware-allow-non-lawyer-representation-tenants-eviction-cases>.

²⁵ DEL. R. SUP. CT. 57.1 (2023).

²⁶ 84 Del. Laws 112 (2023).

²⁷ DEL. R. SUP. CT. 57.1 (2023).

²⁸ *Id.*

²⁹ *Id.*

Though the program is still in its early stages, there are currently 10 trained tenant advocates, who have assisted in whole or in part on roughly 700-1000 cases, taking the lead (instead of their supervisors) on 400-500 of them.³⁰ Early reports from clients indicate that tenant advocates provide more timely and consistent communication than lawyers.³¹

UTAH & ARIZONA

Utah and Arizona have both reformed their unauthorized practice of law rules to permit licensed paraprofessionals to provide legal services. However, such programs have high barriers to entry, requiring rigorous training and education. In 2022, Innovation for Justice (i4J)—an organization working to propose and implement solutions to the justice gap—recommended establishing a training certificate for employees of community-based non-profit organizations (CBOs) to provide limited-scope legal advice related to housing issues.³² In 2023, both Utah and Arizona approved the Housing Stability Legal Advocates pilot program.³³

Though it is too early to assess the success of the program, i4J's research on the model provides insight into the expected benefits. By embedding such services

in CBOs, i4J predicts that more advocates will become certified to provide legal services than under the more costly and time-intensive paraprofessionals licensing scheme.³⁴ Additionally, individuals facing housing issues will benefit from a one-stop shop where they can receive support, rather than having to navigate both legal and non-legal housing services organizations.³⁵ Finally, research shows that tenants experiencing housing instability are more comfortable working with non-lawyers, whom they have an easier time trusting, making CBOs well-positioned to provide wrap-around assistance.³⁶

i4J is also working on several related initiatives, including an approved program that allows community healthcare workers to give limited-scope legal advice to individuals at risk of medical debt collection and a proposal to embed CJWs in community-based medical services in West Valley City, Utah.³⁷

Utah has also recently approved the Timpanogos Legal Center's Certified Advocate Partners Program (CAPP) as part of its regulatory sandbox. Nonlawyers with at least two years of victim advocacy experience are now permitted to assist victims of domestic violence, sexual assault, child abuse, and related crimes

³⁰ Email from James Teufel, Principal, Help Justice LLC, to Molly Shapiro, Civil Justice Fellow, Deborah L. Rhode Center on the Legal Profession (Oct. 31, 2023, 8:11 PM PST) (on file with author).

³¹ *Id.*

³² INNOVATION FOR JUST., REPORT TO ARIZONA AND UTAH SUPREME COURTS: EXPANDING ARIZONA'S LP AND UTAH'S LPP PROGRAM TO ADVANCE HOUSING STABILITY 46 (2022).

³³ Authorizing a Housing Stability Legal Advocate Pilot Program, No. 16 (Utah 2023); Authorizing a Housing Stability Legal Advocate Pilot Program, No. 2023-19 (Ariz. 2023).

³⁴ INNOVATION FOR JUST., *supra* note 33, at 43.

³⁵ *Id.*

³⁶ *Id.* at 45.

³⁷ *Medical Debt Legal Advocate Initiatives*, INNOVATION FOR JUST., <https://www.innovation4justice.org/mdla> (last visited Dec. 18, 2023); *Community Justice Workers & Health*, INNOVATION FOR JUST., <https://www.innovation4justice.org/work/cjws-health> (last visited Dec. 18, 2023).

in seeking protective orders and stalking injunctions.³⁸ This includes giving legal advice about which protective order is most appropriate for clients, preparing clients for hearings, and drafting civil relief orders on behalf of clients.³⁹

CAPP, which was established in 2021, has now trained 13 advocates.⁴⁰ In the program's first two years, advocates have assisted 199 clients, provided 491 services, and helped with 153 protective orders.⁴¹ In part because the protective order process can be complex (there are 13 different types of protective orders in Utah), receiving legal advice throughout makes a difference.⁴² Early data shows that clients, many of whom live in rural areas, have more success when represented by CAPP advocates than those in the state who do not have CAPP representation.⁴³

Success & Challenges

SUCSESSES

Affordable. The services of CJWs are typically free for their clients.⁴⁴ Thus, unlike legal paraprofessionals, these services are affordable for indigent individuals navigating the civil legal system.

Community-Based. CJWs are members of the community who have similar backgrounds to, and might have experienced the same legal issues as, the people they are assisting. In Alaska, for example, many of the CJWs are tribal employees and village health aides.⁴⁵ These commonalties help build relationships of trust and ensure that legal services are accessible for clients.

Legal Aid and CBO Led. CJW programs are designed and supervised by legal aid or community-based organizations, ensuring that the services are integrated into the state's existing legal aid structure and insulating them from the resistance of state bar associations.

³⁸ In re: Application of Timpanogos Legal Center Certified Advocate Partners Program (Utah 2021).

³⁹ CERTIFIED ADVOCATE PARTNERS PROGRAM, 2023 CALL FOR APPLICANTS 1 (2023).

⁴⁰ *Certified Advocate Partners Program*, TIMPANOGOS LEGAL CTR., <https://www.timplegal.org/legal-services/certified-advocate-partners-program> (last visited Dec. 18, 2023).

⁴¹ *Id.*

⁴² Kristi Eaton, *Legal Assistance Pilot Program Helps Rural Victims of Domestic Violence and Abuse in Utah*, DAILY YONDER (Jan. 6, 2022), <https://dailyyonder.com/legal-assistance-pilot-program-helps-rural-victims-of-domestic-violence-and-abuse-in-utah/2022/01/06/>.

⁴³ *Certified Advocate Partners Program*, *supra* note 40.

⁴⁴ Order Adopting Bar Rule 43.5, No. 1994 (Alaska 1994); DEL. R. SUP. CT. 57.1 (2023).

⁴⁵ ALASKA LEGAL SERVS. CORP., *supra* note 9.

CHALLENGES

Time-Intensive to Launch. The community-based nature of CJWs—which is one of the program’s greatest strengths—also can lead to such programs being slow to launch. In Alaska, the program was developed over the course of four years, in part because ALSC sought input from community members across the state.⁴⁶ However, this time could be drastically shortened now that there is a model that other states can use.

Retention Through Training. Though there is a lower barrier to entry for CJWs than paraprofessionals, extensive training is still required. Both Alaska and Delaware have seen individuals start the training process but not complete it, raising questions about how such programs can support prospective CJWs throughout their certification.⁴⁷

State Funding. So far, funding for CJW programs comes from grants from government, private donations, and non-profits. An ongoing challenge will be maintaining and expanding funding sources to support the growth of CJWs. This is already a concern in Delaware, given federal emergency rental assistance funding has decreased since the pandemic.⁴⁸

⁴⁶ Telephone Interview with Nikole Nelson, *supra* note 17.

⁴⁷ *Id.*; Email from James Teufel, *supra* note 30.

⁴⁸ Email from James Teufel, *supra* note 30.