

Seeking Comments on Proposed Amendment adding Bar Rule 43.5
Granting Waiver to Engage in the Limited Practice of Law for Non-Lawyers
Trained and Supervised by Alaska Legal Services Corporation

At its August 31, 2022 meeting, the Board of Governors voted to approve the publication of a proposal to add a new Alaska Bar Rule 43.5, as requested by the Regulatory Reform Subcommittee of the Alaska Court System's Access to Justice Committee. The Board is seeking comments from members on this proposal.

As explained by the below Memorandum from the Regulatory Reform Subcommittee, the proposal would permit certain non-lawyers, trained by and under the supervision of Alaska Legal Services Corporation, to engage in the limited practice of law. The proposal represents an attempt by ALSC and the Subcommittee to partially address the access to justice gap in Alaska, especially in rural communities. For further information on these issues, please see the information compiled by the Court System's Justice For All Project, available at: <https://courts.alaska.gov/jfa/>.

Members of the Subcommittee are: Justice Jennifer Henderson (Alaska Supreme Court), Stacey Marz (AK Court System), Nikole Nelson (ALSC), Susie Dosik (Alaska Judicial Council), James Torgerson (bar member), Ryan Fortson (bar member/UAA Justice Center), Meghan "Sig" Topkok (bar member), Christopher Slottee (bar member), Dr. Robert Onders (Alaska Native Tribal Health Consortium), Deborah Periman (bar member/UAA Justice Center), and Phil Shanahan (Bar Counsel).

Please send any comments to Bar Counsel Phil Shanahan, shanahan@alaskabar.org, by October 13, 2022.

Introduction to Proposed Alaska Bar Rule 43.5

“Expanding access to justice requires innovation and moving past the idea that an attorney or a courtroom is the best or only solution for Alaskans.” *Alaska Court System’s Justice for All Statewide Action Plan*.

In 2019 Alaska Legal Services Corporation (ALSC), in partnership with Alaska Pacific University (APU) and Alaska Native Tribal Health Consortium (ANTHC), created the Community Justice Worker (CJW) Project, an innovative new step toward addressing Alaska’s escalating access to justice crisis. Now to make the project more effective, ALSC seeks a waiver that would allow properly trained and supervised CJWs to provide legal assistance to ALSC clients who otherwise would go without.

The Challenge

The Alaska Court System’s “*Justice For All*” *Statewide Action Plan* estimates that Alaskans experience 2.1 civil legal issues per person, or nearly 1 million legal issues among adult Alaskans, every 18 months. Comparing the number of cases filed in court to the number of estimated legal issues, it is clear that most Alaskans are not accessing the justice system to address their legal needs. ALSC is the only statewide provider of free, comprehensive civil legal aid, and operates the largest pro bono program in Alaska. As such, we are tasked with the enormous challenge of addressing the civil legal needs of the over 170,000 Alaskans who can’t afford legal help. However, there are only 1.13 ALSC attorneys available per every 10,000 Alaskans in poverty. Each year our limited resources force us to turn away one person for every individual we help. This doesn’t even take into account the many Alaskans who need legal help but can’t or don’t reach us. Given this reality, the need for a new strategy utilizing non-attorney resources to address Alaska’s civil justice crisis was clear, and the Community Justice Worker Training Program was launched in 2019.

Community Justice Worker Training Program

ALSC identified several areas of law where non-lawyer advocates could supplement existing ALSC staff and pro bono attorney efforts: addressing public assistance delays and denials, accessing unemployment benefits, debt collection defense, estate planning, domestic violence protective order advocacy, and Indian Child Welfare Act matters. The CJW Project recruits and comprehensively trains qualified non-lawyer volunteers (such as paralegals, tribal legal advocates, tribal employees, village health aids, undergraduate and law school students) to serve Alaskans who can’t afford or otherwise access civil legal help.

We have successfully recruited and trained CJWs in forty different Alaska communities (many off the road system). CJW placement in remote

areas of Alaska enables us to better match clients with legal help in their same geographic region, whereas the vast majority of our staff and pro bono attorneys are located in the urban areas on the road system and may not have a firm understanding of the challenges their clients are facing. Once trained, the CJWs assist ALSC clients on cases specific to the substantive area in which they have been trained. Each CJW is also mentored and supervised by an ALSC or pro bono attorney. The CJWs have advocated for individuals in administrative proceedings, drafted letters and other documents and provided legal information to clients in court proceedings. To date 88 cases have been placed with CJWs. SNAP cases are an example of the impact of CJWs. CJWs have helped low-income clients increase or maintain their monthly benefits, successfully reduce or eliminate overpayments, and identify back-owed benefits. Through their SNAP advocacy, CJWs have helped low income households maintain thousands of dollars in benefits. Additionally, CJWs have drafted and assisted in executing wills for elderly, mostly rural clients as well as put on informational will clinics for elders interested in learning about will drafting. In all, CJWs have achieved positive outcomes for clients in 74 of the 88 cases they have handled, in the other 14 cases clients did not follow through with their cases. These are positive outcomes for clients who otherwise would have gone without legal help.

The success of the CJW project has drawn attention from national Access to Justice researchers as a potential solution for not just Alaska, but the nation's growing civil justice crisis. It is currently being studied by Harvard's Access to Justice Lab and will shortly be the subject of another study conducted by the American Bar Foundation's Access to Justice Research Initiative including Macarthur Award winning researcher Dr. Becky Sandefur.

Building on this success and inspired by regulatory reform efforts in the Lower 48 in states such as Utah, Arizona and Delaware, and with oversight and support from the Alaska Supreme Court's Access to Civil Justice Subcommittee on Regulatory Reform and national Access to Justice researchers and policy voices, ALSC seeks a pathway for qualified CJWs to expand their practice and allow limited legal advocacy in certain civil cases where clients would otherwise go without help..

The proposed limited practice waiver has been carefully crafted as a measured approach towards expanding those who may provide legal assistance and representation within a very defined scope. The individuals would be granted waivers to provide limited legal assistance to ALSC clients on specific legal issues after completing required training on ethics, procedure and substantive law, all while receiving ongoing oversight and supervision by ALSC. The proposed rule also requires ALSC to provide quarterly reports to the Board of Governors and the Supreme Court's Access to Civil Justice Subcommittee on Regulatory Reform.

Rule 43.5: Waiver to Engage in the Limited Practice of Law for Non-Lawyers Trained and Supervised by Alaska Legal Services Corporation.

Section 1. Eligibility. A person not admitted to the practice of law in this state may receive permission to provide legal assistance in a limited capacity in certain civil matters in the state if such person meets all of the following conditions:

- (a) The person has completed the required training provided by Alaska Legal Services Corporation in the following areas: Rules of Professional Conduct, including, but not limited to conflicts of interest, confidentiality and duty of candor, the substantive area of law in which the person will practice, and appropriate tribunal procedures;
- (b) The person will be supervised by Alaska Legal Services Corporation;
- (c) The person will engage in the limited practice of law exclusively for Alaska Legal Services Corporation on a full-time or part-time basis or as a volunteer;
- (d) The person will inform all clients in writing that they are not a lawyer and obtain consent confirmed in writing from the client to their representation by the non-lawyer.

Section 2. Application. Application for such permission shall be made as follows:

- (a) The executive director of the Alaska Legal Services Corporation shall apply to the Board of Governors on behalf of a person or persons eligible under Section 1;
- (b) Application shall be made on forms approved by the Board of Governors and shall include the proposed scope of each applicant's practice;
- (c) Proof shall be submitted with the application that the applicant has completed the requisite training and that appropriate supervision is in place as set forth in Section 1.

Section 3. Approval. The Board of Governors shall consider the application(s) as soon as practicable after it has been submitted. If the Board finds that the applicant meets the requirements of Section 1 above and the applicant has completed training adequate for the scope of practice sought, it shall grant the application and issue a waiver to allow the applicant to provide legal assistance in the state of Alaska in the substantive areas of law in which they have completed requisite training and have supervision as required in Section 1. The scope of legal assistance will be limited to that approved by the Board pursuant to Section 2(b) of this Rule.

Section 4. Conditions. A person granted such permission may provide legal assistance in the scope approved pursuant to Section 3 of this Rule and only as required in the course of representing clients of Alaska Legal Services Corporation and shall be subject to the provisions of Part II of these rules to the same extent as a member of the Alaska Bar Association.

Section 5. Reporting. Alaska Legal Services Corporation shall provide regular quarterly reports to the Alaska Supreme Court, and the Board of Governors regarding the number of clients served by approved non-lawyers and case outcomes, as well as any complaints related to client harm, and the termination of any active waivers.