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### **The Need for Non-Lawyer Assistance and Limited License Practice in Philadelphia**

On a Monday in November 2018, the 3<sup>rd</sup> floor of 1501 Arch Street, Philadelphia's Family Court building, resembles an airport during the holiday season. It's full of Philadelphians waiting to have their custody and domestic relations matters heard. Rows and rows of plastic grey seats are full of parents, guardians, social workers, children, siblings, probation officers, and other individuals.

A court clerk, in charge of two to three courtrooms, tries to control the crowd. Attorneys, outnumbered by the crowd of litigants, mill about and occasionally approach the harried clerk or speak in consultation rooms with their clients. When approached by the nervous, wary, and oftentimes angry litigants, the clerk asks each party if they could reach an agreement so that he can clear up the Judge's long list. It's exhausting. And this is only Monday on the 3<sup>rd</sup> floor. Each floor is full and a typical day in Philadelphia's Family Court is, for lack of a better word, chaotic.

This particular Monday, after my supervisor and I won a client's expedited custody motion, an exhausted-looking young woman asked me for a card. This was the first time I had been mistaken for a "real lawyer," and I was taken aback. But the woman must have been watching as I counseled my trembling client who hadn't seen her daughter in months. She probably saw me review my client's case file and talk to my supervisor about our strategy. And, she certainly saw me exit the courtroom with my client who was crying tears of joy because she'd get to see her three-year-old again. I understood. I was a "figure in a suit" that could possibly help her navigate her own legal issues.

I explained that I was with Temple Legal Aid, and that I could give her the number to our clinic. I warned her that there was a waiting list. She shrugged and took the number down anyway, said thank you, and retreated back to her plastic grey seat.

Even if the woman calls Temple Legal Aid - or Philadelphia VIP, Community Legal Services, or some other low-income based legal aid agency - she may still have to represent herself. The fact that “lawyers have priced themselves out of the market” means that most middle and low income Philadelphians cannot afford legal representation.<sup>1</sup> Philadelphia’s legal aid agencies are absolutely overwhelmed by their demand and their simultaneous lack of funding, which has been declining.<sup>2</sup> These agencies, like Temple Legal Aid, also often screen clients based on their income and poverty level, leaving individuals who may be a few percentage points above the poverty level without representation.

Therefore, Philadelphia’s civil courts, like family court, are truly overcome with pro-se petitioners attempting to navigate the convoluted and oftentimes daunting court system. Testimony at the 2013 Pennsylvania Senate Judiciary Committee hearings by the Civil Legal Justice Coalition found that in Philadelphia in 2012, the Domestic Relations court received 11,994 petitions for Protection from Abuse Orders, 39,500 support petitions, and 12,951 divorce filings.<sup>3</sup> In April 2013, there were “706 custody events before judges, and of that number 208 had one attorney at least, not both attorneys.” There are also over 30,000 landlord/tenant eviction cases filed in Municipal Court each year in Philadelphia, and only about 3-5% of tenants have attorneys as compared to roughly 85% of landlords.<sup>4</sup>

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<sup>1</sup> Gene Johnson, The Seattle Times: Washington Experiments with More Affordable Legal Advice, <https://www.seattletimes.com/seattle-news/washington-experiments-with-moreaffordable-legal-advice/>.

<sup>2</sup> Towards Equal Justice For All: Report of the Civil Legal Justice Coalition to the Pennsylvania State Senate Judiciary Committee, 10, (2014), <http://www.philadelphiabar.org/WebObjects/PBA.woa/Contents/WebServerResources/CMSResources/ReportoftheCivilLegalJusticeCoalition.pdf>.

<sup>3</sup> *Id.* at 19.

<sup>4</sup> Towards Equal Justice For All, *supra* note 2, at 19.

There is no question that there is an unmet legal need in Philadelphia. If Philadelphia could create “limited-license legal technician” positions, some of this burden could be alleviated, and more individuals could have access to justice in their civil matters. In Washington, where “limited-license legal technicians” have been introduced, highly-trained paralegals charge low rates to provide legal advice, research, and drafting of documents.<sup>5</sup> By increasing low and middle-income Philadelphian’s access to these legal resources, a similar program could help litigants solve legal problems in a more productive fashion while simultaneously increasing efficiency of the courts Philadelphia.

What the woman who approached me for a card did not know is that if my client had gotten legal help sooner, she wouldn’t have been in a situation that left her without access to her daughter. Instead, the client now has a long journey ahead of her in the Family Court system to resolve her case. Unfortunately, this seems to be common. Testimony at the Judiciary Committee hearings provided more examples of cases which were only ultimately resolved with the assistance of a lawyer, including the following: an injured veteran unable to work in foreclosure on his home, a father unable to gain access to his child, and a domestic violence victim who didn’t know she could call witnesses at her Protection from Abuse hearing.<sup>6</sup> These examples illustrate just how integral attorneys are in the civil justice system, and how needed they are to efficiently resolve legal disputes.

Not only would a limited license technician program help litigants, but it could positively impact the courts as well. Pro se litigants, unfamiliar with the law and court protocols, often slow down resolution of cases, slowing down the docket, and ultimately the administration

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<sup>5</sup> Johnson, *supra* note 1.

<sup>6</sup> Towards Equal Justice For All, *supra* note 2, at 13.

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of justice.<sup>7</sup> For example, filings are often incorrect and litigants need extra time for refiling, unrepresented litigants fail to present necessary evidence for their cases, and other cases may not be brought at all if the parties had consulted with a lawyer beforehand.<sup>8</sup>

Inside the courtroom judges struggle to balance the duty of neutrality and the duty to preserve litigant's rights in their courtroom.<sup>9</sup> Pro se litigants rarely make objections, for example, and this results in "presentation of long-winded, extraneous and irrelevant matters."<sup>10</sup> Judge Gary Caruso testified to the Judiciary Committee hearings, these types of situations cause judges to have to "balance" and walk on an "ethical tight rope" when it comes to preserving the delicate equilibrium.<sup>11</sup>

As the Monday morning court clerk's situation illustrates, the court staff themselves are often put in difficult ethical situations. Another judge testified at the Judiciary Committee hearings that "the entire courthouse staff faces the struggle of attempting to explain the legal process to the unrepresented litigants, help them understand the pleading procedures, and provide the correct forms, without crossing the line to improperly providing legal advice."<sup>12</sup> The clerks are often the litigant's "first point of contact," and creates situations where improper legal advice could be provided.<sup>13</sup> Arming pro se litigants with legal advice before they ever step foot into the courthouse and answering many of these questions could greatly expedite the court's efforts at administration of justice.

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<sup>7</sup> Towards Equal Justice For All, *supra* note 2, at 28.

<sup>8</sup> *Id.* at 29.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> Towards Equal Justice For All, *supra* note 2, at 30.

<sup>13</sup> *Id.*

Though a limited legal license technician program could greatly improve Philadelphia's civil legal landscape, it is foreseeable that the program would have a few downsides. In Washington, the technicians do not represent clients in legal proceedings or negotiate on behalf of their clients.<sup>14</sup> These are two areas of legal representation rightfully left to a lawyer. However, without increasing Philadelphian's access to direct representation in their legal proceedings, the issue can only be partially solved. The difficulties that pro se litigants face in the courtroom are unable to be cured solely via consultation with a legal technician. Only establishment of a civil right to counsel can solve this issue.

Additionally, as lawyers take years to learn the law and prepare for the kinds of situations that legal technicians would face when providing legal assistance, training for technicians must be rigorous. Washington's program requires "3,000 hours of work as a paralegal, 45 hours of core curriculum through an American Bar Association-approved legal program, and a family law course offered through the University of Washington Law School."<sup>15</sup> These standards are daunting, but necessary. There is a possibility that, as Stanford Law School professor Deborah Rhode pointed out, "a relatively small number of individuals [will be] ready to jump through the hoops."<sup>16</sup> A possible way to solve this issue could be to get law firms on board with incentivizing their paralegals to participate in training and providing technician services. Law students could also be included in the pool of limited license legal technicians, possibly with legal clinics such as Temple Legal Aid providing training for its students and utilizing them to expand their programs.

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<sup>14</sup> Johnson, *supra* note 1.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

Though young lawyers may initially fear that allowing non-lawyers to give legal advice might rob them of their clientele, the fear would most likely be unfounded. The program, according to the Philadelphia Bar Association's Resolution would be aimed at providing legal services in areas of great unmet need.<sup>17</sup> Obviously, there are not enough lawyers who are willing and able to help the disadvantaged in areas of great unmet legal need. Unless there is some sudden influx of young lawyers ready to tackle the issues facing poor and underserved populations for a low fee, young lawyers will not be economically affected by the imposition of legal technicians.

In fact, lawyers have a responsibility to help the disadvantaged. Our rules of Professional Conduct say so. The Pennsylvania Rules of Professional Conduct state in Rule 6.1 that a "lawyer should render public interest legal service."<sup>18</sup> The comments to the rule clarify that "every lawyer, regardless of professional prominence or professional workload, should find time to participate in or otherwise support the provision of legal services to the disadvantaged."<sup>19</sup> Young lawyers have nothing to fear and should instead be hopeful about this type of change. Increasing access to justice should be something that young lawyers strive for. They should find time to support these types of programs, and volunteer their own time to the cause.

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<sup>17</sup> Philadelphia Bar Association Board of Governors, Philadelphia Bar Association Resolution Regarding Emerging Models for Nonlawyer Assistance and Practice, (2016), [http://www.philadelphiabar.org/page/ResApril16\\_1?appNum=5](http://www.philadelphiabar.org/page/ResApril16_1?appNum=5)

<sup>18</sup> PA ST RPC 6.1

<sup>19</sup> *Id.*, Comment 3.