



INSTITUTE *for the* ADVANCEMENT
of the AMERICAN LEGAL SYSTEM



UNIVERSITY of
DENVER

IAALS Comment RE: the Expansion of the Legal Paraprofessional Pilot Project

I write on behalf of IAALS, the Institute for the Advancement of the American Legal System, in response to the recommendation of expanding the Minnesota Legal Paraprofessional Pilot Project to include cases involving allegations of domestic abuse or child abuse. IAALS is a national, independent research center at the University of Denver dedicated to continuous improvement of the of the civil justice system. IAALS identifies and researches issues in the legal system; convenes experts, stakeholders, and users of the system to develop and propose concrete solutions; and then goes one step further to empower and facilitate the implementation of those solutions so as to achieve impact. We are a nonpartisan organization that champions people-first reforms to the legal system and the legal profession.

The Implementation Committee for Proposed Legal Paraprofessional Pilot Project highlighted in its March 2020 Report and Recommendations to the Minnesota Supreme Court that in family law disputes from 2016 thru 2018 there were 84% of respondents and 53% of petitioners who were unrepresented. And in Orders for Protection and Harassment Restraining Orders from 2018 thru 2020, over 90% of petitioners and respondents were unrepresented. This data exposes a major flaw with the current regulatory structure, that far too many litigants involved in domestic and child abuse cases go unrepresented.

Those who oppose the expansion of legal paraprofessionals (LPs) to work on domestic and child abuse cases highlight the importance of being knowledgeable in this area of law. We agree that knowledge is important, but we disagree that LPs are inadequate. Under the current structure, anyone who is eligible to practice law is also eligible to handle domestic violence cases. This is the case even for the large percentage of attorneys who graduate law school without any family law or domestic violence education. There are, in fact, more safeguards with LPs as they are supervised by attorneys who not only vouch for their skills, abilities, and substantive law-related experience, but also assume personal professional responsibility over their work. And the supervising attorneys have been so impressed with the LPs' work product in just the first six months that they themselves are calling for this increase in scope. If the bar or court is truly concerned that those who represent domestic violence cases are not

trained on domestic violence issues, this concern should first be addressed through legal education and specialization requirements within the family bar. If the true issue is domestic violence training and experience, LPs should not be held to a higher standard than attorneys.

There is also concern that by creating a less expensive option to receiving legal help on domestic and child abuse cases, there will be an increased imbalance in representation between victims and abusers due to financial abuse. This concern is well-intentioned, however, it is public policy that courts and bar associations do not limit the help that certain litigants get in the interests of allowing everyone to have representation and to seek justice. To put these restrictions into place now will set a dangerous precedent of allowing the state to cherry pick who gets help from licensed and regulated providers.

Another common concern is that immigrant communities will be exploited by these paraprofessionals because they will not know the difference between an attorney and a LP. This concern revolves around notario fraud, individuals who represent themselves as qualified to offer legal advice when they have no such qualification. It is important to first recognize that notario fraud has come about in large part because today's regulatory framework forces most people to either represent themselves with no understanding of the law or use non-certified representatives. The creation of this new tier of regulated legal service provider will in fact help immigrant communities receive more regulated legal help from competent professionals.

Lastly, opponents to this expansion argue that Minnesota should instead just increase its funding to legal aid so that more experienced attorneys can provide quality legal representation. This argument for the increase in legal aid and pro bono resources has been made time and time again, but the numbers do not add up. Using numbers from 2016, economist and law professor Gillian Hadfield estimated that it would cost upwards of \$46 billion to provide just one hour of legal help to all the households in the United States currently facing legal problems. While these numbers are for the nation as a whole and not Minnesota-specific, they reveal just how costly it would be to rely on legal aid to solve the access to justice problem. Instead of focusing on a single solution to such a large-scale problem, let us work on a variety of solutions that include increasing legal aid and creating a new tier of regulated legal professionals.

As it stands, a very strong majority of cases that involve allegations of domestic and child abuse are handled by the litigants themselves. These are cases that affect not only the safety of a party and their

children, but also affect other areas of their lives including housing and employment. As the Standing Committee notes, expanding the scope in this way may encourage settlement, assure equitable representation opportunities, and protect parties through a third-party representative. These are outcomes that everyone in the legal profession should be advocating for, and that is why IAALS supports the recommendation of expanding the Minnesota Legal Paraprofessional Pilot Project to include cases involving allegations of domestic abuse or child abuse.

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