

**THREE STRATEGIES FOR IMPROVING ACCESS TO CIVIL LEGAL
ASSISTANCE IN SOUTH CAROLINA**

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I. INTRODUCTION

South Carolina ranks last out of all states in access to civil legal assistance.¹ Over ninety percent of people facing housing, financial, and other common civil legal problems are left to try to resolve them on their own—or give up—creating additional economic and psychological distress for them and their families.² A lack of access to civil legal assistance also costs the state money in unrecovered federal benefits and increased demand for health care

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1. NATIONAL CENTER FOR ACCESS TO JUSTICE, *Attorney Access*, NCAJ (2022), <https://ncaj.org/state-rankings/justice-index/attorney-access> [https://perma.cc/76FU-TVJJ] (ranking South Carolina last out of all states on the “Attorney Access” index when the reader scrolls to “Attorney Access” and selects the box to “[v]iew the number of civil legal aid attorneys per 10,000 people with low incomes”).

2. See ELIZABETH CHAMBLISS, WILL DILLARD & HANNAH HONEYCUTT, *MEASURING SOUTH CAROLINA’S JUSTICE GAP: A REPORT OF THE SC ACCESS TO JUSTICE COMMISSION 5* (2021) [hereinafter *S.C. JUSTICE GAP REPORT*], <https://www.scaccesstojustice.org/the-sc-justice-gap> [https://perma.cc/9ELR-CQQA] (presenting data on the percentage of unrepresented parties in eviction, foreclosure, and consumer debt cases).

and social services such as emergency housing and foster care.³ Even in our age of deep political division, improving low- and moderate-income people's access to civil legal assistance is a priority upon which both sides agree.⁴

The South Carolina legal community has come together to begin to address the problem. In 2021, the Supreme Court of South Carolina's Access to Justice Commission, the South Carolina Bar, and the Nelson Mullins Riley & Scarborough Center on Professionalism at the University of South Carolina School of Law commissioned the first-ever statewide civil legal needs assessment to raise awareness, identify priorities, and improve outreach to underserved communities.⁵ The mixed methods study, conducted by the University of North Carolina-Greensboro Center for Housing and Community Studies, drew on in-depth interviews with legal services providers and community leaders;⁶ statewide surveys of South Carolina residents⁷ and

3. See generally Laura K. Abel & Susan Vignola, *Economic and Other Benefits Associated with the Provision of Civil Legal Aid*, 9 SEATTLE J. FOR SOC. JUST. 139, 140 (2010) (reviewing the "growing body of data documenting the financial and other societal benefits of the work of civil legal aid programs"); FARROW ET AL., EVERYDAY LEGAL PROBLEMS AND THE COSTS OF JUSTICE IN CANADA: OVERVIEW REPORT 16 (2016) (estimating that everyday legal problems add approximately \$800 million annually to the combined costs of health care, employment insurance, and social services in Canada); see also *Eviction Right to Counsel: Resource Center, Stout Eviction RTC Evaluations and Cost-Benefit Studies*, STOUT, <https://www.stout.com/en/services/transformational-change-consulting/eviction-right-to-counsel-resources> [<https://perma.cc/XF65-HZ77>] (finding net benefits of a right to counsel in eviction cases in ten jurisdictions).

4. See, e.g., Nathan L. Hecht, *The Twilight Zone*, 148 DÆDALUS 190, 191 (2019) (stating that access to justice is "an American idea, not a liberal one or a conservative one," and "simply good government"); Sam Skolnick, *Gorsuch Sides with Access to Justice Reformers in New Book*, BLOOMBERG L. (Sept. 13, 2019), <https://news.bloomberglaw.com/us-law-week/gorsuch-sides-with-access-to-justice-reformers-in-new-book> [<https://perma.cc/QB26-PZGG>].

5. See BRUCE RICH ET AL., SOUTH CAROLINA LEGAL NEEDS ASSESSMENT 2022, at 3 (2023) [hereinafter S.C. LEGAL NEEDS ASSESSMENT], <https://static1.squarespace.com/static/5d38a7143b6514000155e5a9/t/64184e6db3775a6576cbffe/1679314547803/CHCS+-+SC+LNA+-+Final+Report+-+February+21%2C+2023+-+with+Appendices+-+03-17-23.pdf> [<https://perma.cc/9M8C-PMVL>].

6. The research team conducted 28 semi-structured, in-depth one-on-one interviews of legal services providers and community leaders representing the following organizations: Antioch Educational Center, Catholic Charities of South Carolina, Center for Heirs Property Preservation, Charleston Legal Access, Charleston Pro Bono Legal Services, Lowcountry Legal Volunteers, NAACP, One80 Place, Prisma Health, Root & Rebound, Safe Homes Rape Crisis Coalition, SC Appleseed Legal Justice Center, SC Association for Community Economic Development, South Carolina Bar Pro Bono Board, South Carolina Coalition Against Domestic Violence and Sexual Assault, South Carolina Legal Services, South Carolina Office of Resilience, South Carolina Victim Assistance Network, University of South Carolina School of Law, and three private law offices. *Id.* at 21–22.

7. The Community Survey was designed to reach low- and moderate-income people with civil legal problems, including people who did not seek help from a lawyer, and yielded a sample of 1,352 respondents. *Id.* at 146. The survey was distributed in part through legal services

lawyers;⁸ court data about the number and types of cases handled by the civil court system;⁹ and focus groups with low- and moderate-income people throughout the state, who talked about their legal problems and their experiences with lawyers and courts.¹⁰ The study is accompanied by a web-based dashboard displaying socioeconomic and court data by county and census tract.¹¹

This Article reviews the findings of the statewide assessment and related efforts in other states and identifies strategies for improving access to civil legal assistance in South Carolina.

agencies' mailing lists and overrepresents people who did seek help from a lawyer. *Id.* In the Community Survey sample, 68% sought help from a lawyer, and 32% did not (based on 1,094 responses to this question). *Id.* at 153. Studies based on representative samples find that people seek help from lawyers for only about 25% of their civil legal problems. *See, e.g.*, THE 2022 JUSTICE GAP STUDY, LEGAL SERVS. CORP. [hereinafter LSC JUSTICE GAP STUDY], <https://justicegap.lsc.gov/resource/executive-summary/> [https://perma.cc/EK8X-T7GD] (nationally representative survey of more than 5,000 adults finding that low-income people seek the assistance of a lawyer for only about one in four civil legal problems that impact them substantially); REBECCA L. SANDEFUR, ACCESSING JUSTICE IN THE CONTEMPORARY USA: FINDINGS FROM THE COMMUNITY NEEDS AND SERVICES STUDY 11–12 (2014) (random sample of 3,087 Midwestern adults finding that people sought help from lawyers or other third parties outside their social networks for only 22% of their civil justice problems and only 5% of problems without court involvement).

8. The Practitioner Survey was administered to the entire South Carolina Bar, with purposive follow-up through selected additional organizations. S.C. LEGAL NEEDS ASSESSMENT, *supra* note 5, at 169. The resulting sample of 1,415 lawyers includes solo practitioners (22%), lawyers who practice in firms of 2–20 lawyers (35%), lawyers who practice in firms of 21 or more lawyers (15%), government lawyers (11%), judges (5%), public defenders (4%), legal aid lawyers (3%), and lawyers in business (2%) and education (1%). *Id.* at 170.

9. South Carolina Court Administration provided data for civil cases filed in Magistrate Courts, Circuit Courts, and Family Courts from 2016 to 2021. *Id.* at 194. The data request excluded some case codes not relevant to the assessment, such as Inmate Petitions, Out-of-State Depositions, Pre-Suit Discovery, Foreign Judgments, and Lis Pendens. For a full listing of included and excluded case codes, see *id.* at Appendix E (Amendment of the Data Request to S.C. Court Administration).

10. The research team conducted fourteen focus groups with low- and moderate-income people in the following locations: Blackville, Charleston, Columbia (2), Conway, Florence, Greenville, North Charleston (3), Ridgeland, Rock Hill, and Spartanburg. *Id.* at 94. Groups were made up of current and former clients of the Charleston Hispanic Association, Charleston Legal Access, Midlands Mediation Center, Roots & Rebound, Safe Homes Rape Crisis Coalition, and South Carolina Legal Services (6), as well as groups recruited by the Antioch Educational Center and the Blackville First Baptist Church. *Id.*

11. *See SC Civil Legal Needs Dashboard*, S.C. ACCESS TO JUST., <https://www.scaccesstojustice.org/legal-needs-dashboard> [https://perma.cc/9JKH-FDDP]. The data reported include: the percent of cost-burdened renter households; the percent of cost-burdened owner households; the percent of households at or below 125% of the federal poverty line; the percent of households without vehicles; the racial makeup of the selected area; the number of private attorneys; the number of civil cases per 1,000 population, overall and by seven case types; and the percent of parties represented by counsel. *Id.*

II. FINDINGS

A. *The Justice Gap*

There is a yawning gap between South Carolinians' civil legal needs and the resources available to meet them. South Carolina has the fewest lawyers per capita of any state, at 2.1 lawyers per 1,000 residents.¹² The state's leading legal services agencies reported nearly 19,000 intakes in 2021; yet, the agencies are staffed by a combined total of only 66.5 lawyers and 71 support staff.¹³ Legal services providers report a continuing crisis of unmet need.¹⁴ As one lawyer put it, "[i]t is always in turmoil There's just so many people in need, and not enough help out there."¹⁵ Another said, "[t]here are 20 bazillion . . . people that need us."¹⁶

Housing and family law are the areas of greatest need among low- and moderate-income people, especially eviction defense, divorce, child custody, and child support.¹⁷ Thirty-one percent of South Carolina residents surveyed reported that they or someone in their household had experienced a housing problem in the previous five years, and 30% reported a problem with child support or custody.¹⁸ The lawyers surveyed also identified housing and family law as the top two areas of unmet need in the counties where they practice.¹⁹ Other significant areas of need are debt collection defense, access to public benefits, protection from domestic violence, and immigration.²⁰

12. See PROFILE OF THE LEGAL PROFESSION 2021, AM. BAR ASS'N 1, 25 (2021), <https://www.americanbar.org/content/dam/aba/administrative/news/2021/0721/polp.pdf> [<https://perma.cc/5MEU-K9VB>].

13. S.C. LEGAL NEEDS ASSESSMENT, *supra* note 5, at 4 (staffing figures are based on full-time equivalents). Figures are based on staffing data from the following agencies: South Carolina Legal Services, Charleston Legal Access, Charleston Pro Bono, One80 Place, Root & Rebound, and Lowcountry Legal Volunteers. *Id.* at 209.

14. See *id.* at 3–4.

15. *Id.* at 23.

16. *Id.*

17. *Id.* at 5.

18. *Id.* at 150 fig.5. These figures likely overstate the incidence of such problems in the general population, since the Community Survey was distributed in part using client lists from legal services providers, *id.* at 146, but the data are useful in measuring the relative frequency of different types of problems. Based on a nationally representative sample of 5,000 adults, nearly three quarters (74%) of low-income households experienced at least one civil legal problem in 2021, and 39% experienced five or more problems. LSC JUSTICE GAP STUDY, *supra* note 7. The most frequent types of problems were consumer issues, health care, housing, and income maintenance. *Id.*

19. S.C. LEGAL NEEDS ASSESSMENT, *supra* note 5, at 174 fig.23.

20. *Id.* at 5, 150, 174. Only about 2% of South Carolina residents surveyed reported experiencing citizenship or immigration problems, *id.* at 150, but 16% of lawyers surveyed identified immigration as an underserved practice area in the counties in which they practice. *Id.*

The gap between legal needs and resources differs in different parts of the state. Private practitioners are concentrated in larger cities and towns and are scarce in rural parts of the state.²¹ Nearly two-thirds of the state's private practitioners practice in Charleston, Greenville, or Richland County, whereas many rural counties have fewer than ten private practitioners, and some have fewer than five.²² Legal services lawyers, too, are unequally distributed, with Charleston having four legal services providers compared to one for rest of the state.²³ Yet some of the highest poverty levels and per capita civil court case rates are in rural parts of the state.²⁴

The highest per capita civil court case rates tend to be in counties with lower median household incomes, higher unemployment rates, and proportionally larger Black populations, although there are some exceptions.²⁵ The ten counties with the highest per capita civil court case rates are: Dillon, Florence, Marion, Sumter, Cherokee, Orangeburg, Colleton, Richland, Greenwood, and Union.²⁶ Different case types have somewhat different geographies: for instance, the highest case rates for debt collection are in Florence, Marlboro, Chesterfield, and Marion counties, whereas the highest child support case rates are in Marion, Barnwell, Allendale, and Dillon counties.²⁷ However, several of the state's poorest counties have high case rates of more than one type, such as Dillon, Marion, and Colleton counties.²⁸

Eviction stands out both for the sheer size of the caseload and because eviction rates do not correspond closely to county socioeconomic characteristics.²⁹ Statewide, the average annual eviction case rate is 20.8 cases per 1,000 people, compared to 4.4 divorce cases per thousand, 3.4 debt collection cases per thousand, and 2.8 child support cases per thousand.³⁰ Eviction case rates are highest in counties with the highest percentages of renter households (for instance Dillon, Richland, and Charleston) and the

at 174. Hispanic residents were significantly more likely than other groups to report immigration problems. *Id.* at 152 fig.6.

21. *Id.* at 9.

22. S.C. JUSTICE GAP REPORT, *supra* note 2, at 11. In 2020, 14 of the state's 46 counties had fewer than ten lawyers, and four counties had fewer than five. *Id.*

23. S.C. LEGAL NEEDS ASSESSMENT, *supra* note 5, at 9. As one Charleston legal services lawyer said, "Charleston is unique in the state of South Carolina, in that it's the only city that has four legal services providers. Nobody else has that. So, while I'm sure there is a gap, we probably have a lesser of a gap than anywhere else in the state." *Id.* at 51.

24. *See id.* at 198 tbl.5.

25. *Id.* at 10.

26. *Id.* at 198 tbl.5. Richland County is one of the richest ten counties in the state and is an outlier, perhaps because as the state capital it attracts a disproportionate amount of civil litigation involving the government. *Id.* at 199.

27. *Id.* at 199 tbl.6.

28. *Id.* at 199–200.

29. *Id.* at 201.

30. *Id.* at 200–01.

lowest housing vacancy rates (for instance, Spartanburg and Greenwood).³¹ Spartanburg—a county with a relatively high median income—has one of the lowest housing vacancy rates in the state and one of the highest per capita rates of eviction.³²

Statewide, over 70% of parties who appear in civil court are unrepresented, and both sides have lawyers in less than 8% of cases, in the case types covered by the study.³³ Representation rates vary somewhat by county and likely by case type, although the data are not disaggregated by case type.³⁴ In FY2019, 99.7% of defendants in eviction cases, 92.3% of defendants in foreclosure cases, and 96% of defendants in debt collection cases were unrepresented.³⁵

B. *Barriers to Access*

Cost is a significant barrier for people seeking legal assistance. Many people who sought help from a private lawyer said that cost was an obstacle, and only 43% were able to pay the lawyer from their own funds.³⁶ “You call,” said one Spartanburg woman, “and the first thing they . . . tell you is what they charge an hour. They gonna charge you a consultation fee just to hear your case and see what you got going on. And half of the time, when they give you that price, I’ll say, ‘OK, yeah, you have a nice day.’ Cause if I can’t afford for you to just review, I most def can’t afford you.”³⁷ A person from Barnwell County said, “I don’t have that in my budget to pay somebody a retainer or, you know, an hourly fee or you know, I mean, if they write a letter, that’s three hundred dollars.”³⁸

Many people who cannot afford a private lawyer do not qualify for free legal services because their incomes are above the eligibility threshold. South Carolina Legal Services’ income eligibility threshold is 125% of the federal poverty guideline or, in some cases, 200%.³⁹ Most other legal services providers have similar thresholds.⁴⁰ “[I]f you’re part of the working poor,”

31. *Id.* at 201 tbl.7.

32. *Id.*

33. *Id.* at 202.

34. *Id.*

35. S.C. JUSTICE GAP REPORT, *supra* note 2, at 5.

36. S.C. LEGAL NEEDS ASSESSMENT, *supra* note 5, at 158 fig.11.

37. *Id.* at 112.

38. *Id.*

39. *Id.* at 44.

40. *Id.* See also ELIZABETH CHAMBLISS, BENNETT GORE & LIYUN ZHANG, VETERANS LEGAL CLINIC 2018–19 REPORT 16 tbl.8 (2019) (finding that, from a survey of 27 nonprofit and law firm providers of veteran legal services in South Carolina, nine have income eligibility thresholds ranging from 100% to 200% of the federal poverty guideline and ten have no income eligibility thresholds).

said one lawyer, “chances are you’re going to be over 200% just barely. But there’s nothing for you at 201%.”⁴¹ “There’s nothing in the middle.”⁴² A woman from Florence said:

I was going to try to get them to assist me in a divorce . . . and I just qualified for advice for that one. They wouldn’t represent me fully . . . And I did go out and try to hire a [private] lawyer. That didn’t go well, so I’m still married. [Laughter.] It’s just too costly.⁴³

Fifty percent of respondents who did not seek help from a lawyer cited concerns about cost.⁴⁴ As one said, “I’ve seen a few signs, but I mean, you can tell by the outside of the building, you can’t afford to go in there.”⁴⁵

While cost is an important barrier to seeking legal assistance, however, cost is not the only barrier. There is also a widespread lack of understanding about civil legal issues and a lack of information about where to find help.⁴⁶ Many people with civil legal problems do not recognize their problems as “legal” or understand that there might be a legal remedy.⁴⁷ “[Y]ou see that a lot,” said one lawyer, “that people don’t realize there’s a legal issue involved. They know they have a problem, but not a legal problem.”⁴⁸ As another lawyer described it,

[t]heir benefits are getting cut off or somehow their Medicaid is gone, or they’re getting evicted, or the school is not doing what they need to do for their kid. . . . And it’s just—that is life as they know it. And the idea that . . . maybe my rights are being violated and a lawyer could help fix that, I don’t think that is a thought that crosses lots of folks’ minds.⁴⁹

41. S.C. LEGAL NEEDS ASSESSMENT, *supra* note 5, at 45.

42. *Id.* at 113.

43. *Id.*

44. *Id.* at 153 fig.7.

45. *Id.* at 113.

46. *Id.* at 7.

47. *Id.* at 32. *See also* SANDEFUR, *supra* note 7, at 16 (finding that Americans rarely turn to lawyers or courts to handle their civil justice problems); Rebecca L. Sandefur, *Money Isn’t Everything: Understanding Moderate Income Households’ Use of Lawyers’ Services*, in MIDDLE INCOME ACCESS TO JUSTICE 222, 244–45 (Michael Trebilcock et al. eds., 2012) (finding that many people with civil legal problems do not recognize their problems as “legal,” even when those problems raise clear legal issues and have legal remedies).

48. S.C. LEGAL NEEDS ASSESSMENT, *supra* note 5, at 32.

49. *Id.*

Another said, “[s]ome of it is a perception that you only go to a lawyer for certain things, like a criminal problem.”⁵⁰

About a third of people (34%) with civil legal problems who did not seek help from a lawyer said they did not believe they had a legal problem or that a lawyer might help.⁵¹ Many said they did not know where to look for legal help (15%) or did not know that legal help was available (17%).⁵² Although legal services agencies engage in many forms of outreach, such as ask-a-lawyer sessions,⁵³ know-your-rights seminars and clinics, placing brochures in courthouses and agencies, and liaising with local community organizations,⁵⁴ they say that “people just don’t realize we’re here.”⁵⁵ “As much as we have done,” said one legal services lawyer, “there are still so many people and lawyers out there who don’t know about us.”⁵⁶

There also may be social barriers to seeking legal assistance, for instance stemming from poverty or distrust. “When you’re used to living in poverty, you are just not used to asking for help, getting help,”⁵⁷ explained one legal services lawyer. Some people are just in survival mode, and hiring a lawyer is the least of their worries.⁵⁸ “When I think of Maslow’s hierarchy of need,” said another, “food and benefits and those needs take precedence over, ‘Oh, let me go talk to a lawyer about my rights when it comes to housing.’”⁵⁹ People also may have had previous bad experiences with lawyers or courts or with the criminal justice system. “If your only interaction with the legal system has been negative . . . [then] there’s a hesitancy to get involved.”⁶⁰ Another lawyer said, “I just think people have had the door shut in their face so many times . . . or been told, ‘Sorry, we don’t have the resources to help you,’”⁶¹ so they have given up seeking help. “You reached out and you were told, no, they couldn’t help you this time, so you don’t go for the next one.”⁶²

There also may be racial and language barriers between lawyers and clients. One nonprofit leader said,

[i]n rural communities, especially heavily African American counties, if there’s a lawyer there, that lawyer probably has been

50. *Id.* at 33.

51. *Id.* at 153 fig.7.

52. *Id.*

53. *Id.* at 176.

54. *Id.* at 38–39.

55. *Id.* at 33.

56. *Id.* at 7.

57. *Id.* at 35.

58. *Id.*

59. *Id.*

60. *Id.* at 37.

61. *Id.*

62. *Id.*

practicing in that area for quite some time, has developed certain networks, and . . . oftentimes does not represent the population that largely lives in that area. . . . You don't have an abundance of lawyers of color in rural areas.⁶³

Some Black residents of rural counties said they are hesitant to seek services from lawyers who do not look like them.⁶⁴ As one said, “[c]onsidering the community in which we live, and . . . who are the attorneys in our community, if you don't see a representation of yourself, and you don't have a relationship with attorneys . . . there is going to be a trust issue.”⁶⁵ Or, as one Jasper County resident put it, “it's not that I don't trust them. It's that they slick. [Laughter.] Some of them slick.”⁶⁶ Some Spanish speakers reported difficulties accessing legal information and navigating the court system. As one said,

[t]hey don't speak Spanish. They don't have literature in Spanish. They don't have anything in Spanish. First question is, are you a citizen? You know, what do you care? You're a resident of South Carolina. Believe it or not, even the illegal people here pay taxes. They pay taxes on everything. And they aren't treated the same way when they need legal help.⁶⁷

Finally, many people simply may prefer to handle problems on their own. Other studies have found that self-help is the most common response to civil legal problems, followed by doing nothing or getting help from family and friends,⁶⁸ and these responses may be especially prevalent in rural communities.⁶⁹ One lawyer observed that some rural people “don't like strangers. Being from a small place, people don't always trust outsiders coming in, or they don't want to ask for help from outsiders.”⁷⁰ Another reported that “[t]here's also a culture in the more rural part [of the state] . . . of people wanting to take care of their own, so they try to figure it out themselves or with the help of their family, which is not always the best solution.”⁷¹

63. *Id.* at 53.

64. *Id.* at 10.

65. *Id.* at 113.

66. *Id.* at 114.

67. *Id.* at 130.

68. *See, e.g.,* SANDEFUR, *supra* note 7, at 11 (finding that 46% of people used self-help to resolve their civil legal problems, 16% did nothing, and 16% sought help from family or friends).

69. *See* S.C. LEGAL NEEDS ASSESSMENT, *supra* note 5, at 35.

70. *Id.* at 53.

71. *Id.* at 35.

C. People's Experiences with Lawyers and Courts

Among people who sought help from a lawyer, 82% got free legal assistance, and the rest paid a private lawyer a regular or discounted fee.⁷² The most common type of problem for which people sought help from a lawyer was family law (33%), followed by housing (24%), consumer rights (15%), domestic violence or sexual assault (12%), wills and estates (12%), and children's rights (12%).⁷³ More than half of people who got help from a lawyer said that their concerns were taken seriously (53%), they were treated fairly (52%), and that the lawyer did a good job (54%).⁷⁴ Fifty percent were satisfied with outcome of their case, and 26% said they had no issues getting their legal problems resolved.⁷⁵

Among those who used legal services lawyers, many were "really, really grateful"⁷⁶ for the way they were treated and the assistance that they received. "They are really welcoming here," said one of the Columbia focus group participants.⁷⁷ "Everybody that I associate with, even like, to the secretary. . . . [T]hey're welcoming and . . . I've never really had an issue or problem. Their turn around is really quick, like I can call, they do get back to you. Most of the time the same day . . ." ⁷⁸ Another said, "[i]t was like I'd paid this lady fifty thousand dollars. She was in court on time. She brought all my paperwork. They sent me copies of everything. So, it was a free attorney, but I felt she acted like it was a hundred-thousand-dollars attorney She treated me that way."⁷⁹ Some clients said that their legal services lawyers had become like family to them. A Greenville client said, "I know mine became a little extended part of our family because, like I said, he was like a saving grace. . . . Me and my kids give him Christmas cards every year."⁸⁰ "My daughter is in the honors college at WCU," said another client, "partly thanks to these folks right here, because they helped us pull out of a situation we would never have pulled out of."⁸¹ Even taking into account the potential bias among focus group participants recruited by legal services agencies,⁸² clients' accounts of the lifechanging impact of effective legal assistance are striking and inspiring.

72. *Id.* at 157.

73. *Id.* at 157 fig.10.

74. *Id.* at 161 fig.13.

75. *Id.* at 161 fig.13, 159 fig.12.

76. *Id.* at 116.

77. *Id.* at 117.

78. *Id.*

79. *Id.*

80. *Id.*

81. *Id.* at 118.

82. *See id.* at 96.

This is not to say it is all a bed of roses in legal services. Many people reported frustrations with intake⁸³ and with their attorneys being overwhelmed,⁸⁴ and some waited a long time for follow-up. “Mine was terrible,” said one focus group participant.⁸⁵

The call to the 1-800 number was good, but after that they said, “Okay, no problem, you know, you’re accepted in some way, we’ll get ya.” Didn’t hear from anybody for a long time. My neighbor, he had one who told him to call here, and same thing with him. He got accepted but didn’t hear back from the lawyer for a full two months.⁸⁶

“Those lawyers who have good hearts,” said a Barnwell resident, “and they’re really in it for the justice of the people, [but] they are underpaid and they work more hours, and so that’s a problem in itself, because if you’re overworked, then how are you going to give me your best service? Even if it’s free?”⁸⁷ A Spanish-speaking person who looked for help with an immigration matter reported that “it was almost like you are bothering them.”⁸⁸

Among people who used private lawyers, many reported negative experiences,⁸⁹ including “bad service and shady conduct.”⁹⁰ One small town resident paid four thousand dollars to a lawyer in a city some distance away and reported that “[n]othing got done . . . The lawyer just didn’t do anything. And we weren’t there to make it happen. We kept calling him, sending him letters, he wouldn’t return them.”⁹¹ Another person hired the wrong kind of lawyer but could not get her money back. “He . . . told me that that’s not something he could help me with, but I had already paid him by then . . .”⁹² “Everything seems to go extremely slow,” said another focus group participant.⁹³ “He just filed the paperwork. And I’m not an attorney, I don’t know what to say. And now we’re trying to get it changed.”⁹⁴ Another said, “[h]e just kept putting me off, putting me off and making excuses after I gave

83. Fifteen percent of those who sought free legal services reported that the intake system was time-consuming or confusing. *Id.* at 156.

84. *See id.* at 120.

85. *Id.* at 119.

86. *Id.*

87. *Id.* at 120.

88. *Id.* at 121.

89. *See id.* at 4, 114.

90. *Id.* at 115.

91. *Id.*

92. *Id.* at 116.

93. *Id.*

94. *Id.*

him my money.”⁹⁵ Several people who used private lawyers told stories of “being cheated.”⁹⁶

Many people who handled—or tried to handle—legal problems on their own also had rocky experiences, despite being resourceful. “I’m kind of perceptive,” said one Barnwell County resident, “so I went online and I did the maintenance agreement and, you know, I did all the research myself.”⁹⁷ Another person said he did the best he could.⁹⁸ “For me it was like I can read and I can learn and I can figure out what the law is. But that doesn’t mean I how to interpret it for my situation.”⁹⁹ Others warned: don’t try to do it yourself. A man with a bankruptcy case said, “[v]ery complicated! If you try to do a bankruptcy by yourself, you might as well go home, ‘cause you’re not going to know who to notify and all that.”¹⁰⁰ A Columbia woman said, “it was difficult, because we don’t know the legal stuff like an attorney would know. . . . [A]nd in some cases, we probably mess things up, because we didn’t know what we was doing. . . . I went to a hearing by myself, because I was doing everything by myself, and I lost that hearing.”¹⁰¹ When she went to the next hearing with her legal services lawyer, she said, “[w]e went in front of the same judge . . . and he was like, . . . ‘Oh you smart today.’”¹⁰²

Some people who went to court without a lawyer described the process as “[a] nightmare,”¹⁰³ and said they felt like they were “on trial.”¹⁰⁴ Legal services lawyers report that judges can be impatient with pro se litigants, and the focus groups bore that out.¹⁰⁵ One woman said the judge

[M]ade me feel . . . like a criminal . . . like I did something wrong. And I didn’t do anything wrong. . . . I felt like I was a Black woman being berated by this white judge who knew nothing about my story in my life, while the other person in question, got to cry and have full representation. While she told me how bad of a mom I was.¹⁰⁶

“You have to compose yourself,” said another woman, “and that’s very hard for some people to do, especially when you are in a courtroom and they’re

95. *Id.*

96. *Id.*

97. *Id.* at 122.

98. *Id.*

99. *Id.*

100. *Id.* at 123.

101. *Id.*

102. *Id.*

103. *Id.*

104. *Id.* at 124.

105. *Id.*

106. *Id.*

telling lies.”¹⁰⁷ When the other party is represented by a lawyer, “[i]t’s not even the slightest way close to a fair fight.”¹⁰⁸ One person said, “[i]t’s like having a pro football player go in against—I mean, not like it’s an intelligence thing, but just the education background—having him play against someone who’s in pee wee. It’s impossible.”¹⁰⁹

People also struggled with the logistics of appearing in court and many reported being confused. A woman with an eviction case did not know where to go. “I was late,” she said, “because I was looking for housing court. I didn’t know everything was in one building. But when I got there, he was like, ‘you lost.’”¹¹⁰ A plaintiff seeking a protective order in a domestic violence case lost because “she couldn’t get a single piece of her evidence in there,” said her friend.¹¹¹ “Whether you have someone complete the paperwork or not, she didn’t know that she had to have a record or an officer testifying to those phone calls to get it admitted. And that was her only opportunity to do it.”¹¹²

Among people who did not get help from a lawyer, 59% reported that their problem is still ongoing.¹¹³ The effects of these unresolved problems ripple through families and communities. People get evicted and end up homeless.¹¹⁴ Custody battles drag on, interrupting children’s care and schooling.¹¹⁵ People spend years fighting for disability benefits to care for themselves or disabled relatives.¹¹⁶ Women fleeing domestic violence struggle to prove the violence in court and find a safe place for their children.¹¹⁷ “In the precarious lives of the poor, even an apparently minor event can set off a chain reaction,” stated the research team in the Executive Summary of the study.¹¹⁸ “The overarching theme running through all the work of the needs assessment—an alarm that sounded wherever we went—is people’s dire need for help, and the gap between the needs and the resources available to assist them.”¹¹⁹

107. *Id.*

108. *Id.* at 123.

109. *Id.*

110. *Id.* at 122.

111. *Id.*

112. *Id.*

113. *Id.* at 154 fig.8.

114. *See, e.g., id.* at 102–03.

115. *See, e.g., id.* at 100–02.

116. *See, e.g., id.* at 104. Fully 27% of respondents to the Community Survey reported that they are disabled, and 39% are a primary caregiver or have caregiving responsibilities. More than three quarters (78%) of respondents were women. *Id.* at 147.

117. *See, e.g., id.* at 104–06.

118. *Id.* at 6.

119. *Id.* at 3–4.

III. STRATEGIES FOR IMPROVING ACCESS

Study participants offered many suggestions for improving access to civil legal assistance, which can be grouped into three broad strategies: more resources, community outreach, and regulatory reform to make it easier for lawyers—and others—to provide limited legal assistance. Several proposals had widespread support among all stakeholder groups. This Part draws on participants' suggestions, as well as research and developments in other states, to detail these strategies for improving access to civil legal assistance in South Carolina.

A. *More Resources*1. *State Funding*

There is widespread agreement about the need for direct state funding for civil legal assistance.¹²⁰ South Carolina is one of sixteen states that does not provide a legislative appropriation for civil legal aid.¹²¹ South Carolina Legal Services, the state's frontline provider of subsidized legal assistance, gets nearly 60% of its funding from the Legal Services Corporation (LSC) and the rest from a patchwork of other sources, such as court filing fees, funds from the Victims of Crime Act (VOCA), and interest on lawyers' trust accounts (IOLTA).¹²² According to the American Bar Association, South Carolina ranks in the bottom quintile of all states in legal aid funding.¹²³ Fully 92% of lawyers surveyed support a legislative appropriation for civil legal services,¹²⁴ and 73% of residents surveyed would be willing to pay more taxes to support free legal services in their communities.¹²⁵

A growing body of research suggests that state funding for civil legal assistance provides a return on investment to states through recovered federal

120. *See id.* at 11.

121. *See Legal Aid Funding Report: Funding Types by State*, PUB. TABLEAU: ABARRAY, <https://public.tableau.com/app/profile/abarray/viz/ABArrayNationalData/NationalLegalAidFunding> [<https://perma.cc/87XT-VR37>].

122. *See* South Carolina Legal Services 2023 Budget (on file with author); *see also* S.C. COMM'N ON INDIGENT DEFENSE, S.C. LEGAL SERVICES, 2019, [https://www.scstatehouse.gov/reports/CommOnIndigentDefense/FY20%20Proviso%20117.21%20Report%20\(SC%20Legal%20Services\).pdf](https://www.scstatehouse.gov/reports/CommOnIndigentDefense/FY20%20Proviso%20117.21%20Report%20(SC%20Legal%20Services).pdf) [<https://perma.cc/HDC8-F4Z7>] (reporting South Carolina Legal Services' 2019 budget, of which 52% came from LSC funds).

123. *See Legal Aid Funding Report*, *supra* note 121.

124. S.C. LEGAL NEEDS ASSESSMENT, *supra* note 5, at 183 fig.32.

125. *Id.* at 163.

benefits, savings on health care and social services, and reduced crime.¹²⁶ For instance, legal services for domestic violence victims reduce domestic violence rates and associated law enforcement and social services costs.¹²⁷ The prevention of eviction keeps tenants from entering the shelter system and reduces shelter costs.¹²⁸ Medical legal partnerships improve clients' health and well-being, generate revenue for hospitals, and reduce Medicaid claims.¹²⁹ Thus, in addition to improving access to the civil justice system, increased legal aid could improve the cost-effectiveness of related government programs.¹³⁰

2. *Pro Bono?*

Legal services providers also call upon private practitioners to provide more pro bono service.¹³¹ Although there is little reliable data about how

126. See Abel & Vignola, *supra* note 3, at 140 (reviewing research); Karen Lash, *Executive Branch Support for Civil Legal Aid*, 148 DÆDALUS 160, 164 (2019) (also reviewing research); see also LEGAL AID INTERAGENCY ROUNDTABLE, ACCESS TO JUSTICE IN THE AGE OF COVID-19: A ROUNDTABLE REPORT 10–11 (2021) (summarizing the benefits of access to justice interventions for federal program outcomes, such as preventing homelessness, strengthening family stability, enhancing public safety, protecting consumers, and improving health care).

127. See, e.g., Amy Farmer & Jill Tiefenthaler, *Explaining the Recent Decline in Domestic Violence*, 21 CONTEMP. ECON. POL'Y 158, 164 (2003) (analyzing data from the National Crime Victimization Survey and finding that the availability of legal services for victims “significantly” reduced the incidence of domestic violence); Abel & Vignola, *supra* note 3, at 147–48 (reviewing research on cost savings to states).

128. See, e.g., MASS. LEGAL ASSISTANCE CORP., CIVIL LEGAL AID YIELDS ECONOMIC BENEFITS TO CLIENTS AND TO THE COMMONWEALTH: SOME BENEFITS FROM FY12 ADVOCACY 11–12 (2012), https://mlac.org/wp-content/uploads/2015/08/Economic_Benefits_FY12.pdf [<https://perma.cc/3TMB-CWQN>]; REPORT OF STOUT RISIUS ROSS, INC., THE FINANCIAL COST AND BENEFITS OF ESTABLISHING A RIGHT TO COUNSEL IN EVICTION PROCEEDINGS UNDER INTRO 214-A, at 4–5 (2016), <https://cdn2.hubspot.net/hubfs/4408380/PDF/Cost-Benefit-Impact-Studies/SRR%20Report%20-%20Eviction%20Right%20to%20Counsel%20%203%2016%2016.pdf> [<https://perma.cc/5KTB-Y8X4>].

129. See, e.g., James A. Teufel et al., *Rural Medical-Legal Partnership and Advocacy: A Three-Year Follow-up Study*, 23 J. OF HEALTH CARE FOR THE POOR AND UNDERSERVED 705 (2012) (finding that providing patients with legal assistance with insurance problems, Social Security benefits, family law issues, and end-of-life guidance resulted in 319% return on investment to the hospital in reimbursements for clinical services, in addition to social benefits for patients). A recent analysis of the return on investment for the Carolina Health Advocacy Medicolegal Partnership (CHAMPS), a partnership of the University of South Carolina School of Law, the University of South Carolina School of Medicine, Prisma Health, and South Carolina Legal Services, found that, after receiving CHAMPS services, Medicaid clients made 57% fewer Medicaid claims and had fewer and shorter hospital stays, resulting in an estimated savings of \$16,000 to \$17,000 per month per client served. CHAMPS Return on Investment Analysis (Dec. 2022) (on file with author.)

130. See Lash, *supra* note 126, at 165 (discussing the use of legal aid to improve the cost-effectiveness of executive agency programs).

131. See S.C. LEGAL NEEDS ASSESSMENT, *supra* note 5, at 8.

much pro bono service private practitioners currently provide, and the assessment did not measure this directly, there is a consensus among legal services providers that private attorneys do not contribute enough and that South Carolina lags behind other states in the availability of pro bono service.¹³² One provider said, “[w]e’ve talked about this ad nauseum at every meeting we go to, about the lack of attorneys in South Carolina that will do pro bono services.”¹³³ Another said, “it’s just getting more and more difficult . . . [N]othing seems to work.”¹³⁴

Providers offered several theories of why this might be the case. One factor may be the dearth of large, resource-rich law firms in the state, and the relatively large proportion of small, rural practices.¹³⁵ As one lawyer noted, “[e]specially since the pandemic . . . [many] attorneys are struggling and trying to make their own way.”¹³⁶ Others pointed to a “standoff” regarding the rules governing limited scope representation, which make it difficult for lawyers to provide service for just part of a case.¹³⁷ Lawyers worry that if they make one appearance on behalf of a client—for instance at a temporary order hearing—“the judge[] won’t release them, because the judge wants an attorney on the case, it’s easier to deal with an attorney.”¹³⁸ “[J]udges in South Carolina are notorious for never letting you off of a case,” said one lawyer.¹³⁹ Another said “[s]ome judges, I mean, not everyone, but the practice is, in for a penny, in for the pound.”¹⁴⁰

Among lawyers surveyed, 73% of whom are private practitioners,¹⁴¹ 38% report that they provide free or low-cost services to low- and moderate-income people,¹⁴² most frequently in the areas of wills and estates (50%) and family law (44%).¹⁴³ Many expressed support for incentives to increase pro bono service, such as offering Continuing Legal Services (CLE) credit (81%) or tax incentives (69%); or amending the rules governing limited scope practice

132. *Id.*

133. *Id.* at 70.

134. *Id.*

135. *Id.* at 8.

136. *Id.* at 70.

137. *Id.* at 73. In 2018, the Supreme Court of South Carolina’s Access to Justice Commission submitted a proposal to “standardize and clarify” the rules governing limited scope representation, but the court declined to adopt it. *See* Matt Chaney, *SC Judiciary Considers Limited Scope Representation*, S.C. LAWYERS WEEKLY (Sept. 27, 2018), <https://sclawyersweekly.com/news/2018/09/27/sc-judiciary-considers-limited-scope-representation/> [<https://perma.cc/6FUU-7ZNU>]. Lawyers have differing views as to the meaning of the rules as written. S.C. LEGAL NEEDS ASSESSMENT, *supra* note 5, at 73.

138. *Id.*

139. *Id.*

140. *Id.*

141. *Id.* at 169.

142. *Id.* at 172.

143. *Id.* at 173 fig.22.

(40%).¹⁴⁴ In response to the statewide assessment, the Supreme Court of South Carolina is considering awarding CLE credit for pro bono participation.¹⁴⁵

But while pro bono service is an important component of the profession's duty to the public¹⁴⁶ and may offer important benefits to pro bono providers¹⁴⁷ as well as to clients, pro bono service alone cannot make up the extreme shortfall in civil legal assistance in South Carolina—or any other state.¹⁴⁸ By one estimate, “U.S. lawyers would have to increase their pro bono work from an annual average of thirty hours each to over nine hundred hours each to provide some measure of assistance to all households with legal needs.”¹⁴⁹ On the resource side, state funding for civil legal services is an essential component of any serious effort to improve access to legal assistance for low- and moderate-income people.

144. *Id.* at 184 fig.33.

145. See Press Release, S.C. Jud. Branch, First Statewide Legal Needs Assessment Reveals Need and Opportunity (Feb. 22, 2023), <https://www.sccourts.org/whatsnew/displaywhatsnew.cfm?indexID=2771> [<https://perma.cc/Y4BU-GPYR>].

146. See MODEL RULES OF PRO. CONDUCT r. 6.1 (AM. BAR ASS'N, 1983) (“Every lawyer has a professional responsibility to provide legal services to those unable to pay. A lawyer should aspire to render at least (50) hours of pro bono publico legal services per year.”); S.C. RULES OF PRO. CONDUCT r. 6.1 (“A lawyer should render public interest legal service. A lawyer may discharge this responsibility by providing professional services at no fee or reduced fee to persons of limited means or to public service or charitable groups or organizations, by service in activities for improving the law, the legal system or the legal profession, and by financial support for organizations that provide legal services to persons of limited means.”).

147. See, e.g., Scott L. Cummings & Deborah L. Rhode, *Managing Pro Bono: Doing Well by Doing Better*, 78 *FORDHAM L. REV.* 2357, 2361 (2010) (noting that pro bono work “can enhance firms’ recruitment, retention, rankings, and reputation, while offering individual lawyers crucial training and career development opportunities”); Brian J. Murray, *The Importance of Pro Bono Work in Professional Development*, AM. BAR ASS'N (Apr. 20, 2011), <https://www.americanbar.org/groups/litigation/committees/real-estate-condemnation-trust/articles/2011/042011-pro-bono-professional-development/> [<https://perma.cc/CBC9-3PQ8>] (noting that pro bono service provides opportunities for skill development and direct client contact).

148. See, e.g., N.Y.C. BAR ASS'N, *NARROWING THE “JUSTICE GAP”: ROLES FOR NONLAWYER PRACTITIONERS* 7 (2013), <https://www2.nycbar.org/pdf/report/uploads/20072450-RolesforNonlawyerPractitioners.pdf> [<https://perma.cc/E9DK-XP9D>] (praising lawyers’ pro bono efforts but concluding that “any foreseeable increase in pro bono work . . . is unlikely to close the justice gap”); see also Atinuke O. Adediran, *Solving the Pro Bono Mismatch*, 91 *U. COLO. L. REV.* 1035, 1035 (2020) (“The pro bono interests of law firm lawyers tend to differ from the actual legal needs of the poor.”).

149. Gillian K. Hadfield, *Innovating to Improve Access: Changing the Way Courts Regulate Legal Markets*, 143 *DÆDALUS* 83, 87 (2014).

3. *Courtside Assistance for Self-Represented Litigants*

Study participants also called for more courtside assistance for self-represented litigants, especially people seeking orders of protection or facing eviction.¹⁵⁰ Several lawyers suggested having help desks at magistrate and family courts so that people “can at least get some advice before they go in that courtroom.”¹⁵¹ As one lawyer put it,

[t]he pro se litigants are going to come no matter what. . . . And so why not have them be better prepared, make sure their documents are in order, make sure they understand the concept of service, make sure that by the time they show up to their hearing, they’ve done all the things they needed to do to proceed with the hearing.¹⁵²

Help desks could be staffed by designated staff at the courthouse “or have attorneys who are willing to do a free thirty-minute consultation”¹⁵³ One focus group participant suggested a “lawyer-of-the-day” approach that had helped him in another state. “We went to court in Salem . . . and talked to the Magistrate. He said there was a lawyer-of-the-day on call. They had a lawyer present in the courthouse for anybody that needed a lawyer that couldn’t afford one.”¹⁵⁴ This is the model used for the Pro Se Divorce Help Desk at the Richland County Family Court Office.¹⁵⁵

Another lawyer suggested expanding assistance from domestic violence advocates in protective order hearings, modeled on their use in other states, “where the advocates assist with the protection paperwork, they’re in the courthouse, and then they have pro bono attorneys that come and represent the litigants in the actions.”¹⁵⁶ Others suggested that law students could provide assistance in eviction cases “because the law that you have to learn is

150. S.C. LEGAL NEEDS ASSESSMENT, *supra* note 5, at 90.

151. *Id.*

152. *Id.* at 65.

153. *Id.* at 91.

154. *Id.* at 133.

155. See E-mail from Olivia Jones, to Elizabeth Chambliss (Feb. 22, 2023, 12:35 PM) (on file with author). The help desk is staffed by two lawyers on the second and fourth Tuesday of each month from 11 a.m. to 1 p.m. to answer questions from pro se divorce litigants. *Id.*

156. S.C. LEGAL NEEDS ASSESSMENT, *supra* note 5, at 91. A recent study of roughly 275 protective order hearings in two states found that courts allow nonlawyer domestic violence advocates to “provide the full range of services one might expect from a lawyer, short of appearing in court,” including assisting petitioners with the preparation of pleadings and the development of evidence and advising petitioners as to “whether to pursue legal recourse, how to select remedies, and how to clear procedural hurdles, such as service of process.” See Jessica K. Steinberg et al., *Judges and the Deregulation of the Lawyer’s Monopoly*, 89 *FORDHAM L. REV.* 1315, 1331–32 (2021).

relatively limited. Our landlord Tenant Act is small, so it's easier to train attorneys how to do that, than some other areas."¹⁵⁷ Recently, Charleston School of Law students began assisting in eviction cases.¹⁵⁸ A lawyer who works with the students explained, "[t]hey help us do all the screening and everything that's necessary. It's also certainly good for them to get the experience. They don't get to represent clients but they get to see how various attorneys represent clients and different approaches that are taken."¹⁵⁹

Participants also suggested creating positions for pro se judges, who could be trained to assist pro se litigants.¹⁶⁰ One lawyer said, "I think part of the issue becomes judges get accustomed to working with attorneys, they get accustomed to things running a certain way. Things never run that way with pro se litigants. It causes frustration for the judges, it causes frustration for the litigants."¹⁶¹

Legal services lawyers also called for better training for magistrates.¹⁶² In South Carolina,¹⁶³ as in many states,¹⁶⁴ magistrates do not have to be lawyers, and many lawyers complained that magistrates "don't know the law" and do not get enough training.¹⁶⁵ As one lawyer remarked, "[a] magistrate judge has to go through less training . . . than cosmetologists. . . . [I]t's like 20 hours of training."¹⁶⁶ Research in South Carolina and other states finds that proceedings in magistrate courts tend to be highly localized, often with little attention to procedural or substantive law,¹⁶⁷ to the disadvantage of self-

157. S.C. LEGAL NEEDS ASSESSMENT, *supra* note 5, at 61.

158. *Id.*

159. *Id.*

160. *Id.* at 69.

161. *Id.* at 70.

162. *See id.* at 78.

163. *Id.* at 77; *see* S.C. CODE ANN. § 22-1-10 (2007 & Supp. 2022) (containing no requirement for Magistrates to be attorneys).

164. *See* Sara Sternberg Greene & Kristen M. Renberg, *Judging Without a J.D.*, 122 COLUM. L. REV. 1287, 1288 (2022) (reviewing the requirements for lower court judges in all 50 states and finding that 32 states allow at least some low-level state court judges to adjudicate without a law degree, and 17 states do not require judges who handle eviction cases to have a law degree).

165. S.C. LEGAL NEEDS ASSESSMENT, *supra* note 5, at 78.

166. *Id.*

167. *See* Joseph Cranney, *These Judges Can Have Less Training Than Barbers but Still Decide Thousands of Cases Each Year*, PROPUBLICA (Nov. 27, 2019), <https://www.propublica.org/article/these-judges-can-have-less-training-than-barbers-but-still-decide-thousands-of-cases-each-year> [<https://perma.cc/44VS-BW5M>] (investigating magistrate courts in South Carolina and finding "serious judicial errors or misconduct in thirty of the state's forty-six counties"); Lauren Sudeall & Daniel Pasciuti, *Praxis and Paradox: Inside the Black Box of Eviction Court*, 74 VAND. L. REV. 1365, 1418 (2021) (studying eviction courts in Georgia and finding that "[j]udges regularly misapply rules of procedure and do not require landlords to prove the basic elements of the prima facie case"); Greene & Renberg, *supra* note 164, at 1339

represented litigants who are disproportionately poor.¹⁶⁸ As one housing lawyer said, “[s]ome of our magistrates give really horrible advice to people about how fast landlords can get evictions.”¹⁶⁹ Another lawyer said, “You’ll hear this from every attorney who ever practices in Magistrate Court: it’s kind of like a wild, wild west because every magistrate’s office is different.”¹⁷⁰ Better training for magistrates and the availability of lawyers or other advocates to assist pro se litigants seeking orders of protection or facing eviction could improve judicial administration and accountability in these high stakes proceedings.¹⁷¹

B. Community Outreach

A second strategy for improving access to legal assistance in underserved communities is to focus on community outreach. The need for outreach came up repeatedly in the focus groups, especially among residents of rural areas.¹⁷² A woman from Jasper County said,

[w]hat I’ve experienced . . . is a lot of people don’t know what to do. There’s a lot of resources that they have in the community in South Carolina, but a lot of people don’t know what this is or where this is or how they can get the help that they need.¹⁷³

A Barnwell County resident said the same. “There are a lot of people here who don’t know the system, the laws and the laws that are in place.”¹⁷⁴ She mentioned housing issues in particular:

When it comes to renting, . . . even if . . . the government is paying for your rent or part of your light bill, you still have a right to live at the place without being threatened every so often about being kicked out, especially without notice, anything that you might be doing wrong or anything that might, like, say, if you needed to fill out some

n.331 (discussing research on lay judging in New York that found “egregious violations of legal rights . . . as well as overt racism and sexism by the judges”).

168. See Greene & Renberg, *supra* note 164, at 1287 (arguing that “allowing a system of nonlawyer judges perpetuates . . . the devaluation of the legal problems of the poor”).

169. S.C. LEGAL NEEDS ASSESSMENT, *supra* note 5, at 78.

170. *Id.* at 77.

171. See Rebecca L. Sandefur, *Elements of Professional Expertise: Understanding Relational and Substantive Expertise Through Lawyers’ Impact*, 80 AM. SOC. REV. 909, 925 (2015) (finding that the presence of lawyers improves case outcomes primarily by encouraging courts to “follow their own rules”).

172. See S.C. LEGAL NEEDS ASSESSMENT, *supra* note 5, at 126.

173. *Id.*

174. *Id.*

paperwork, there has to be some notice about coming to the office and doing some paperwork that might be missing, rather than having someone send you an eviction notice without telling you what's going on.¹⁷⁵

Participants made similar comments about outreach to the elderly and domestic violence victims.¹⁷⁶ For instance, several participants mentioned elderly widowed people's need for help with their spouse's estates.¹⁷⁷ "They used to help the elderly with these problems, but they don't do it anymore," said one participant.¹⁷⁸ "They don't understand that you could go to a probate judge and get things done."¹⁷⁹ One participant suggested outreach through the South Carolina Department on Aging. "I believe there should be a human being in there that their sole job is to find out what these elderly people need to know. They may not know how to do all this stuff . . . but they know where to point 'em."¹⁸⁰ Another participant suggested having something in place for domestic violence victims at the magistrate's office. "[I]f this is your first time ever experiencing it, how will we know we need a lawyer? When we call the police and get these police reports and they tell us to go to the magistrate's office, why not have something in place at that office?"¹⁸¹

Legal services providers already engage in many forms of outreach,¹⁸² and community outreach is a central part of their mission.¹⁸³ Providers work with domestic violence shelters,¹⁸⁴ hospitals, and local housing task forces;¹⁸⁵ they provide educational seminars for tenants, wills clinics and health care power of attorney clinics,¹⁸⁶ and work with community organizations to process expungements.¹⁸⁷ "We try to put brochures in courthouses, food stamp places, DSS, all the places that people may go."¹⁸⁸ South Carolina Legal Services recently hired a full-time marketing director to improve

175. *Id.*

176. *See id.* at 127.

177. *Id.*

178. *Id.*

179. *Id.*

180. *Id.*

181. *Id.*

182. *See supra* notes 53–54 and accompanying text.

183. *See* S.C. LEGAL NEEDS ASSESSMENT, *supra* note 5, at 38.

184. *Id.*

185. *Id.* at 57.

186. *Id.* at 38.

187. *Id.*

188. *Id.*

community outreach, in part through expanded use of social media platforms such as YouTube and TikTok.¹⁸⁹

Legal services providers stress the value of making connections through community partners, who “act as trusted intermediaries, to prepare the way for clients to connect with lawyers.”¹⁹⁰ “We need trusted partners in the community,” said one lawyer, “and I think there is that little bit of trust, because people have now been applying through trusted partners.”¹⁹¹ Another agreed that “trusted intermediaries, I think at this point is probably the most efficient way to begin that conversation.”¹⁹² But, they say, “[t]here’s a shortage of programs that can help identify folks who could benefit from legal services.”¹⁹³

There are some promising initiatives underway. For instance, in response to South Carolina’s housing crisis, exacerbated by the COVID-19 pandemic, the South Carolina NAACP launched a Housing Navigator Program in Columbia in February 2021.¹⁹⁴ Housing Navigators are community volunteers who receive training and support to help individuals and families who are behind on rent or facing eviction “to access the financial, legal, and social resources they need to retain safe and stable housing.”¹⁹⁵ Several lawyers noted that effective navigators can reduce evictions and the need for lawyers by helping clients access rental assistance.¹⁹⁶ As one lawyer explained,

[t]o apply [for rental assistance], you have to go online, then you have to upload a bunch of documents. So even if our clients have the documents, how do they scan them? Nobody knows how to do that. And then if they got anything wrong, or missed a document, SC state won’t call them, they just won’t give them an answer. So they have to call back and say, “I haven’t gotten a response.” And they say, “Oh, yeah, you missed this one document.” And then when you try to call them, it’s a two hour wait on the phone. So I think where we

189. See Leo Markowitz, *How Marketing Could Help Close the Justice Gap* (May 2023) (Honors Thesis, University of South Carolina) (on file with author). See, e.g., *South Carolina Legal Services*, YOUTUBE, <https://www.youtube.com/sclegalservices> [<https://perma.cc/V4X6-KPB2>]; *South Carolina Legal Services*, TIKTOK, <https://www.tiktok.com/@sclegalservices?t=8aeNWxHDVvS&r=1> [<https://perma.cc/A8XF-JBJT>].

190. S.C. LEGAL NEEDS ASSESSMENT, *supra* note 5, at 58.

191. *Id.*

192. *Id.*

193. *Id.* at 39.

194. See *About the Housing Navigator Program*, S.C. NAACP, <https://navigator.sчнаacp.org/about> [<https://perma.cc/KP7R-P2YS>].

195. *Id.*

196. See S.C. LEGAL NEEDS ASSESSMENT, *supra* note 5, at 62.

could use a lot of non-attorneys is: Money. Need. Connecting those and putting it in a system that's accessible for people.¹⁹⁷

"I don't think [navigators] always can be used to replace having attorneys," said another, "but I think that if you had more of that in place, we might find fewer people ultimately need that lawyer down the road because there's some preemptive work that can be done."¹⁹⁸

Another promising initiative is a Charleston-area pilot project by the Georgetown Law Institute of Technology Law & Policy and Legal Link to create a network of social service providers who are trained to deliver "Legal First Aid" to their clients.¹⁹⁹ Providers are trained to identify their clients' legal problems at an early stage to enable timely referrals to legal service providers and facilitate clients' use of existing legal self-help materials.²⁰⁰ Based in the Bay Area, Legal Link has trained over 1,000 social service providers in First Aid since its founding in 2015.²⁰¹ The pilot project is adapting Legal Link's training model in the Charleston Tri-County area and developing technology tools to support navigators' work with an eye toward statewide expansion.²⁰²

C. Regulatory Reform

Finally, regulatory reform is an essential component of expanding access to civil legal assistance. The existing rules governing limited scope and unauthorized practice create uncertainty for providers about the permissible limits of assistance²⁰³ and impede the development of new service models that have proven effective in other states. Most modestly, for instance, the state supreme court should clarify the rules governing limited scope practice, to provide an explicit safe harbor for lawyers willing to provide limited

197. *Id.*

198. *Id.*

199. *South Carolina Justice Navigators Network*, GEO. LAW: INST. FOR TECH. L. & POL'Y, <https://www.law.georgetown.edu/tech-institute/initiatives/georgetown-justice-lab/south-carolina-justice-navigators-network/> [<https://perma.cc/QGD4-QDL4>].

200. *See id.*; *see also* Pamphlet, *South Carolina Justice Navigator Network*: Georgetown Technology Law and Policy Institute (on file with author).

201. *See Our Mission + Model*, LEGAL LINK, <https://legallink.org/our-mission-model/> [<https://perma.cc/NUX9-JTQK>]; MARGARET HAGAN ET AL., *COMMUNITY NAVIGATORS: THE ROLE OF COMMUNITY NAVIGATORS TO REDUCE POVERTY AND EXPAND ACCESS TO JUSTICE 3* (2022), <https://legallink.org/wp-content/uploads/2022/04/Community-Navigators-Legal-Link-Working-Paper.pdf> [<https://perma.cc/52JS-J7FE>].

202. *See South Carolina Justice Navigators Network*, *supra* note 199.

203. *See S.C. LEGAL NEEDS ASSESSMENT*, *supra* note 5, at 73 (reporting that uncertainty about the rules governing limited scope representation inhibits lawyers from providing pro bono assistance).

assistance to self-represented litigants.²⁰⁴ State courts should also consider adopting the American Bar Association’s position on “ghostwriting,” which allows lawyers to help draft legal documents without being required to sign the documents, include a disclosure, or appear in the case.²⁰⁵ Allowing ghostwriting would facilitate lawyers’ provision of limited and pro bono assistance to self-represented litigants in areas of high unmet need, such as family law. In 2022, the South Carolina Bar issued an ethics advisory opinion approving ghostwriting.²⁰⁶

The court also should consider allowing specially trained paralegals to handle certain types of matters without attorney supervision. Nearly ten states have begun or are considering licensing paralegals to provide limited legal assistance in matters such as landlord tenant disputes and uncontested divorce,²⁰⁷ and existing programs show good results and high rates of client satisfaction.²⁰⁸ Paralegals are authorized to assist clients in drafting and filing forms, represent clients in settlement discussions and mediations, and prepare clients for court appearances.²⁰⁹ A 2021 study of Washington’s Limited License Legal Technician (LLLT) program—which allows specially trained paralegals to provide some family law services—found that LLLTs:

[E]xpanded legal services to traditionally underserved communities . . . allowed for more efficient proceedings and better decision-making

204. See *supra* notes 137–40 and accompanying text.

205. See ABA Comm. On Ethics & Pro. Resp., Formal Op. 07-446 (2007) (“[A] lawyer may provide legal assistance to litigants appearing before tribunals ‘pro se’ and help them prepare written submissions without disclosing or ensuring the disclosure of the nature or extent of such assistance.”).

206. See S.C. Bar Ethics Advisory Op. 22-06 at 1 (“When limited representation is reasonable under the circumstances, Lawyer is not required to make an affirmative disclosure of any sort regarding Lawyer’s limited assistance.”).

207. See Karen Sloan, *Non-Lawyer Licensing Movement Gains Steam with Oregon Approval*, REUTERS (Jul. 20, 2022), <https://www.reuters.com/legal/legalindustry/non-lawyer-licensing-movement-gains-steam-with-oregon-approval-2022-07-20/> [<https://perma.cc/3F3N-J9K5>] (discussing existing programs in Arizona, Minnesota, Oregon, Utah and Washington); Tara Hughes & Joyce Reichard, *How States Are Using Limited Licensed Legal Paraprofessionals to Address the Access to Justice Gap*, AM. BAR ASS’N (Sept. 2, 2022), <https://www.americanbar.org/groups/paralegals/blog/how-states-are-using-non-lawyers-to-address-the-access-to-justice-gap/> [<https://perma.cc/9K36-VY68>] (discussing limited licensing efforts in multiple states).

208. See THOMAS M. CLARKE & REBECCA L. SANDEFUR, *PRELIMINARY EVALUATION OF THE WASHINGTON STATE LIMITED LICENSE LEGAL TECHNICIAN PROGRAM 9* (2017) (finding that “[c]lients uniformly reported that [LLLTs] provided competent assistance” and “that their legal outcomes were improved by utilizing” LLLTs); JASON SOLOMON & NOELLE SMITH, *THE SURPRISING SUCCESS OF WASHINGTON STATE’S LIMITED LICENSE LEGAL TECHNICIAN PROGRAM 1* (2021) (finding that “[t]he LLLT program was demonstrating real success in expanding access to justice in Washington”).

209. See Sloan, *supra* note 207.

for family law judges and commissioners by reducing procedural errors . . . obtained improved legal outcomes for moderate means clients . . . [and] allowed lawyers to expand their practice by capturing a previously untapped market [through referrals from LLLTs].²¹⁰

In 2022, the South Carolina Board of Paralegal Certification proposed expanding the authority of specially trained paralegals to handle simple estate matters, adult name changes, and uncontested divorces that do not involve children.²¹¹ Nearly 60% of lawyers surveyed said they would be somewhat or very likely to support such a proposal.²¹²

Finally, the court should consider allowing trained nonlawyers, such as housing and community navigators, to provide basic legal assistance in areas of high unmet need, such as eviction and debt collection defense.²¹³ For example, New York City Housing Court allows nonlawyer Court Navigators to provide “one-on-one assistance to eligible unrepresented litigants,” including “help[ing] them access and complete court forms” and “explain[ing] what to expect . . . in the courtroom,”²¹⁴ and research found that the use of navigators improved case outcomes and pro se litigants’ perception of fairness.²¹⁵ Delaware allows nonlawyer Qualified Tenant Advocates to represent tenants facing eviction, “including but not limited to providing advice regarding defenses, engaging in settlement negotiations, filing pleadings or other documents with the Justice of the Peace Court, and

210. SOLOMON & SMITH, *supra* note 208, at 1.

211. Letter from the South Carolina Board of Paralegal Certification to the Supreme Court of South Carolina (Jun. 7, 2022) (on file with author).

212. S.C. LEGAL NEEDS ASSESSMENT, *supra* note 5, at 186.

213. *See, e.g.*, REBECCA L. SANDEFUR & THOMAS M. CLARKE, ROLES BEYOND LAWYERS: SUMMARY, RECOMMENDATIONS AND RESEARCH REPORT OF AN EVALUATION OF THE NEW YORK CITY COURT NAVIGATORS PROGRAM AND ITS THREE PILOT PROJECTS 4–5 (2016), https://www.americanbarfoundation.org/uploads/cms/documents/new_york_city_court_navigators_report_final_with_final_links_december_2016.pdf [<https://perma.cc/5PLF-DK8F>] (examining three New York court navigator programs and finding that the assistance of navigators improves outcomes for self-represented litigants and can result in financial savings to the public); MARY E. MCCLYMONT, NONLAWYER NAVIGATORS IN STATE COURTS: AN EMERGING CONSENSUS 6 (2019) https://www.ncsc.org/_data/assets/pdf_file/0024/53691/Justice-Lab-Navigator-Report-6.11.19.pdf [<https://perma.cc/2CCL-CBZR>] (surveying nonlawyer navigator programs in 15 states and finding various benefits). *See also* Alicia Forehand, Note, *Navigating Rough Waters: Empowering Law Students to Act as Navigators for the Unrepresented*, 74 S.C. L. REV. (forthcoming 2023) (proposing a change in the student practice rules in South Carolina to allow law students to serve as navigators in specific areas of need).

214. Volunteer Opportunities: Court Navigator Program, NYCOURTS.GOV, <https://www.nycourts.gov/courts/nyc/housing/rap.shtml> [<https://perma.cc/YCB3-4573>].

215. SANDEFUR & CLARKE, *supra* note 213, at 5.

appearing before the court.”²¹⁶ The Alaska Supreme Court recently authorized Community Justice Workers—nonlawyers trained and supervised by the Alaska Legal Services Corporation—to provide community-based, limited-scope legal assistance, inspired by tribally-based healthcare programs using a similar model.²¹⁷

Lawyers are deeply divided about allowing nonlawyers to provide legal assistance without lawyer supervision.²¹⁸ Some lawyers worry about the quality of service and potentially causing more harm than good.²¹⁹ Many low-income clients face complex domestic, financial, and other legal problems in which specialized legal expertise is essential.²²⁰ Yet many low- and moderate-income people who do not have access to (or trust) lawyers face problems like eviction, debt-collection, and no-fault divorce where a little personal assistance and targeted advice could go a long way.²²¹

Trained nonlawyers already provide authorized legal assistance in a variety of legal contexts, including state and federal agency proceedings, and research consistently finds that they perform as well (and sometimes better) than lawyers.²²² Nonlawyer specialists may have more familiarity with a

216. Del. Sup. Ct. R. 57.1.

217. Supreme Court of Alaska, Bar Rule 43.5, <https://www.alsc-law.org/wp-content/uploads/2022/12/sco1994.pdf> [<https://perma.cc/JA9P-J4GE>]; see also *Using Supervised Non-Lawyers to Provide Limited-Scope Legal Assistance*, LEGAL TALK NETWORK: TALK JUSTICE, AN LSC PODCAST (Jan. 17, 2023), <https://legaltalknetwork.com/podcasts/talk-justice/2023/01/using-supervised-non-lawyers-to-provide-limited-scope-legal-assistance/> [<https://perma.cc/D7K4-L75Y>].

218. See Sloan, *supra* note 207.

219. See *id.*; see also *Using Supervised Non-Lawyers to Provide Limited-Scope Legal Assistance*, *supra* note 217.

220. See, e.g., Anna E. Carpenter, Alyx Mark & Colleen F. Shanahan, *Trial and Error: Lawyers and Nonlawyer Advocates*, 42 LAW & SOC. INQUIRY 1023, 1023 (2017) (study of nonlawyer advocates in unemployment insurance appeals finding that “while experienced nonlawyers can help parties through their expertise with common court procedures and basic substantive legal concepts, they are not equipped to challenge judges on contested issues of substantive or procedural law . . .”).

221. See Bruce A. Green, *Why State Courts Should Authorize Non-Lawyers to Practice Law*, 91 FORDHAM L. REV. 1249, 1284 (2023) (arguing that states should “allow people to obtain—within their own communities—the basic legal advice they need to . . . respond to the legal problems they confront”).

222. See Elizabeth Chambliss, *Evidence-Based Lawyer Regulation*, 97 WASH. U. L. REV. 297, 322 (2019) (reviewing research on the quality of services provided by authorized nonlawyer providers and concluding “there is little evidence to support a total ban on non-lawyer providers. Most research suggests that non-lawyer specialists are capable of performing competently and effectively in a variety of contexts, including some types of formal proceedings”); Rebecca L. Sandefur, *Legal Advice from Nonlawyers: Consumer Demand, Provider Quality, and Public Harms*, 16 STAN. J. C.R. & C.L. 283, 312 (2020) (assessing indicators of consumer demand and provider quality and concluding that consumers value legal services from nonlawyer providers and “[t]he legal work produced by nonlawyers can be as good as—and sometimes better than—that of lawyers”).

narrow body of law and procedure—such as eviction defense—than lawyers who typically practice in other fields,²²³ and people may prefer to work with nonlawyers, finding them to be more approachable.²²⁴ Nonlawyers also may better reflect the demographics of the communities they serve and help to connect underserved communities to other legal resources.²²⁵ South Carolina should join other states in expanding access to civil legal assistance by supporting initiatives to train nonlawyers to provide basic legal assistance in areas of high unmet need.

IV. CONCLUSION

South Carolina is far from alone in grappling with problems of poverty, scarce resources, and inequalities in access to legal assistance. All states face these difficult problems. But these problems cannot be addressed without professional leadership and a willingness to ask hard questions and engage in systematic self-assessment. The shared commitment of the South Carolina Bar, the courts, legal services providers, and other stakeholders in conducting a statewide legal needs assessment is both vital and commendable and distinguishes South Carolina from many other states.

The South Carolina Legal Needs Assessment provides a rich, comprehensive portrait of civil legal needs and resources, and a baseline for measuring the effectiveness of initiatives for improving the state civil justice system. The challenge now is to use the assessment, as well as the growing body of civil justice research in other states, to design and test specific interventions to expand access to civil legal assistance in South Carolina.

223. See Leslie C. Levin, *The Monopoly Myth and Other Tales About the Superiority of Lawyers*, 82 *FORDHAM L. REV.* 2611, 2620–21 (2014) (reviewing research showing that, in many legal contexts, task specialization and experience with the practice setting appear to be more important than formal legal training); see also Chambliss, *supra* note 222, at 324 (same).

224. See Sandefur, *supra* note 222, at 294–95.

225. See *supra* notes 190–93 and accompanying text (discussing the importance of “trusted intermediaries”).