



Regulatory Reform as an Access to Justice Imperative

Note taker: Ari Rivera

Speakers:

Keynote:

- Rebecca Sandefur, Professor, The Sanford School, Arizona State University and Faculty Fellow at the American Bar Foundation

Panelists:

- Bridget Gramme, Administrative Director and Adjunct Law Professor, [Center for Public Interest Law, University of San Diego School of Law](#)
- Stacy Butler, Professor of Practice; Director, [Innovation for Justice Program, University of Arizona Law School](#)
- Will Morrison, Strategic Policy Counsel, [Law Society of Ontario](#)

Moderator:

- David Udell, Executive Director, [National Center for Access to Justice](#), based at Fordham Law School

Number of participants:

Notes:

- From Session Guide:
"This session will bring together leading U.S. reformers that are at the cutting edge of efforts to reform rules that prohibit non-lawyers from using their knowledge of the law to help other people. We will also hear from Canada, where in the province of Ontario thousands of independent community paralegals deliver legal services without lawyer supervision. Panelists will share why they

see regulatory reform as an access to justice imperative, and describe the steps they are taking to mitigate any fears of consumer harm.”

- Part of today's theme of democratizing the law and regulatory reform
- Introduction to theme and speaker: David Udell
 - National Center for Access to Justice and works on Justice Index project

- Keynote: Rebecca (Becky) Sandefur

Considering democracy

- Question of: Why might regulatory reform be imperative?
- Who is included in decisions and what communities are included
- Problems like evictions affect all communities (not just those that may seem like the ones directly impacted)

Lawyer-forward model and access to justice

- We currently have a lawyer-forward model that doesn't work, even with aims of having a lawyer for everyone, pro bono work etc.
- In many places, it is a crime to offer legal help if you're not a lawyer
- People often don't believe they can solve their legal problem or even necessarily know that their problem is in fact a legal one
- In a referenced study, Americans are doing nothing for their legal issue far more than other referenced countries - why? Because of different model/solutions that are not limited to lawyers, including:
 - Providing language access for legal issues
 - Market reforms - allowing those who are not lawyers to provide legal assistance
 - Policy advocacy
 - Subsidized programs/assistance

Moving forward

- Transparent processes
 - Going through channels/people familiar already to those seeking assistance
 - Empowering communities that have already organized themselves
 - Such as around wage theft, environmental justice, policing
 - *Without releasing lawyers' monopoly on the law, there is no significant change to in access to justice*
- Panel Members: Hearing about changes that have already taken place in Ontario, Utah, California, and Arizona

Will Morrison: What paralegals do in Ontario

- Give legal advice, draft documents, and more
- Involves education & training, licensing, required to carry insurance, submit to audits, and file annual reports, and are also subject to complaint/disciplinary process
- Timeline/problems trying to solve in Ontario
 - Paralegal agents in the past hadn't been regulated, with a mix of competency in the field. In 2008 an initial cohort of paralegals being regulated
 - Set scope of work for licensed paralegals
 - Had individuals working as paralegals contribute to the actual production of the licensing exam and expectations
 - Today:
 - Additional paralegals making clear contribution to a2j
 - Many working in small claims, tenant-landlord areas (and many do specialize even though they are able to practice in a wide range of areas)
 - Majority work as sole practitioners or small practice settings
 - Tend to come from a second career, bringing work experience they had prior into their work
 - Many are immigrants or come from a different linguistic background, not currently well served by the legal community
 - With current paralegal processes in place, seeing similar outcomes as with lawyers in items like complaint response

Rebecca Sandefur: Utah model

Applying a regulatory sandbox program (beyond visioning)

- Non-lawyers, human or computer programs, can practice
- Lawyers make money from practicing
- May have lawyers split \$ with others (controversial)
- Have more entities come in and monitor to see if there is harm (bad advice, upsold on a service not needed, etc)
- Two year pilot, those admitted can follow their own proposal in the two years
 - Those who can benefit financially likely to apply, more risky or not possible for community organizations
- Opposition from the bar, personal injury lawyers concerned about upsetting the market - which is the point

Stacy Butler: Arizona reform effort

- Looking to improve efficiency of the market, provide increased access to justice
- Elimination of 5.4, Arizona rule that had barred fee sharing between lawyers and non-lawyers
- Creation of licensed paraprofessional program to provide legal assistance
 - Pilot launching in January
 - Had time for public comment, primarily from bar
- Looking for areas in which lawyer assistance was already lacking, such as in trauma-informed assistance, “looking for early wins”
- Community-based training

Bridget Gramme: California

- Driving factor in change in this location actually coming from the bar itself, rather than from court directive
- Some background on this:
 - State bar retained regulatory and licensing, but other areas spun off into trade associations in 2017
 - They commissioned report on legal market landscape and saw gap in obtaining help for legal needs
 - Could see technological solutions for this, but laws did not allow for this to actually happen in service delivery
- Key points to address issue
 - Licensed paraprofessional programs
 - Relaxing of rule 5.4
 - Create sandbox program based on the Utah model
- Additional thoughts/questions:
 - Is legal aid engaged?
 - Questions of quality control and monitoring
 - Concerns from those who think current rules and regulations are needed -> Which rules should remain in place?
 - How can nonprofits have access to these pilots (e.g. grants to allow them to participate in a sphere maybe otherwise limited to those with greater financial flexibility)
 - Clients have varying reasons as well for seeking assistance outside of a lawyer (whether financial or other personal reasons)

Resources Shared:

- Slack Channel for Decolonizing Justice:
https://decolonizingjustice.slack.com/join/shared_invite/zt-j41huvtg-dQjFnejoXKKAnEM3Nhd4FQ#
- Decolonizing Justice Resource Guide: <https://www.probono.net/decolonizingjustice/>