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Gregory Zlotnick

St. Mary's University School of Law, gzlotnick@stmarytx.edu

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INVITING THE PEOPLE INTO PEOPLE'S COURT: EMBRACING NON-ATTORNEY REPRESENTATION IN EVICTION PROCEEDINGS

By: Gregory Zlotnick*

ABSTRACT

Evictions often hide in plain sight—and so does one of the most effective responses. Studies uniformly confirm that represented tenants avoid evictions, and with it associated downstream effects, at appreciably higher rates than unrepresented tenants. Tenant representation is one of the most cost-effective anti-poverty interventions available in our housing system. Lawyers should support its expansion, even if and when it a non-lawyer serves as that intervenor in eviction court.

This paper argues that the legal profession should embrace and expand existing pathways for training eligible and interested individuals, regardless of whether they are licensed attorneys, to assist tenants facing eviction. While much attention has rightfully been paid to reforming existing laws to permit non-attorney participation, existing rules may, and in some jurisdictions do, already permit this approach to expanding access to justice.

However, permission does not equal promotion. That certain rules and regulations allow non-attorney involvement in eviction proceedings does not mean that, like the role of the justice court in displacing tenants, those rules are not hidden from the public. In order to best meet the needs of tenants facing eviction and homelessness, the legal profession needs to encourage the active participation of non-attorney advocates in eviction proceedings. The best efforts of the legal profession to invite pro bono attorney involvement to fill gaps in accessing the justice system simply have not been sufficient to meeting the needs of unrepresented individuals.

The legal profession should look to innovative models emerging across the country for eviction defense—from Delaware to Alaska—as well as to longstanding practices in federal administrative agencies. Further, by adopting accessible accreditation practices used in certain state and federal proceedings, jurisdictions can assure a baseline level of competency among representatives, while also exercising oversight on its practitioners.

In so doing, courts can fulfill their duties to be truly open to the public, while the legal profession can empower tenants and tenant-advocates in a manner that will have both procedural and substantive benefits. In so doing, the burgeoning access to justice and right to counsel movements can coalesce around a cost-effective, empowerment-oriented model: one that has the potential to move beyond a triage approach to addressing legal issues towards a more holistic approach to addressing housing justice writ large.

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INTRODUCTION: THE EVICTION FACTORY HIDING IN PLAIN SIGHT

At the edge of a nondescript strip mall on the outskirts of San Antonio, Texas, sits the Justice of the Peace Court for Precinct 2 of Bexar County.¹ Tucked between a Big Lots discount store and an indoor bounce house named Pump It Up, “JP 2” hardly feels like a courthouse. The courtrooms lie in the back of the facility, beyond a long bank of clerk windows and a handful of uncomfortable lobby benches. If not for the metal detectors at the entrance, visitors could easily mistake the facility for a motor-vehicle office or a cable company’s customer service center.

Moreover, were it not for the black judge’s robe in the courtroom, parties could be forgiven for thinking that justice court was not a formal part of the Texas judicial system. Texas Rules of Evidence are largely discretionary, rather than mandatory.² Only a handful of Rules of Civil Procedure apply.³ And very few lawyers appear—even when corporate landlords seek to evict tenants living on their properties.⁴

*Visiting Clinical Assistant Professor and Supervising Attorney, Housing Rights Project at the Center for Legal and Social Justice, St. Mary’s University School of Law. J.D., 2011, *cum laude*, Georgetown University Law Center. I am grateful for the feedback that so many colleagues have provided during this process. Michele Pistone provided invaluable insights at the AALS Clinical Conference Works-in-Progress workshop as a discussant. Juliet Brodie, Allison Freidman, Abdul Rehman Khan, Alaina Thomas and Caryn Schreiber all provided generous feedback at the *Clinical Law Review Writers’ Workshop*. Isabella Arciba and Falak Momin provided critical research assistance, and Jacqueline Calvert made critical connections with the Texas Access to Justice Commission’s working groups on paraprofessional practice. All errors are mine alone.

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¹ *E.g.*, Precinct 2, Place 1, BEXAR COUNTY <https://www.bexar.org/3151/Precinct-2-Place-1> (August 1, 2023), [<https://perma.cc/2WJ2-Y89C>]; *see also*, <https://earth.app.goo.gl/?apn=com.google.earth&isi=293622097&ius=googleearth&link=https%3a%2f%2fearth.google.com%2fweb%2fsearch%2fAddress%253a%2b7723%2bGuilbeau%2bRd%2bSte%2b105,%2bSan%2bAntonio,%2bTX%2b78250%2f%4029.5199197,-98.64127783,262.60321045a,0d,60y,6.79831758h,77.91533491t,0r%2fd%2fdata%3dCigi%2fgokCZv-RZ--hz1AEbgIJVDVhD1AGb73-L9AqfjAIZIaGanaqVjAlhoKfk9Sc0ttaFBWSmphdTcxUzIFLUt2aEEQAjoDCgEw> [<https://perma.cc/4V5S-G75F>].

² *See* TEX. R. CIV. P. 500.3(e).

³ *See id.*; *see also* TEX. R. CIV. P. 510 *et. seq.* (rules governing eviction proceedings).

⁴ *See* TEX. R. CIV. P. 500.4.

Evictions definitionally deprive people of their homes. They cause folks to lose possessions, jobs, and mental well-being.⁵ In other words, evictions cause poverty.⁶ And in one sprawling section in one of America's fastest-growing cities,⁷ the courtroom component of this traumatic process—where the State gives its approval to this deprivation of liberty and property—takes place next to a kids' birthday party venue.⁸

Texas justice courts have original jurisdiction over eviction lawsuits in the Lone Star State.⁹ Yet people at the brink of housing insecurity routinely face eviction suits without advocates accompanying them. This includes the absence not only of licensed attorneys, but also of limited legal practitioners, housing navigators, or—as permitted in Texas—authorized agents, representatives, or an "other individual" authorized to assist.¹⁰

As exceptional as Texas may claim to be in other contexts,¹¹ its eviction court practices are all too common across the country. Nationwide, eviction proceedings take place in what scholars such as Anna Carpenter, Colleen Shanahan, Jessica Steinberg, and Alyx Mark have named "lawyerless courts"—venues where "at least three-quarters of cases involve a party without counsel."¹² Moreover, in Texas justice courts, as well as in courts across 32 states, judges themselves are not required to be lawyers.¹³ In certain jurisdictions, the judge hearing the eviction case may have the same amount of

⁵ *Why Eviction Matters*, EVICTION LAB, <https://evictionlab.org/why-eviction-matters/#eviction-impact> [<https://perma.cc/VK4C-4SM3>]; see generally MATTHEW DESMOND, *EVICTED: POVERTY AND PROFIT IN THE AMERICAN CITY* (2014).

⁶ See generally DESMOND, *supra* note 5 ("[E]viction is not just a condition of poverty, it is a cause of it.").

⁷ *Large Southern Cities Lead Nation in Population Growth*, U.S. CENSUS BUREAU (May 18, 2023), <https://www.census.gov/newsroom/press-releases/2023/subcounty-metro-micro-estimates.html> [<https://perma.cc/RF2K-UXKS>]. (San Antonio, Texas population increased by 18,889 people).

⁸ The SEO-driven title for this Pump It Up location's webpage reads "Best Kids Birthday Parties in San Antonio NW TX." <https://www.pumpitupparty.com/san-antonio-nw-tx/> [<https://perma.cc/V3NG-JVZK>].

⁹ TEX. PROP. CODE § 24.004(a) ("[A] justice court in the precinct in which the real property is located has jurisdiction in eviction suits.").

¹⁰ See TEX. R. CIV. P. 500.4.

¹¹ E.g., *Governor Abbott Touts Texas Exceptionalism at Texas Public Policy Foundation Policy Orientation*, OFF. OF THE TEX. GOVERNOR (Jan 19, 2022), <https://gov.texas.gov/news/post/governor-abbott-touts-texas-exceptionalism-at-texas-public-policy-foundation-policy-orientation> [<https://perma.cc/PN3W-VX5Q>].

¹² See Anne E. Carpenter, et. al., *America's Lawyerless Courts*, 48 AM. BAR ASS'N L. PRAC. 48 (2022).

¹³ Sara Sternberg Greene & Kristen M. Renberg, *Judging Without a J.D.*, 122 COLUM. L. REV. 1287, 1311 (2022).

formal legal education as an unrepresented tenant: none.¹⁴ And even in jurisdictions with more robust training for non-lawyer judges, judges have found canons permitting them to explain proceedings to unrepresented clients unworkable, mitigating the impact of rules that theoretically could improve the quality of legal proceedings.¹⁵

Meanwhile, studies uniformly confirm that represented tenants avoid evictions, and their associated downstream effects, at appreciably higher rates than unrepresented tenants.¹⁶ Tenant representation is one of the most cost-effective anti-poverty interventions available in the housing system.¹⁷ Research further demonstrates that increased tenant organization, advocacy, and empowerment contributes to increased housing stability and decreased eviction filings.¹⁸ The legal profession should support the expansion of tenant representation, even if and when—and perhaps especially if and when—it means that a non-lawyer serves as that representative.

This paper argues that the existing regulatory framework in Texas can serve as both a model for and an invitation to non-attorney advocacy in eviction court. As a high-population state with a sizeable bar, and with evictions laws that generally favor landlords, Texas may be an unlikely source for empowering non-attorney representation. Even so, Rule 500.4 of the Texas Rules of Civil Procedure provides on paper, if not in practice, a pre-set “regulatory sandbox” in which an expanded approach to accessing justice in eviction court can flourish.¹⁹

¹⁴ See *id.* at 1289 (describing a judge’s lack of knowledge in a North Carolina eviction proceeding) (“[T]he judge was in his first six months on the job and had received exactly zero hours of legal training of any kind: no webinar, no training session, nothing.”).

¹⁵ See Carpenter et. al., *supra* note 12; see generally Anne E. Carpenter et. al., *Judges in Lawyerless Courts*, 110 GEO. L. J. 509, 558-59 (2022).

¹⁶ See generally *Current Tally of Tenant Right to Counsel Jurisdictions: 17 cities, 4 states, 1 county!*, NAT’L COAL. FOR A CIV. RIGHT TO COUNS., http://civilrighttocounsel.org/highlighted_work/organizing_around_right_to_counsel [https://perma.cc/L5E6-EE8B] (last visited Sept. 10, 2023).

¹⁷ See *id.* (summarizing the finding of cost-benefit studies on tenant right to counsel programs) (“[E]very report has found that cities and states will save far more than they spend to provide such a right, due to avoided costs around shelters, health care, foster care, and other social safety net services”).

¹⁸ See Andrew Messamore, *The Effect of Community Organizing on Landlords’ Use of Eviction Filing: Evidence from U.S. Cities*, 70 SOC. PROB. 809 (2023) (finding that expanded nonprofit intervention in tenant-landlord relationships is associated with measurable drops in eviction filing).

¹⁹ See, e.g., Daniel J. Siegel, *Playing in the Regulatory Sandbox*, 47 AM. BAR ASS’N L. PRAC. 44, 47 (2021) (explaining that a “regulatory sandbox” . . . encourages the use of novel methods to test innovative forms of legal services”).

This paper will then address the lack of tenant use of authorized agents and other non-attorney advocates during eviction proceedings. Surveying various jurisdictions that have implemented non-attorney representation in eviction court, this paper will advocate that greater support from the organized bar for authorized agent practice will both promote its use by all parties, as well as address the potential risks that unlicensed practitioners pose.

The paper examines Alaska's recent creation of the Community Legal Worker program, as well as a similar program in Delaware, as practical models for implementation. Based these examples, as well as longstanding non-attorney practice provisions before federal agencies, this paper then proposes a hybrid model based upon these best practices: one where non-attorney advocates, working at accredited organizations or under attorney supervision, can appear in eviction proceedings.

This paper will argue that the embrace of these best practices will not only increase awareness of, and supply for, authorized agents in eviction defense, but also preempt concerns with unregulated, non-attorney representation, which is the current state of non-attorney representation in Texas eviction court. Particularly in this border state, where the deceptive practices of unsupervised, unlicensed, and exploitative *notarios* are prevalent around immigration matters, this paper will address potential guidance that could minimize the risk of unscrupulous non-attorney agents.²⁰ After all, even sandboxes have boundaries.

Lastly, this paper will argue that the embrace of non-lawyer representation can subvert the obstacles of the lawyerless court, expand new pathways to the profession of law and advocacy, while also meaningfully reducing the frequency of traumatic and destabilizing evictions. Through non-attorney representation, the democratic principle underlying eviction court proceedings – no attorney necessary for justice and due process to be done—can gain meaning in practice, rather than theory alone. Further, through the promotion of eviction advocates, the legal profession can create a meaningful entry into courtroom advocacy and practical law that does not require the burdensome expense of obtaining a J.D. degree. Law schools can play a vital role in the creation and implementation of training programs to equip non-attorney advocates with the

²⁰ See Jill Y. Campbell, BakerRipley & Mark E. Steiner, South Texas College of L., Class on Notario Fraud at 14th Annual Course Advanced Consumer & Commercial Law (Sept. 14, 2018).

knowledge, skills, and abilities necessary to ensure zealous, effective representation of tenants in eviction proceedings. By expanding their educational reach beyond its J.D. students while also advancing procedural and substantive justice in those schools' communities, law schools. can democratize the legal system in a practical way, breathing life into existing frameworks for participation.

I. THE TEXAS RULE AS AN UNEXPECTED REGULATORY BASELINE FOR NON-ATTORNEY ADVOCATES

A. The Uneven Playing Field of Texas Landlord-Tenant Law

Texas law governing the landlord-tenant relationship tends to favor the property owner, rather than the renter.²¹ Texas law does not require landlords to permit an opportunity to cure a tenant's default or defect, such as late payments. It permits landlords to provide only 3-days' notice to vacate a unit prior to filing an eviction suit—and further permits parties to contract for a shorter period in their lease. Once an eviction suit is filed, a trial must be held no later than 21 days after filing.²² Tenants who lose their eviction trial have only 5 days to file an appeal.²³ And, if the eviction is for nonpayment of rent, tenants must pay the equivalent of one month's rent into the court registry prior to the case being transferred to the court of appellate review.²⁴ This framework – and in particular, the mandatory registry payment for nonpayment evictions that functions as a barrier to open courts²⁵ – largely disempowers tenants from asserting their procedural and substantive rights when facing eviction.²⁶

²¹ See generally Sandra Sadek, *Proposed legislation tries to elevate tenant rights in Texas*, KERA NEWS (Jan. 3, 2023, 12:00 PM), <https://www.keranews.org/texas-news/2023-01-03/proposed-legislation-tries-to-elevate-tenant-rights-in-texas> [<https://perma.cc/U8AQ-5MBS>].

²² Tex. R. Civ. P. 510.4(a)(10).

²³ *Id.* § 510.9(a).

²⁴ *Id.* § 510.9(c)(5)(A)(i).

²⁵ See generally Jessica A. Henry, *All Courts Shall Be Open: The Convolution World of Evictions in Texas* (2023) (Article, St. Mary's University School of Law) (on file with author).

²⁶ See *Eviction Diversion Tracker*, TEX. HOUSERS <https://texashousers.org/dashboard/#:~:text=%2B%2028%25%20of%20all%20eviction%20cases,of%20the%20landlord%20by%20default> [<https://perma.cc/FX62-7828>] (last visited Sept. 11, 2023) (explaining that 28% of eviction cases were default cases because tenants did not show up to present any defenses).

B. Texas Rule of Civil Procedure 500.4: A Brief History of the Little Rule That Can Expand Representation in Eviction Proceedings

However, tenant advocates frustrated with state-law barriers to more equitable protections for renters are not without existing options, under Texas law, to expand housing justice. Similar to JP 2's unassuming and unexpected location in an unremarkable strip mall, a tenant-friendly pathway to assisted advocacy hides in plain sight among Texas's statutory and regulatory framework that favors landlords. And, like the shopping center that serve as JP 2's landlord, it was built many years ago.

In 2011, the Texas Legislature passed a bill dissolving the state's separate small claims courts.²⁷ In assigning jurisdiction of those matters to the justice courts²⁸—which already had exclusive original jurisdiction over eviction matters—the Legislature charged the Texas Supreme Court with developing rules of practice for the restructured courts.²⁹

The legislative charge to the Texas Supreme Court was clear. New rules could not require parties to be represented by an attorney, nor could they be so complex that a reasonable person, without legal training, would struggle to understand them.³⁰ Following this directive, the Texas Supreme Court appointed members to its Task Force for Rules in Small Claims Cases and Justice Court Proceedings on September 7, 2011.³¹ This Task Force contained members of the bench and bar, including “justices of the peace from across the state . . . as well as practitioners and persons involved with the administration of the justice courts.”³²

The Task Force consulted with frequent practitioners in justice court, such as the Texas Creditor's Bar Association and Texas RioGrande Legal Aid, the state's largest legal aid provider.³³ After the Task Force filed a report with the Texas Supreme Court, met with the Supreme Court Advisory Committee and invited feedback from

²⁷ See H.B. 79, 82nd Leg., 1st Sess. (Tex. 2011).

²⁸ *Id.* Tex. H.B. 79.

²⁹ Julie Balovich, *Navigating the New Justice Court Rules*, 70 *ADVOCATE* (TEX.) 33, 35 (2015).

³⁰ See *id.*; see also TEX. GOV'T CODE § 27.060(d).

³¹ Appointment of Task Force for Rules in Small Claims Cases and Justice Court Proceedings, Misc. Docket No. 11-9180 (2011).

³² Adoption of Rules for Justice Court Cases, Misc. Docket No. 13-9023 at 4 - 5 (2013).

³³ *Id.* at 5.

the general public, the Texas Supreme Court proposed and adopted a new set of rules that went into effect May 1, 2013.³⁴

The term “regulatory sandbox” was not in common usage at the time of the Task Force’s convening.³⁵ Yet its work—at the direction of the Texas Legislature and the Texas Supreme Court—created a set of rules using a method that, viewed through the lens of contemporary access to justice reform efforts, functioned similarly to the way that more-recent regulatory reform efforts have operated.³⁶ The Texas Legislature codified the principle of plain-language rules and lawyer-optional courts. The Texas Supreme Court consulted widely over the course of approximately 18 months in the research, drafting, and approval of such rules. The resulting product was both new—law practice regulatory reform—and old: a formalization of the traditional concept of a “people’s court.”

To this day, Texas justice courts refer to the concept of “People’s Courts” both to the general public,³⁷ as well as to the judges presiding in those courts.³⁸ The Texas Rules of Civil Procedure set aside 11 rules – Rules 500 through 510—to govern proceedings in the state’s justice courts, which have exclusive original jurisdiction over eviction matters in the state.

By design, justice courts are meant to serve as venues where individuals bringing their own claims can navigate a hearing or trial. To that end, Rule 500.3(e) explicitly limits the applicability of the rest of the rules of procedure, as well as the Texas Rules of Evidence:

³⁴ *Id.* at 4-5.

³⁵ See Google Ngram Viewer Search for “regulatory sandbox,” GOOGLE NGRAM VIEWER, https://books.google.com/ngrams/graph?content=%22regulatory+sandbox%22&year_start=1800&year_end=2019&corpus=en-2019&smoothing=3 [<https://perma.cc/64Z3-KZKU>] (last visited Nov. 14, 2023); further a Westlaw search for the term “regulatory sandbox” prior to May 1, 2013 also yields one result: James R. King and Sherry M. Phillips, *Comparison of Federal Tax and State Charitable Law Concepts as Applied to Insider Financial Transactions*, AHLA-PAPERS P10230312 (Oct. 23, 2003).

³⁶ *Introduction of Proposed Alaska Bar Rule 43.5*, ALASKA BAR ORG., <https://alaskabar.org/wp-content/uploads/Memo-and-Proposed-Bar-Rule-43.5.pdf> [<https://perma.cc/FZK3-SM2E>] (last visited Sept. 15, 2023) (discussing Alaska reform efforts).

³⁷ See, e.g. *Justice of the Peace – Midland County, Texas*, MIDLAND CNTY. TEX., <https://www.co.midland.tx.us/431/Justice-of-the-Peace> [<https://perma.cc/B2X5-25FN>] (last visited Sept. 11, 2023); see also *Justices of the Peace – Hopkins County Texas*, HOPKINS CNTY. TEX., <https://www.hopkinscountytexas.org/page/hopkins.Justice> [<https://perma.cc/G7VB-XJVR>] (last visited Sept. 11, 2023).

³⁸ See *The People’s Court: Overview, Resources, and Ethics*, TEX. J. CT. TRAINING CTR., <https://www.tjctc.org/onlinelearning/selfpacedmodules.html> [<https://perma.cc/2W42-8XLD>] (last visited Sept. 10, 2023).

(e) *Application of Other Rules.* The other Rules of Civil Procedure and the Rules of Evidence do not apply except:

(1) when the judge hearing the case determines that a particular rule must be followed to ensure that the proceedings are fair to all parties; or

(2) when otherwise specifically provided by law or these rules.³⁹

The very next rule—500.4—reinforces the difference of justice courts.

(a) *Representation of an Individual.* An individual may:

(1) represent himself or herself;

(2) be represented by an authorized agent in an eviction case;
or

(3) be represented by an attorney.

(b) *Representation of a Corporation or Other Entity.* A corporation or other entity may:

(1) be represented by an employee, owner, officer, or partner of the entity who is not an attorney;

(2) be represented by a property manager or other authorized agent in an eviction case; or

(3) be represented by an attorney.

(c) *Assisted Representation.* The court may, for good cause, allow an individual representing himself or herself to be assisted in court by a family member or other individual who is not being compensated.⁴⁰

Particularly in comparison to section (c)'s broad "good cause" standard for assisted representation, subparts (a)(2) and (b)(2)'s specificity with eviction cases makes explicit the permission for non-attorney representatives in eviction proceedings.

³⁹ TEX. R. CIV. P. 500.3(e).

⁴⁰ TEX. R. CIV. P. 500.4.

Here, the notion of a people's court broadens. The applicable justice court rules operate as formal acknowledgments of justice courts as lawyerless courts, and of eviction proceedings as lawyerless hearings.⁴¹ Yet viewed differently, these provisions also signal an acknowledgement that eviction proceedings—which, in Texas, concern only the right to actual possession of real property—could and do benefit from a more capacious interpretation of due process protections.⁴² Indeed, the 2013 rules expanded permissions for non-attorney representation beyond what the Rules of Civil Procedure previously permitted.⁴³ The inclusion of “authorized agents” and uncompensated individuals as eligible advocates across all forms of eviction cases grew the scope of non-attorney agents' authority in eviction proceedings.⁴⁴

Put another way: for the forum formerly known as the “People's Court,” Texas rules explicitly invite the public's participation in eviction proceedings. By leaving undefined the term “authorized agent,” Rule 500.4 creates a pathway to advocacy by anyone, for anyone. While this freedom is not without potential pitfalls, it also expresses a strikingly democratic approach to advocacy in eviction matters.⁴⁵

Rule 500.4 specifically, and the justice court rules more generally, broadly permit non-attorney representation. With both the explicit approval of authorized agent practice, and the explicit waiver of most rules of evidence and procedure, interested individuals committed to housing stability can, at any time in Texas, begin serving as authorized agents and advocate for tenants facing eviction.

C. 500.4 in Practice: Authorized Agent Representation for Me (Landlords), not For Thee (Tenants)

Perhaps inadvertently, Texas built a regulatory framework upon the historical practices of its justice courts that invites housing advocates, whether licensed attorneys or not, to represent tenants

⁴¹ See Carpenter et al., *supra* note 12.

⁴² Cf. Vamsi A. Damerla, *The Right to Counsel in Eviction Proceedings: A Fundamental Rights Approach*, 6 COLUM. HUM. RIGHTS L. REV. ONLINE 355, 355-56 (2022) (arguing for a right to counsel in eviction proceedings on substantive due process grounds).

⁴³ See Balovich, *supra* note 37, at 36.

⁴⁴ *Id.* (“Under the former rules, authorized agents could only represent parties in nonpayment of rent and holdover cases [citation omitted]”).

⁴⁵ Cf. Renee Newman Knake, *Democratizing the Delivery of Legal Services*, 73 OHIO STATE L. J. 1,1-2 (2012) (focused on non-attorney ownership of firms).

facing eviction. Somewhat more astonishingly, it adopted this framework nearly a decade before massive interventions in housing stability expanded eviction prevention efforts.⁴⁶ In practice, however, the current regulatory sandbox is largely empty—at least on the tenants’ side of the case styling.

Certainly, Rule 500.4’s authorized agent provisions are not dead-letter rules. Authorized, non-attorney agents regularly appear in eviction proceedings. However, their appearances are almost exclusively on behalf of landlords.⁴⁷ This practice receives further support from § 27.031 of the Texas Government Code, which exempts corporations from the requirement of attorney representation in justice court.⁴⁸ One such organization, Nationwide Compliant, routinely represents landlords, and advertises their services to property managers.⁴⁹ Non-attorney agents file petitions on behalf of landlords, then appear at the eviction trial to seek a judgment for their clients.

Authorized agents—or other non-attorney advocates, such as family members or “other individuals” Rule 500.4(c) envisions—are the rarest of sights on behalf of tenants. Perhaps the most common sight is no tenant at all. In Texas, as is true nationwide, default judgments against tenants who fail to appear for their hearing are commonplace.⁵⁰ Representation of any kind is exceedingly rare, despite the regulatory framework that exists and sees routine landlord usage to advance their claims.

This absence demands the organized bar’s concerted, continued engagement in promoting, training, and overseeing non-attorney participation as advocates for tenants facing eviction in Texas: a

⁴⁶ See, e.g., *The Supreme Court of Texas, the Office of Court Administration, and the Texas Department of Housing and Community Affairs reflect on the successful completion of the Texas Eviction Diversion Program*, TEX. SUP. CT. (July 11, 2023), <https://www.txcourts.gov/supreme/news/supreme-court-reflects-on-the-successful-completion-of-the-texas-eviction-diversion-program/> [<https://perma.cc/4CKV-TTEZ>].

⁴⁷ Having observed eviction dockets over the past year and a half in my capacity as the supervising attorney for the Housing Rights Project at St. Mary’s Law, I can recall one (1) occasion when a non-attorney representative accompanied a tenant. Those advocates worked with a legal aid organization.

⁴⁸ TEX. GOV’T CODE § 27.004(d).

⁴⁹ See generally NATIONWIDE COMPLIANT, <https://nationwidecompliant.com/> [<https://perma.cc/9WJF-DLCM>] (last visited Nov. 17, 2023).

⁵⁰ TEX. HOUSERS, *supra* note 26 (28% of all eviction cases heard in Texas in October 2022 were default judgments); see, e.g., AMERICAN CIV. LIBERTIES UNION No Eviction Without Representation: Evictions’ Disproportionate Harms and the Promise of Right to Counsel 17 (2022), (citing a study of evictions in Greensboro, NC where 75% of tenants did not attend their hearing).

demand not lost upon Texas regulators. Already, the Texas Access to Justice Commission has worked towards this goal. At the urge of the Texas Supreme Court, the Commission, as well as the National Center for State Courts, has studied the use of paraprofessionals for certain legal tasks.⁵¹ Charged with seeking ways to expand justice for low-income Texans, the working group studied three main ideas for expanding access to justice:

1. Permitting trained paraprofessionals, such as paralegals or community justice workers, to provide limited legal services to low-income clients in defined practice areas[;]
2. Allowing community partners and legal aid organizations to form nonprofit organizations to provide a continuum of legal and non-legal services to qualifying low-income Texans[; and]
3. Allowing a legal services non-profit to partner with a technology or software company to allow them to provide services more efficiently to qualifying low-income Texans.⁵²

At its December 15, 2023 meeting, the Access to Justice Commission considered the recommendations of the Access to Legal Services Working Group's Final Report.⁵³ This report comprehensively examined not only the inability so many Texans face in accessing the justice system, but also nationwide and international approaches to regulatory reform.

After public comment and deliberation, the Commission adopted the following recommendations:

1. Authorize Supreme Court-licensed paraprofessionals to represent and assist low-income Texans with certain matters in certain areas of the law and (2) Community Justice Workers to provide limited-scope representation in justice court cases,

⁵¹ See E-mail from Patricia Roberts, Dean, St. Mary's Univ. Sch. of L, to St. Mary's Univ. Sch. of L. faculty (June 20, 2023, 1:54 PM) (on file with author).

⁵² *Access to Legal Services Working Group Fact Sheet*, TEX. ACCESS TO JUST. COMM'N, <https://texasatj.org/sites/default/files/TAJC%20Working%20Group%20Fact%20Sheet.pdf> [<https://perma.cc/FT7A-BKfV>] (mission statement on page)([A]nalyze possible ways to increase access to justice for low-income Texans) (last visited Nov. 16, 2023).

⁵³ See generally Report and Recommendations of the Texas Access to Legal Services Working Group (Dec. 5, 2023), available at <https://www.texasatj.org/sites/default/files/2023.12.05%20Final%20Report.pdf>.

- under the supervision of an attorney working for a legal aid entity or other nonprofit entity [; and]
2. Create rules, qualifications, licensing, and disciplinary infrastructure with the Judicial Branch Certification Commission to ensure paraprofessionals have the necessary training, skill, and oversight to deliver quality services while protecting the public.⁵⁴

In adopting certain recommendations from the Working Group, the Access to Justice Commission's decision aligned with best practices already implemented in Alaska, Delaware, and elsewhere.⁵⁵ Critically, too, it defined "low-income Texans" as those "at or below 200% of the federal poverty guidelines as determined by the U.S. Department of Health and Human Services."⁵⁶ That benchmark far exceeds the standard of 125% of the federal poverty guidelines that generally govern eligibility for legal aid organizations that receive Legal Services Corporation funding.⁵⁷ Combined with the dual-track expansion of both paraprofessional and justice worker practice, these recommendations would both broaden and specify non-attorney representation in evictions proceedings and beyond.

It is expected that the Access to Justice Commission will next share its recommendations with the Supreme Court of Texas for further consideration. Should that body adopt these recommendations, Texas would move from a permissive, unrealized environment for democratic engagement in the justice system to one of active promotion and engagement. Rather than giving advocates the appearance of exploiting a loophole in the Texas Rules of Civil Procedure, such an effort—with the full support of the state's highest court and its Access to Justice Commission—would instead legitimize efforts of non-attorney advocates seeking to aid tenants facing eviction. And, almost certainly, this formal embrace of non-

⁵⁴ See E-mail from State Bar of Texas to Members, "Update on Texas Access to Justice Commission Meeting (Dec. 21, 2023 12:16:23 PM) (on file with author).

⁵⁵ See *infra* Section II.

⁵⁶ See E-mail from State Bar of Texas to Members, "Update on Texas Access to Justice Commission Meeting (Dec. 21, 2023 12:16:23 PM) (on file with author).

⁵⁷ See 45 C.F.R. § 1611 *et. seq.* (regulations governing eligibility for Legal Services Corporation-funded programs).

attorney representation would boost the supply of representatives available to Texas tenants.⁵⁸

D. Gaps in 500.4: Attorneys by Analogy: Undefined Terms for Unlicensed Practitioners

In addition to the implementation gap evident in Texas courts between landlords, who avail themselves of authorized agents, and tenants, who appear unrepresented (if at all), the rule itself has critical gaps in its guidance.

First, the Rules of Civil Procedure do not define the term “authorized agent.” While Rule 500.2 offers 28 distinct definitions of terms that appear throughout the rules governing justice court proceedings, none of those definitions defines what arguably is the rule that deviates most from practice in the state’s county, district, and appellate courts.⁵⁹ Further, Rule 510—which governs eviction proceedings—does not require authorized agents acting on behalf of a party to demonstrate proof of authorization to the court, whether in its pleadings or at trial.

This absence of definition becomes more pronounced when considering Rule 500.4(c)’s authorization for assisted representation. There, the Rule specifically defines who may assist an individual “representing himself or herself”: a family member, or other uncompensated individual.⁶⁰ This restriction on paid, non-lawyer assistance outside of the eviction context underscores the possibility for fraud and abuse in eviction proceedings. Particularly in a state where *notario* fraud is well-documented,⁶¹ the current rule’s structure fails, as a practical and regulatory manner, both to reach all parties and to protect against fraud.

Second, 500.4(c) raises the possibility of tension within the Rules regarding compensation for non-attorney advocates. 500.4(a) and (b)

⁵⁸ See Michele R. Pistone, *Expanding Immigrant Justice by Training Professionals*, 61 *Judges’ J.* 15 (2022) (arguing that training professionals as accredited representatives to appear in immigration proceedings will increase the supply of representation available to immigrants who cannot afford attorneys).

⁵⁹ “Authorized agent” is also not defined elsewhere in the Texas Rules of Civil Procedure.

⁶⁰ TEX. R. CIV. P. 500.4(C).

⁶¹ See Elizabeth Trovall, *Notario Fraud Scammers Target Houston’s Immigrant Communities*, HOUSTON PUB. MEDIA (May 7, 2018, 12:29 PM), <https://www.houstonpublicmedia.org/articles/news/politics/immigration/2018/05/07/283363/notario-fraud-scammers-target-houstons-immigrant-communities> [https://perma.cc/36LJ-9WXJ].

are silent on whether authorized agents may receive compensation.⁶² And, as the frequent appearances in justice courts of non-attorney practitioners like Nationwide Compliant makes clear, there is a plain acceptance of for-profit, unlicensed practice in accordance with 500.4(b).⁶³ However, 500.4(c) prohibits family members or “other individuals” for being compensated for assisting a person before a Texas justice court.⁶⁴ This gestures at some attempt at regulating a non-lawyer’s ability to profit from approved, unlicensed practice, while also protecting tenants. By simply identifying as an “authorized agent,” an unscrupulous advocate could evade this restriction, risking financial and legal harm to the consumer-client.

Indeed, in a Texas Office of the Attorney General opinion from 1986 analyzing authorized agent practice in eviction suits, the Texas Attorney General found against the organized, corporate, for-profit unlicensed practice of law in such proceedings.⁶⁵ Responding to an inquiry from the then-Criminal District Attorney of Bexar County, Attorney General Jim Mattox opined that “authorized agents . . . under section 24.009 must be individuals and not business entities”⁶⁶ when bringing forcible entry and detainer suits under the Texas Property Code. The opinion further explained, “[t]he ‘authorized agent’ is to act analogously to a licensed attorney, who is necessarily an individual.”⁶⁷

Undoubtedly, the Attorney General opinion predates the current Texas legal framework governing justice court proceedings.⁶⁸ And practically, its belief that corporate entities cannot serve as authorized agents does not find support in justice courts across Texas.⁶⁹ Yet the notion of “attorney by analogy” still has explanatory power for the role of non-attorney agents currently practicing in

⁶² TEX. R. CIV. P. 500.4(a)-(b).

⁶³ While non-attorney practitioners are not entitled to attorney’s fees, landlords routinely charge tenants “eviction fees” that can include the cost of retaining non-attorney agents such as Nationwide Compliant.

⁶⁴ TEX. R. CIV. P. 500.4(c).

⁶⁵ Jim Mattox, *Representation of parties in forcible entry and detainer suits by “authorized agents” under 24.009 of the Texas Property Code*, TEX. ATT’Y. GEN. OP. NO. JM-451 (1986). My thanks to the Texas Access to Justice Commission Working Group for making me aware of this opinion in its July 27, 2023 presentation and listening session.

⁶⁶ *Id.* at 2048.

⁶⁷ *Id.* at 2046-47.

⁶⁸ See generally Balovich, *supra* note 37, at 35 (2015 article explaining the new Texas justice court rules, which was published long after the Attorney General opinion).

⁶⁹ In addition to our Housing Rights Project team’s observations, the Texas Access to Justice Commission’s working group noted this in its July 27, 2023, meeting, as well: Nationwide Compliant is a regular presence in eviction proceedings on behalf of landlords.

eviction proceedings. These agents function like or as attorneys; it stands to reason that the courts that permit their practice offer some oversight just as they do for attorney counterparts.

II. SURVEYING THE LANDSCAPE FOR IMPLEMENTATION OF NON-ATTORNEY ADVOCATE MODELS: LEADING PRACTICES FROM CIVIL AND ADMINISTRATIVE PROCEEDINGS

With further refinement and definition, Rule 500.4's grant of permission to non-attorney advocates in eviction proceedings could serve a dual role: not only as a model procedural rule for eviction courts, as well as a catalyst for expanded tenant representation. In surveying both state court practices, as well as those in administrative agency proceedings, examples emerge that can be adopted in a meaningful way to increase tenant representation.

A. Non-Attorney Practice Under Legal Aid Supervision

With increasing alacrity, states are liberalizing non-attorney representation restrictions to permit supervised non-attorneys to advise and appear for clients in specific practice areas. Alaska and Delaware, in particular, have emerged as leading models for non-attorney eviction practice within broader legal aid organizations. The practical implementation of non-attorney advocates in these small-population states, combined with the broad permission of Texas's Rule of Civil Procedure 500.4, could fuse innovation and oversight in a way that moves non-attorney tenant representation from mere possibility towards a practical reality.

1. Alaska's Community Justice Worker Project

In December 2017, the Alaska Court System Access to Justice Committee released a comprehensive study of the state's "justice ecosystem" that contextualized the opportunities for expanded access to the justice system in "The Last Frontier."⁷⁰ By advancing understanding of an ecosystem where justice was not limited to courtroom outcomes, but "issues essential to ensuring wellbeing,

⁷⁰ See STACEY MARZ, MARA KIMMEL & MIGUEL WILLIS, ALASKA'S JUSTICE ECOSYSTEM: BUILDING A PARTNERSHIP OF PROVIDERS (2017) (2017) (report outlines ways to improve access to the justice system by rectifying gaps to access).

including housing, education . . . health, safety[,]” and more components, the report established the possibility for justice work to take place outside of the traditional delivery of legal services.⁷¹

As a next step to address gaps in that ecosystem, the report recommended a certification program for paraprofessionals, modeled upon the medical and dental model of multi-tiered service delivery that administers the Alaska tribal health care system.⁷² Subsequently, Alaska followed the report’s recommendation. In November 2022, Alaska adopted Bar Rule 43.5, which authorized individuals to become non-lawyer advocates.⁷³

The Community Justice Worker Project, as it is known,⁷⁴ requires advocates to offer their services free of charge and under the supervision of legal aid attorneys.⁷⁵ The Alaska Board of Governors overseeing attorneys certifies non-lawyer practitioners upon application from the practitioner’s host organization, which by rule must be the Alaska Legal Services Corporation.⁷⁶ That organization must make quarterly reports to the Alaska Supreme Court and Board of Governors regarding the number of clients served by approved justice workers and case outcomes, as well as any complaints.⁷⁷

The limitation of this program to workers under Alaska Legal Services Corporation supervision yielded a dissent from the then-Chief Justice of the Alaska Supreme Court, Daniel Winfree. While Justice Winfree supported the waiver conceptually, but registered his opposition to its relatively limited scope:

. . . I am unwilling to sign the present Order in the absence of any requirement that the Board of Governors approve—conceptually or otherwise—the proposed training programs or that the Board of Governors maintain some structured overview of the program that can be accessed by the public, *including other organizations that may wish to request a similar rule without being held to different standards.*⁷⁸

⁷¹ *Id.* at i.

⁷² *Id.* at 23.

⁷³ ALASKA BAR RULE 43.5 §1.

⁷⁴ *Introduction of Proposed Rule 43.5*, ALASKA BAR ORG., (last visited Sep. 15, 2023). <https://alaskabar.org/wp-content/uploads/Memo-and-Proposed-Bar-Rule-43.5.pdf> [<https://perma.cc/6EES-EW95>] (last visited Sep. 15, 2023).

⁷⁵ ALASKA BAR RULE 43.5.

⁷⁶ *Id.* §2(a).

⁷⁷ *See id.* § 5.

⁷⁸ *Id.* at 47, (emphasis added).

The Chief Justice's dissent instructs future jurisdictions seeking to implement limited-scope, non-attorney representation programs of the challenges around regulating non-attorney practice. Too few guidelines, and the state's court system is limited in its ability to oversee advocates practicing before its judges and with clients who do not have the option of retaining an attorney. However, too many restrictions, and the promise of expanded access to justice workers becomes illusory: old barriers simply, giving way to new barriers.

2. Delaware's Qualified Tenant Agents

Like Alaska, Delaware recently adopted a rule for expanded non-attorney representation in eviction proceedings. Less restrictive than the one established in Alaska, it still nevertheless places this expanded non-attorney advocacy within the realm of legal aid organizations.

In January 2022, Delaware's Supreme Court adopted Supreme Court Rule 57.1, which permits non-lawyer, Qualified Tenant Advocates to represent residential tenants under the supervision of one of Delaware's three legal aid agencies.⁷⁹ After training and certification from the Qualified Tenant Advocate's supervising agency—a certification that is filed with the Supreme Court of Delaware—Qualified Tenant Agents can appear in court without a supervising attorney, file pleadings, enter into negotiations, and provide advice on landlord-tenant matters.⁸⁰

Delaware's promotion of non-attorney advocates for tenants facing eviction took place within a more-restrictive representation regime than currently in place in Texas. Prior to the authorization of Qualified Tenant Advocates, Delaware corporations could use a non-attorney agent in eviction proceedings in justice of the peace court, but tenants could not.⁸¹ The authorization thus brings some

⁷⁹ *Delaware Supreme Court Announces Adoption of New Supreme Court Rule 57.1 to Allow Non-Lawyer Representation of Residential Tenants in Eviction Actions*, DEL. CTS. (Jan. 28, 2022), <https://courts.delaware.gov/forms/download.aspx?id=133348>, [https://perma.cc/78HR-XVHR].

⁸⁰ DEL. SUP. CT. RULE 57.1.

⁸¹ Joe Irizarry, *Delaware changes rule on non-lawyer representation for people facing eviction*, DEL. PUBLIC MEDIA Delaware Public Media (Feb. 3, 2022, 6:16 PM), <https://www.delawarepublic.org/delaware-headlines/2022-02-03/delaware-changes-rule-on-non-lawyer-representation-for-people-facing-eviction>, [https://perma.cc/8BA9-9WHT].

semblance of balance to landlord-tenant representation in the state's eviction proceedings.

However, like Alaska, its scope remains limited: only tenants who qualify for the services that the state's three legal aid providers offer may obtain representation from a qualified tenant advocate.⁸² Such services routinely have often-onerous standards based on income⁸³ or membership in a defined class.⁸⁴ By limiting Qualified Tenant Advocates to practice under the supervision of legal aid organizations, Delaware, too, has an incomplete framework for increasing tenant representation in eviction proceedings.

B. Paraprofessional Licensing Outside of Legal Aid

While in different stages of development, Arizona, Minnesota, Oregon, and Utah license paraprofessionals to practice law, under attorney supervision, outside of the context of free legal services providers.⁸⁵ Arizona's Legal Paraprofessional licensing certifies non-attorney practitioners to serve as counsel on family law matters, limited jurisdiction civil matters, limited jurisdiction criminal matters where incarceration is not available, and state administrative hearings.⁸⁶ Minnesota's new pilot program has a more limited scope, select housing and family law matters, however neither state

⁸² DEL. SUP. CT. RULE 57.1(B)(1) (The Legal Services Corporation of Delaware, Community Legal Aid Society, Inc., and Delaware Volunteer Legal Services, Inc., are the three legal services providers the Delaware Supreme Court has authorized to supervise Qualified Tenant Advocates).

⁸³ See, e.g., *Frequently Asked Questions (FAQs)*, LEGAL SERVICES CORP. OF DEL., INC., (Aug. 7, 2014) <https://www.lscd.com/node/3/frequently-asked-questions-faqs#Eligibility> [<https://perma.cc/DS99-JR1X>].

⁸⁴ See generally *Classes of Individuals Who Can Receive Free Civil Legal Services*, CMTY. LEGAL AID SOC'Y, INC., <http://www.declasi.org/> (last visited Sept. 15, 2023) (listing categories of individuals CLASI serves).

⁸⁵ Another state, Washington, has stopped licensing new limited license legal technicians, but permits those already licensed to continue. See 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/D7ZU-FPBA>].

⁸⁶ *Legal Paraprofessionals (LP) Questions and Answers*, ARIZ. JUD. BRANCH, <https://www.azcourts.gov/accesstolegalservices/Questions-and-Answers/lp> [<https://perma.cc/7JNK-AMWN>] (last visited Sept. 15, 2023).

requires legal aid supervision of license paraprofessionals,⁸⁷ mirroring Oregon's scope of licensing paralegals for practice.⁸⁸

Utah's Licensed Paralegal Practitioner Program offers, with great specificity, not only the practice areas in which an "LPP" can offer services—certain family matters, evictions, and debt collection—but also the forms of assistance an LPP can provide.⁸⁹ Utah's LPP Program also has practice area-specific training requirements, requiring 100 hours of experience before licensing an LPP to practice in eviction matters.

Interestingly, the Utah courts explain that LPPs may not appear in court. However, Rule 14-802 permits "standing or sitting with the client during a proceeding to provide emotional support, answering factual questions as needed that are addressed to the client by the court or opposing counsel, taking notes, and assisting the client to understand the proceeding and relevant orders."⁹⁰ These permissions resemble the Texas Attorney General's "attorney by analogy" concept, introduced nearly four decades before and over one thousand miles away.

C. Non-Attorney Advocacy Before Federal Agencies

Federal agencies authorize non-attorneys to represent individuals in administrative proceedings. The IRS permits Enrolled Agents to represent taxpayers with "unlimited practice rights"—the same status it confers upon attorneys and Certified Public Accounts—upon passage of a three-part test.⁹¹ Similarly, with the passage of an exam and with the satisfaction of other requirements, non-attorneys can represent individuals in Social Security Administration hearings.⁹² Less stringently, an administrative judge's approval, a non-attorney is permitted to represent an individual in Department of Labor proceedings.⁹³

⁸⁷ See *Legal Paraprofessional Pilot Project*, MINN. JUD. BRANCH, <https://mncourts.gov/Help-Topics/Legal-Paraprofessionals-Pilot-Project.aspx> [<https://perma.cc/7SZ4-VPNX>] (last visited Sept. 15, 2023).

⁸⁸ See generally *Oregon Licensed Paralegals*, OR. STATE BAR, <https://www.osbar.org/lp> [<https://perma.cc/5F2L-TKUX>] (last visited Sept. 15, 2023).

⁸⁹ See *Licensed Paralegal Practitioner*, UTAH STATE COURTS (citing Rule 14-208 of the Rules Governing the Utah State Bar), (last visited Sept. 15, 2023).

⁹⁰ *Id.*

⁹¹ 31 U.S.C. § 330; *Enrolled Agent Information*, INTERNAL REVENUE SERV. (Feb. 14, 2023), <https://www.irs.gov/tax-professionals/enrolled-agents/enrolled-agent-information> [<https://perma.cc/HN2V-PZ7A>].

⁹² 42 U.S.C. § 406(a)(1).

⁹³ See 29 C.F.R. § 18.22(b)(2).

Immigration proceedings before U.S. Citizenship and Immigration Services (USCIS) and the Executive Office of Immigration Review (EOIR) permit non-attorneys to practice as accredited representatives, provided they work for a recognized organization: “a non-profit, federally tax-exempt, religious, charitable, social service, or similar organization established in the United States that has been approved for recognition is called a DOJ Recognized Organization.”⁹⁴ Accredited representatives and recognized organizations *can* charge fees, but the organization must declare and document that it serves low-income and indigent clients, and it must submit fee schedules, revenue, and budget to EOIR.⁹⁵

III. SYNTHESIZING BEST PRACTICES TO MAXIMIZE TENANT REPRESENTATION WHILE ENSURING QUALITY

A. Who Authorizes the Authorized Agent? Court Oversight and Approval of Non-Attorney Practitioners

In reviewing non-attorney practices in civil and administrative proceedings, a common theme emerges: some sort of judicial or administrative oversight is exercised over non-attorney practitioners. Even in the most permissive administrative setting, a form of *pro hac vice* judicial approval is required.⁹⁶ In civil settings, either the supervising organization or the administrative body overseeing attorney licensure must certify the non-attorney for practice. Regardless, the body administering the proceedings—be they judicial or administrative—issues the mechanism for authorizing appearances before the tribunal, not the parties themselves.

Any robust program for non-attorney representation in eviction proceedings should require the body regulating attorneys to similarly regulate the non-lawyer appearances. This safeguards clients—both landlords and tenants alike—from unscrupulous practitioners, and permits a mechanism for disciplining transgressors.

⁹⁴ See *Recognition and Accreditation Program Frequently Asked Questions*, EXEC. OFF. FOR IMMIGR. REV., <https://icor.eoir.justice.gov/en/faq/> [<https://perma.cc/4NNM-7D7G>] (last visited Sept. 15, 2023); see also 8 C.F.R. § 1292.11; see also 8 C.F.R. § 1292.14.

⁹⁵ *Recognition and Accreditation Program Frequently Asked Questions*, EXEC. OFF. FOR IMMIGR. REV., <https://icor.eoir.justice.gov/en/> [<https://perma.cc/XR5X-NTYG>] (last visited Sept. 15, 2023).

⁹⁶ See 29 C.F.R. § 18.22(b)(2).

B. Standards for Authorization: Many Paths to the Courtroom

To maximize those eligible for authorization as non-attorney eviction advocates, overseeing bodies should explicitly permit multiple pathways to licensure. The Alaska/Delaware model of training, followed by legal aid attorney supervision, should be one such pathway for nonprofit representatives.⁹⁷ Non-attorney practice rules, however, should not limit nonprofit representatives to practicing only within the confines of legal aid organizations. As the dissent of Chief Justice Winfree alluded to, such limitations bar access to not only to the broader public interested in receiving training and aiding tenants, but also to tenants themselves who seek to avail themselves of trained assistance when facing eviction.

Further, limiting non-attorney practice to the confines of legal aid organizations risks burdening the already-overburdened providers of free legal services.⁹⁸ Such organizations face demand for services that far outpaces the supply of legal aid professionals. Adding to their duties an expectation of supervising the only permitted non-lawyer practitioners in a given practice area would further stretch their finite resources.

To alleviate this strain on the existing legal services infrastructure, overseeing bodies should, as USCIS and EOIR currently allow, permit a mechanism for social service organizations to become “recognized organizations” for the purposes of eviction defense.⁹⁹ Once recognized, the organization could submit for approval individuals to become “authorized agents” for eviction matters. Such authorized agents would have access to attorneys for the purposes of ongoing training, case counseling, and referrals for matters that fall outside of the limited scope of eviction proceedings. This, too, draws upon the format of accredited representatives working on immigration matters at recognized organizations. While the recognized organizations do not strictly need an on-staff attorney to serve as this technical assistant, they must have some sort of

⁹⁷ See *supra* Part II A.

⁹⁸ See *The Justice Gap: The Unmet Civil Legal Service Needs of Low-Income Americans* LEGAL SERVICES CORP. (April 2022), <https://lsc-live.app.box.com/s/xl2v2uraiotbbzrhwtjlg0emp3myz1> [https://perma.cc/4H5R-X47Y] (“Low-income Americans do not get any or enough help for 92% of their substantial civil legal problems.”).

⁹⁹ See *Recognition and Accreditation Program Frequently Asked Questions*, *supra* note 97.

formal agreement or understanding with counsel to backstop accredited representatives.¹⁰⁰

Within the context of housing and eviction law, this pathway has the potential to not only increase the number of trained advocates representing tenants in court, but also to impact the number of eviction filings overall. Professor Andrew Messamore, studying longitudinal data of eviction filings, has found that “all neighborhoods in cities with high densities of community organizations [focused on housing and anti-poverty] are predicted to have eviction filing rates 21 percent lower relative to cities with few community organizations.”¹⁰¹ Acknowledging the potential for tenant organizations to stabilize housing, the U.S. Department of Housing and Urban Development announced in 2023 a Notice of Funding Opportunity (NOFO) for \$10 million to support tenant education and outreach.¹⁰² Empowering community organizations to not only raise the public profile of tenant concerns, but also to accompany and advocate for tenants in eviction court, would build upon this growing understanding that procedural engagement with the eviction process leads to substantive benefits.

Additionally, expanded guidance for formal recognition of non-attorney advocates in eviction proceedings could provide greater uniformity to existing landlord practices. Currently, Texas corporations can and do contract with authorized, non-attorney agents, who are not corporate employees, for representation in eviction suits. These agents work for corporate, for-profit entities, which in turn charge for services and function analogously to attorneys.¹⁰³ To certify these agents as authorized eviction agents, overseeing bodies could adopt Utah’s hours-of-experience standard. Without going as far as the 1986 Texas Attorney General opinion that found that authorized agents could not be corporate entities, this practice would resemble a form of compromise: continued corporate practice with some amount of administrative compliance. This would preserve the ability of incumbent agents to continue their authorized practice with minimal additional administrative burden,

¹⁰⁰ See 8. C.F.R. § 1292.11(e) (requiring organizations seeking recognition to submit “any agreement or proof of a formal arrangement entered into with non-staff immigration practitioners . . . for consultations or technical legal assistance”).

¹⁰¹ See Messamore, *supra* note 18, at 3.

¹⁰² U.S. DEP’T HOUS. & URB. DEV., TENANT EDUCATION AND OUTREACH FR-6700-N-46 3-4 (2023)

https://www.hud.gov/sites/dfiles/SPM/documents/TenantEducationandOutreachNOFO_FR-6700-N-46.pdf [<https://perma.cc/38WS-75Y8>].

¹⁰³ See Balovich, *supra* note 37, at 36.

while also creating some sort of oversight mechanism over what is currently the practice of law by analogy: a pseudo-practice of law.

Existing supervised practice standards for law students could be expanded for the purpose of eviction proceedings. With clarified standards, law schools then could offer clinical programs for undergraduate and non-J.D. law students, similar to work done at the University of Arizona's Juvenile Justice Undergraduate Clinic¹⁰⁴ where students can both begin practicing under attorney supervision *and* earn credentials to allow for practice following their semester in the clinic. With clear guidance in place for those interested in serving in such roles, law schools can expand their educational reach to future housing advocates, regardless of degree program.

Further, law schools can build relationships with "registered organizations" to ensure a high baseline of substantive and procedural knowledge for housing advocates.¹⁰⁵ Through training and participation, law schools can improve the quality and quantity of advocacy in housing courts. Law schools nationwide have long held "people's law school"—one-day or short-term series of lectures, designed for general audiences, on topics of popular interest.¹⁰⁶ Expanding legal education to train not only enrolled J.D. candidates but also undergraduates and interested housing advocates would advance the concept of a people's law school in a way more enduring than a single morning's worth of lectures. Further, by choosing an area of law—eviction defense—routinely litigated in the "people's court," law schools can do more than make a play on words. Indeed, law schools can use this framework of public participation in the court process as a method for expanded empowerment and training.

¹⁰⁴ See Alejandra Cardenas Cuestas, *At the University of Arizona, Nation's First Law School Clinic for Undergrads Gives Students Legal Experience while Serving the Community*, JAMES E. ROGERS COLL. OF L., UNIV. OF ARIZ. (May 5, 2020), <https://law.arizona.edu/news/2020/04/university-arizona-first-law-school-clinic-for-undergrads> [https://perma.cc/W8CY-FAZM].

¹⁰⁵ See e.g., *VIISTA – Villanova Interdisciplinary Immigration Studies Training for Advocates*, VILLANOVA UNIV., <https://www1.villanova.edu/university/professional-studies/academics/professional-education/viista.html> [https://perma.cc/92DJ-8D47] (last visited Sept. 15, 2023).

¹⁰⁶ See, e.g., *People's Law School open virtual classroom to the public*, ST. MARY'S UNIV. (March 16, 2022), <https://www.stmarytx.edu/2022/peoples-law-school-4/> [https://perma.cc/7QUA-59HH]; see also *People's Law School*, BAYLOR UNIV. SCH. OF L., <https://www.baylor.edu/law/index.php?id=936102> [https://perma.cc/LQX5-HMW7] (last visited Sept. 15, 2023); see also *People's Law School Annual Event*, WILMERHALE LEGAL SERVICES CTR. OF HARVARD L. SCH., <https://www.legalservicescenter.org/peoples-law-school-annual-event/> [https://perma.cc/D84V-DWUH] (last visited Sept. 15, 2023).

IV. EMPOWERING LIONS: NON-ATTORNEY ADVOCATES, TENANT EMPOWERMENT AND THE ALIGNMENT BETWEEN ACCESS TO JUSTICE AND RIGHT TO COUNSEL REFORMS

A. Subversive Non-Lawyering As an Outcome of Non-Attorney Representation

Prof. Eloise Lawrence builds upon the concept of a resistance lawyer to define a subversive lawyer: one who “works directly with organizers to take a moment imbued with vulnerability, isolation, and feelings of powerlessness—when a person is facing an eviction—and transform it into one of strength, solidarity, and empowerment.”¹⁰⁷ Embracing non-lawyer representation in eviction proceedings builds upon this framework and builds power closer to its source: tenants and tenant organizers themselves. Rather than rely upon the lawyer as an intermediary—no matter how client-centered—non-attorney representation can subvert the often-obstructive framework of the existing civil legal system. It can be a direct pathway for tenants facing housing insecurity to insist upon their rights and dignity. And, it can do this while stabilizing their housing.

Lawrence retells the success of tenants and organizers with Vida Urbana, the Boston-based tenant organization. After a successful jury trial in an eviction suit, tenant Tunde Kunnu explained: “We are powerful. We needed to know our rights, and we needed to exercise our rights. With support from City Life/Vida Urbana and the amazing lawyers at Harvard Legal Aid Bureau, we realized we are a lion.”¹⁰⁸

Tunde Kunnu is not alone. Countless other lions can be empowered through recognized, promoted non-attorney representation. Even in landlord-friendly jurisdictions like Texas,¹⁰⁹ procedural and substantive rights exist that tenants can exercise to combat unjust evictions. This is not to eliminate the attorney’s role as an advocate, supporter, or counselor altogether. As discussed, a non-attorney representation scheme would optimally involve some

¹⁰⁷ Eloise Lawrence, *When We Fight, We Win: Eviction Defense as Subversive Lawyering*, 90 FORDHAM L. REV. 2125, 2127 (2022).

¹⁰⁸ Katie Trojano, *Jury says that tenants in Uphams Corner case can stay in their homes*, DORCHESTER REP. (Nov. 14, 2019), <https://www.dotnews.com/2019/jury-says-tenants-uphams-corner-case-can-stay-their-homes> [<https://perma.cc/HS96-UYPU>].

¹⁰⁹ See *supra* Part IA.

level of attorney consultation or availability. That said, non-attorney representation in eviction proceedings minimizes the need for direct attorney representation while maximizing access to trained, zealous advocates.

B. Non-Attorney Representation as Common Ground for Access to Justice and Right to Counsel Movements

Through this balance between lowered barriers to entry to eviction courtroom advocacy and established standards for training and supervision, non-attorney eviction defense can also synthesize the aims of both access-to-justice and tenant-right-to-counsel advocates.

The changing landscape of paraprofessional licensing demonstrates the successes of access to justice advocates seeking to reshape legal services delivery into a tiered model akin to medical services, where a patient may see a nurse, licensed nurse practitioner, medical assistant, general practitioner, or specialist depending on one's needs.¹¹⁰ However, concerns about the effectiveness of non-lawyer advocates are well-founded, with research suggesting that a lawyer's knowledge of procedural rules and how to interact with judges affects, to a considerable degree, the effectiveness of representation.¹¹¹ This concern with effective representation is implicit within the aims of movements supporting a right to counsel for tenants in eviction proceedings, which point to studies showing the difficulty tenants face in raising potential defenses on their own.¹¹² Regulated non-attorney representation brings together the goals of both movements, expanding the pool of trained advocates available to tenants while expanding pathways to individuals becoming said advocates—and, likely, at lower cost to funders (be they private or public) than fully-licensed attorneys.¹¹³

¹¹⁰ E.g., Laurel A. Rigertas, *Stratification of the Legal Profession: A Debate in Need of a Public Forum*, J. OF THE PRO. LAW, Jan. 1, 2012, at 79, 80.

¹¹¹ See Anna E. Carpenter, Alyx Mark, & Colleen F. Shanahan, *Trial and Error: Lawyers and Nonlawyer Advocates*, 42 L. & SOC. INQUIRY 1023, 1024 - 25 (2017).

¹¹² Cf. PUB. JUST. CTR., RTS TO HOUS. ALL., DAN PASCIUTI & MICHELE COTTON, JUSTICE DIVERTED: HOW RENTERS ARE PROCESSED IN THE BALTIMORE CITY RENT COURT, <https://abell.org/wp-content/uploads/2022/02/cd-justicediverted216.pdf> (2015) (showing an 8% success rate among tenants surveyed who had potential defenses out of 168 renter-defendants surveyed).

¹¹³ See Stacey Butler, *Allied Legal Professionals and the Legal Service Ecosystem*, UNIV. OF DENVER - INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS. (Feb. 15, 2023), <https://iaals.du.edu/blog/allied-legal-professionals-and-legal-service-ecosystem>, [<https://perma.cc/QXH3-SZBP>].

Such an expansion also likely anticipates the direction of legal services delivery to potential clients of limited financial means. In addition to the state-level reforms underway to expand paraprofessional licensing, on the Court of Appeals for the Second Circuit's docket is *Upsolve, Inc. v. James*.¹¹⁴ Upsolve, a non-profit organization dedicated to helping low-income residents resolve debt-collection suits, has challenged New York's Unauthorized Practice of Law (UPL) statute on First Amendment grounds.¹¹⁵ Access to justice and civil rights advocates have filed *amicus curiae* briefs in support of Upsolve's suit, arguing that Upsolve, if allowed to operate as envisioned and free of UPL prohibitions, would address the real-world needs of New Yorkers facing debt collection.¹¹⁶

Upsolve's model—which trains non-attorneys to assist fellow community members in addressing discrete, limited-subject-matter questions¹¹⁷—mirrors the processes adopted in Alaska and Delaware. Through a “recognized organization” model of authorizing non-attorney practice, a nonprofit organization with a similar, tailored focus on housing rights would not need to pursue years' worth of litigation on constitutional grounds to serve its community. Instead, it would receive approval from a state overseer, and begin seeking accreditation for advocates working under its auspices—doing more, and more quickly, to address the real-life challenges tenants face.

CONCLUSION: NON-ATTORNEY REPRESENTATION AS A JUSTICE SOLUTION FOR A JUSTICE PROBLEM

Scholar Rebecca Sandefur has written extensively about the importance of distinguishing “justice problems” from “legal

¹¹⁴ See *Upsolve, Inc. v. James*, Justia Dockets & Filings, <https://dockets.justia.com/docket/circuit-courts/ca2/22-1345> [<https://perma.cc/LTJ8-QFC9>] (last visited Sept. 14, 2023) (showing that the case was filed on June 22, 2022 in the U.S. Court of Appeals, Second Circuit and remains on their docket).

¹¹⁵ See, e.g., Bruce A. Green and David Udell, *What's Wrong with Getting a Little Free Legal Advice?*, N.Y. TIMES (Mar. 17, 2023), <https://www.nytimes.com/2023/03/17/opinion/lawyers-debt-monopoly-advice.html> [<https://perma.cc/7K4C-V54R>].

¹¹⁶ See Amicus Brief of the National Center for Access to Justice in *Upsolve, Inc., v. James* at 6-7, *Upsolve, Inc. v. James*, No. 22-cv-627 (U.S. Dist. Ct., S.D. N.Y. argued May 5, 2022) (No. 22-1345).

¹¹⁷ See Green & Udell, *supra* note 118.

needs.”¹¹⁸ Justice problems often involve basic needs, such as housing.¹¹⁹ They may involve a legal problem, but they do not only involve legal issues.¹²⁰ In a call for broader engagement with addressing the scope and the specifics of these challenges, Sandefur writes, “[r]esolving the access-to-justice crisis requires that justice professionals shift their understanding of the access problem, and share the quest for solutions with others.”¹²¹

Similarly, in their work exposing the challenges of America’s lawyerless courts, Profs. Carpenter, Shanahan, Steinberg, and Mark exhort the legal profession to look outside itself for solutions. “Because lawyers do not have all the answers,” they write, “we also urge them to invite ordinary people and experts from outside the legal system to take leadership roles in reforming our courts.”¹²²

In promoting a formal pathway for non-attorney representation in eviction proceedings, this article seeks to contribute to this effort of democratizing our response to the justice crisis. Promoting and formalizing the presence of non-attorney advocates in eviction proceedings would practically and meaningfully express a commitment to democratic engagement in expanding access to justice, with justice properly defined. It would empower advocates and organizers who are responding holistically to the needs of tenants to incorporate courtroom representation into broader justice advocacy.

Further, rather than view the lawyerless eviction court as an obstacle for tenants, it invites practitioners, advocates, and regulators alike to see the “people’s court” as an invitation for creative engagement: one that can both empower tenants, stabilize housing, and mitigate the traumas of eviction.

Practically and symbolically, eviction hearings are a fitting venue to catalyze this democratizing work. After all, the courthouse may already share space with the trappings of ordinary American life, like discount retailers and birthday party venues. Its rules, by explicit design, are meant for ordinary Americans to navigate unassisted. What better place, then, to begin the difficult yet liberating work of reimagining not just fairer legal processes, but more expansive notions of justice?

¹¹⁸ Rebecca L. Sandefur, *Access to What?*, 148 DAEDALUS, THE J. OF THE AM. ACAD. OF ARTS & SCIENCES, 49, 50 (2019).

¹¹⁹ *Id.* at 49.

¹²⁰ *See id.* at 50.

¹²¹ *Id.* at 54.

¹²² Carpenter *et. al.*, *supra* note 12, at 51.