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Navigating Rough Waters: Empowering Law Students to Act as Navigators for the Unrepresented

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**NAVIGATING ROUGH WATERS: EMPOWERING LAW STUDENTS TO ACT AS
NAVIGATORS FOR THE UNREPRESENTED**

Alicia M. Forehand*

An access to justice crisis persists in the United States. In the movement to address this crisis, reformers have begun to consider ways to expand legal assistance by nonlawyers, through limited licensing of paraprofessionals and procedural assistance from nonlawyer “navigators.” Law students could play a valuable role as navigators but currently are restricted in most jurisdictions by student practice rules. The access to justice crisis is particularly acute in South Carolina which has an especially narrow student practice rule compared to other states. This Note presents a comprehensive review of student practice rules in all fifty states and proposes rule changes in South Carolina to empower law students to serve as navigators in specific areas of need.

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I. INTRODUCTION: THE ACCESS TO JUSTICE CRISIS

Equal, meaningful access to legal services is among the most important duties of the legal profession. Yet a profound access to justice crisis persists in the United States.¹ Access to justice “refers to a person’s ability to use the legal system to advocate for themselves and their interests.”² Many forego necessary legal assistance due to an inability to afford to consult or hire a lawyer.³ In 76% of civil cases, at least one party is not represented.⁴ Every year, 55 million Americans have legal issues, but less than half are resolved fairly or even resolved at all.⁵ The negative results are substantial and widespread and can not only impact “outcomes in courtrooms, but also often lead to loss of employment, housing, family stability, consumer protections, and liberty.”⁶

The access to justice crisis is particularly prevalent in the State of South Carolina.⁷ The Justice Index, published by The National Center for Access to Justice, identified policies that ensure access to justice and ranked states based on their adoption of those policies.⁸ The Justice Index found that South Carolina has the ninth lowest score of all states, the fourth lowest score among all states when fines and fees are considered, and the second lowest score among Southern states.⁹ Moreover, even where South Carolina has policies in place to provide access to lawyers, there are not enough lawyers in the state to meet the demand.¹⁰ According to the Justice Index, South Carolina ranks

1. INST. FOR ADVANCEMENT AM. LEGAL SYS., JUSTICE NEEDS AND SATISFACTION IN THE UNITED STATES OF AMERICA 6 (2021).

2. ELIZABETH CHAMBLISS ET AL., S.C. ACCESS TO JUST. COMM’N, MEASURING SOUTH CAROLINA’S JUSTICE GAP 2 (2021).

3. INST. FOR ADVANCEMENT AM. LEGAL SYS., *supra* note 1, at 131.

4. NAT’L CTR. FOR STATE CTS., THE LANDSCAPE OF CIVIL LITIGATION IN STATE COURTS 4 (2015).

5. INST. FOR ADVANCEMENT AM. LEGAL SYS., *supra* note 1, at 222. The study found a little less than half (49%) of legal issues are resolved; of those unresolved, approximately half (29% of all legal issues) are not expected to be resolved in the future. *Id.* at 32. The age of the legal issue (time since it arose) was not found to have a meaningful effect on whether it would be resolved. *Id.* Of the legal issues resolved, 17% reportedly were resolved unfairly. *Id.* at 56.

6. Memorandum from the Off. of the Att’y Gen. on Access to Just. (May 18, 2021), <https://www.justice.gov/ag/page/file/1395271/download> [<https://perma.cc/MC8Q-7JRR>].

7. See CHAMBLISS ET AL., *supra* note 2, at 4.

8. *Justice Index*, NAT’L CTR. FOR ACCESS TO JUST., <https://ncaj.org/state-rankings/justice-index> [<https://perma.cc/QV8M-EBTB>].

9. *Id.*

10. *Attorney Access*, NAT’L CTR. FOR ACCESS TO JUST., <https://ncaj.org/state-rankings/2020/attorney-access> [<https://perma.cc/6XKY-KAPE>]. South Carolina ranked 29th among all states in attorney access but last among all states in attorney count. *Id.*

last out of all states in the number of attorneys available to represent people living in poverty.¹¹ The extent of the crisis in South Carolina warrants prioritization, and action is necessary to make meaningful change. Recent and developing efforts to address the crisis across the nation deserve review to determine where South Carolina can improve.

The shortage of affordable legal assistance results in part from the way that legal services are regulated in the United States.¹² The practice of law is limited to lawyers admitted to the bar in a jurisdiction.¹³ According to the American Bar Association, this limitation exists to protect the public from receiving legal services from unqualified individuals.¹⁴ The definition of the practice of law varies by jurisdiction and is determined by each state's supreme court.¹⁵ However, the unauthorized practice of law is generally prohibited, and every jurisdiction has a rule against it.¹⁶ Notably, the source of most complaints about the unauthorized practice of law are lawyers, not the

11. See *Justice Index*, *supra* note 8, at 4; see also ELIZABETH CHAMBLISS ET AL., *supra* note 2, at 4. Approximately 15% of South Carolinians lived in poverty, and 20% were eligible for subsidized legal assistance (below 125% of the federal poverty line). *Id.* In South Carolina's 46 counties: 14 counties have fewer than 10 privately practicing lawyers; and 4 counties have fewer than 5 privately practicing lawyers. *Id.* at 5. Additionally, cost is a factor in the decision to seek out or utilize legal assistance. *Id.* The average cost of hiring an attorney in South Carolina ranges from approximately \$150 per hour to \$350 per hour. See, e.g., *How Much Do Lawyers Cost: Fees Broken Down by State*, CONTRACTSCOUNSEL, <https://www.contractsounsel.com/b/how-much-do-lawyers-cost> [<https://perma.cc/EVE3-BQQE>]. This means an individual earning the mean annual wage in South Carolina, approximately \$47,000 per year, would have to work nearly 7 hours to pay for 1 hour of legal services at the lower average rate, and nearly 16 hours to pay for 1 hour of legal services at the higher average rate. See *May 2021 State Occupational Employment and Wage Estimates South Carolina*, U.S. BUREAU OF LABOR STATISTICS, https://www.bls.gov/oes/current/oes_sc.htm#00-0000 [<https://perma.cc/V7MU-YDCF>]. For many others, paying for legal services would pose an even greater challenge. *Id.* The JUSTICE GAP REPORT indicates that South Carolina does not have adequate resources to provide access to legal services for those who cannot afford it. ELIZABETH CHAMBLISS ET AL., *supra* note 2, at 4–5. A staggering 20% of South Carolina citizens are eligible for subsidized legal services, yet “funding for South Carolina Legal Services, the front-line provider of civil legal aid within the state, supports only 54 attorneys—one for every 18,197 eligible persons.” *Id.* at 4. South Carolina Legal Services (SCLS) turns away around 2,000 people in need of legal services every year due to insufficient resources. *Id.* at 10. Of those accepted, over three quarters only receive limited assistance. *Id.* at 10.

12. See INST. FOR ADVANCEMENT AM. LEGAL SYS., *supra* note 1, at 230. A study conducted by the Institute for the Advancement of the American Legal System found that “barriers and inefficiencies” and, ultimately, the lack of “access to scalable solutions of consistent high quality” are to blame. *Id.* at 231.

13. MODEL RULES OF PRO. CONDUCT r. 5.5, cmts. 1–2 (AM. BAR ASS'N 2020).

14. *Id.* at cmt. 1.

15. See *id.* at cmt. 2; Elizabeth Chambliss, *Evidence-Based Lawyer Regulation*, 97 WASH. U. L. REV. 297, 335 (2019).

16. Michael E. Rosman, *Is It Time to Revisit the Constitutionality of Unauthorized Practice of Law Rules?*, 20 FEDERALIST SOC'Y REV., Apr. 2019.

public, and many have criticized unauthorized practice regulation as overbroad.¹⁷

The strict regulation of the practice of law plays a significant role in the access to justice gap.¹⁸ The rules prohibiting the unauthorized practice of law prevent nonlawyers from providing legal services, “limit[] the development of alternate forms of assistance,”¹⁹ and restrain the supply of legal services available.²⁰ Ultimately, the rules cause legal services to be unmet despite the fact that they include tasks that could have been completed by someone who is not a lawyer.²¹ Persistent concerns regarding the regulation of the practice of law and the continued existence of the justice gap have prompted calls for reform.²²

The extent of the crisis has led to reconsideration of the way legal services are provided and received.²³ One strategy for reform is to expand legal assistance by nonlawyers, either by amending unauthorized practice of law statutes and developing limited licensing for paraprofessionals, or by training nonlawyer navigators to provide procedural assistance in specific areas of

17. See Deborah L. Rhode & Lucy Buford Ricca, *Protecting the Profession or the Public? Rethinking Unauthorized-Practice Enforcement*, 82 FORDHAM L. REV. 2587, 2587 (2014) (continuing research in challenging the legal monopoly); Chambliss, *supra* note 15, at 322–23 (noting that the rules prohibiting the unauthorized practice of law may continue to exist as a means of monopolizing the legal profession rather than protecting the public); Ralph C. Cavanagh & Deborah L. Rhode, *The Unauthorized Practice of Law & Pro Se Divorce: An Empirical Analysis*, 86 YALE L.J. 104, 104 (1976) (arguing that no justification exists for the prohibition on the unauthorized practice of law); AM. BAR ASS’N COMM’N ON PROFESSIONALISM, “IN THE SPIRIT OF PUBLIC SERVICE”: A BLUEPRINT FOR THE REKINDLING OF LAWYER PROFESSIONALISM 52 (1986) (“[I]t can no longer be claimed that lawyers have the exclusive possession of the esoteric knowledge required and are therefore the only ones able to advise clients on any matter concerning the law.”); DAVID FREEMAN ENGSTROM ET AL., LEGAL INNOVATION AFTER REFORM: EVIDENCE FROM REGULATORY CHANGE 8 (2022) (arguing that the legal profession’s stronghold on the practice of law has prompted discussion of how the legal profession defines and regulates the practice of law and the resulting consequences).

18. ENGSTROM ET AL., *supra* note 17, at 8.

19. *Id.* at 13.

20. *Id.* at 8.

21. N.Y. CITY BAR ASS’N COMM. ON PRO. RESP., NARROWING THE “JUSTICE GAP”: ROLES FOR NONLAWYER PRACTITIONERS 30 (2013).

22. *Id.* at 1.

23. See INST. FOR ADVANCEMENT AM. LEGAL SYS., *supra* note 1, at 9 (noting the inadequacies of the current system to meet current demands which necessitate regulatory reform based on a “clear need—and market—for new, innovative, and forward-looking models for delivering justice”); Matt Reynolds, *Utah’s Reforms Offer Model for Serving Low-Income and Indigent People, Report Suggests*, A.B.A. J. (Sept. 29, 2022, 10:42 AM), <https://www.abajournal.com/web/article/utahs-reforms-offer-model-for-serving-low-income-and-indigent-people-report-suggests> [<https://perma.cc/Q4CU-U2G5>] (“The access concerns are so grave that we have to find new ways to deliver legal services using an innovative mix of lawyers, nonlawyers, and software.”).

need.²⁴ Law students could play a valuable role as navigators but are limited in many jurisdictions, including South Carolina, by student practice rules. South Carolina has a particularly narrow student practice rule as compared to other states.²⁵

This Note examines the benefits of empowering law students to act as navigators in areas of high legal need and presents a proposal for amending the South Carolina student practice rule. To help understand the role that law students could play in narrowing the justice gap, this Note proceeds in four parts. Part II examines emerging models of nonlawyer assistance, focusing on navigator programs. Part III presents the first comprehensive comparison of student practice rules in all fifty states. Part IV explains the benefits of empowering students to act as navigators, drawing partly on personal experience as an employee in a court self-help center, and Part V presents a proposal for amending student practice rules in South Carolina.

II. EXPANDING ASSISTANCE BY NONLAWYER NAVIGATORS

Increasing access to justice requires changes in the regulation of legal services with the overall goal of making them more readily available.²⁶ To address the access to justice crisis, multiple states have considered, and some have implemented, regulatory reforms to expand the services that nonlawyers may provide.²⁷ These regulatory changes differ by state, but all were initiated to expand the scope of who can provide legal services and the ways in which services may be delivered.²⁸

24. See C. Thea Pitzen, *Can Nonlawyers Close the Legal Services Gap?*, AM. BAR ASS'N (Apr. 21, 2022), https://www.americanbar.org/groups/gpsolo/publications/gpsolo_report/2022/april-2022/can-nonlawyers-close-legal-services-gap-two-states-remove-ban-fee-sharing-partnerships-nonlawyers/ [https://perma.cc/9BH3-HGBE]; MARY E. MCCLYMONT, GEORGETOWN L. CTR., *NONLAWYER NAVIGATORS IN STATE COURTS: AN EMERGING CONSENSUS* 9 (2019).

25. See RULE 401, SCACR (S.C. Jud. Branch 2018); *infra* Table 2.

26. See INST. FOR ADVANCEMENT AM. LEGAL SYS., *supra* note 1, at 13; Reynolds, *supra* note 23 (quoting Stanford law professor David Freeman Engstrom, who recently authored a report analyzing the recent reforms, as saying “[w]hen you relax the various rules that govern legal services in responsible ways, with oversight, you generate a lot of salutary innovation that helps people”).

27. See Pitzen, *supra* note 24; Patrick McGlone, *Can Licensed Legal Paraprofessionals Narrow the Access-to-Justice Gap?*, A.B.A. J. (Sept. 6, 2018, 6:05 AM), https://www.abajournal.com/news/article/can_licensed_legal_paraprofessionals_narrow_the_access_to_justice_gap [https://perma.cc/RH6U-76AY]; Richard Zorza & David Udell, *New Roles for Non-Lawyers to Increase Access to Justice*, 41 FORDHAM URBAN L. J. 1259, 1266, 1292 (2016).

28. See N.Y. CITY BAR ASS'N COMM. ON PRO. RESP., *supra* note 21, at 2–4 (arguing in support of expanding limited legal assistance because aspects of legal representation can be

There are two basic models of reform: one that seeks to amend the unauthorized practice of law rules to license paralegals to provide limited legal assistance; and one that seeks to train nonlawyer navigators to provide other supporting roles.²⁹ Under the first model, licensed paraprofessionals are eligible for licensure through training requirements and are allowed to provide legal services in a limited capacity.³⁰ The licensure is typically for practice in a specific area of law which allows the paraprofessional to gain specialized experience.³¹ Licensed paraprofessionals may provide services directly to clients in an individual capacity, which often entails working with clients until task or case completion.³² The layperson navigators model differs from the

adequately handled by nonlawyers); Pitzen, *supra* note 24 (arguing that allowing nonlawyers to provide limited legal assistance will increase the affordability of representation and, in turn, the access to justice); ENGSTROM, *supra* note 17, at 17 (arguing that expanding limited legal assistance has been successful in other countries as well as in the United States with no negative outcomes thus far).

29. ENGSTROM, *supra* note 17, at 17 (discussing that some states have amended unauthorized practice of law rules to authorize experienced paralegals to provide limited legal assistance, while others have implemented navigator programs within and outside of courts to meet specific areas of need).

30. *Id.* at 17 (discussing that the requirements and narrow scope of the licensure results in the paraprofessional gaining specialized education and experience in a specific area of law); see also Tara Hughes & Joyce Reichard, *How States Are Using Limited Licensed Legal Paraprofessional to Address the Access to Justice Gap*, AM. BAR ASS'N (September 02, 2022), <https://www.americanbar.org/groups/paralegals/blog/how-states-are-using-non-lawyers-to-address-the-access-to-justice-gap/> [<https://perma.cc/55TQ-LEUP>] (discussing how the areas of specialization vary by state and serve to address areas with the most need); *Licensed Paralegal Practitioner*, UTAH COURTS, <https://www.utcourts.gov/legal/lpp/> [<https://perma.cc/N7ZK-VKFZ>] (discussing Utah's constraints on licensed paraprofessionals, known as Licensed Paralegal Practitioners, as being limited to the areas of family law, debt collection, and landlord-tenant); *Paralegal Licensing Proposal*, OR. STATE BAR, <https://www.osbar.org/lp> [<https://perma.cc/YPQ4-LHS2>] (discussing Oregon's approval of a Licensed Paralegal Program that has similar requirements for licensure as Utah); *Legal Paraprofessional Project*, MINN. JUD. BRANCH, <https://mncourts.gov/Help-Topics/Legal-Paraprofessionals-Pilot-Project.aspx> [<https://perma.cc/9LWU-EYM6>]; Order Implementing Legal Paraprofessional Pilot Project, No. ADM19-8002 (Minn. Sept. 29, 2020) (discussing Minnesota's Legal Paraprofessional Pilot Project as being limited to the areas of family law and landlord-tenant); *Legal Paraprofessionals*, ARIZ. JUD. BRANCH, <https://www.azcourts.gov/cld/Legal-Paraprofessional/Apply> [<https://perma.cc/5U4H-WSRM>]; *Legal Paraprofessionals (LP) Questions & Answers*, ARIZ. JUD. BRANCH, <https://www.azcourts.gov/accesstolegalservices/Questions-and-Answers/lp> [<https://perma.cc/K8YU-43DT>] (discussing Arizona's Legal Paraprofessional Program as being limited to the areas of: family law; limited jurisdiction civil cases; limited jurisdiction criminal cases; and administrative law).

31. See ENGSTROM, *supra* note 17, at 13.

32. See *Frequently Asked Questions: California Paraprofessional Program*, STATE BAR CAL., <https://www.calbar.ca.gov/paraprofessionals-FAQ> [<https://perma.cc/2AT9-HVR6>]. But see MODEL RULES OF PRO. CONDUCT r. 5.3 (AM. BAR ASS'N 2018) (discussing paralegals as being distinct from licensed paraprofessionals in that paralegals work under the supervision of, and are employed by, a licensed lawyer).

licensed paraprofessionals model in that layperson navigators are not licensed to practice law.³³ Navigators work to provide legal assistance within a program, as opposed to in an individual capacity,³⁴ and work with clients on an as-needed basis, as opposed to taking on a client through task or case completion.³⁵ Navigators are laypersons, volunteers, or employees who complete specialized training to prepare them to provide procedural direction and limited assistance to unrepresented individuals in a specific court system or jurisdiction.³⁶

Recently, Utah and Arizona enacted regulatory reforms with the goal of improving access to legal services.³⁷ Other states, including California, Michigan, North Carolina, and Washington, are considering similar reforms.³⁸ Moreover, Minnesota is currently conducting, Oregon has approved, and Colorado is considering pilot projects that allow paraprofessionals to provide limited legal services.³⁹ The reforms are nascent, and the results are still forthcoming, but early evidence suggests that the states that implement reform in the area of law practice authorization are increasing access to providers overall and among the demographics that have the most difficulty accessing legal services.⁴⁰

A. *The Need for Navigators*

Unauthorized practice of law rules restrict access to legal services and prevent pro se litigants from obtaining legal information and assistance.⁴¹

33. McClymont, *supra* note 24, at 5.

34. *Id.*

35. *Id.* at 19.

36. *Id.* at 6, 23.

37. Reynolds, *supra* note 23.

38. See *Closing the Justice Gap Working Group*, STATE BAR CAL., <https://www.calbar.ca.gov/About-Us/Who-We-Are/Committees/Closing-the-Justice-Gap-Working-Group> [<https://perma.cc/KDJ9-RMBT>]; *Justice for All*, MICH. CTS., <https://www.courts.michigan.gov/administration/special-initiatives/justice-for-all-commission/> [<https://perma.cc/3SC3-PHFA>]; *North Carolina Equal Access to Justice Commission*, N.C. JUD. BRANCH, <https://www.nccourts.gov/commissions/north-carolina-equal-access-to-justice-commission> [<https://perma.cc/Q36R-ZJV9>]; WASH. CTS. PRAC. L. BD., *BLUEPRINT FOR A LEGAL REGULATORY SANDBOX IN WASHINGTON STATE 3* (2021).

39. See *Legal Paraprofessional Pilot Project*, MINN. JUD. BRANCH, <https://www.mncourts.gov/Help-Topics/Legal-Paraprofessional-Pilot-Project.aspx> [<https://perma.cc/V5V8-RANN>]; *Paraprofessional Licensing Implementation Committee*, OR. STATE BAR, <https://paraprofessional.osbar.org/committeematerials/resources/> [<https://perma.cc/PW54-R6MZ>]; *Licensed Legal Paraprofessionals Implementation Report and Plan*, COLO. JUD. BRANCH, <https://coloradosupremecourt.com/AboutUs/PALS.asp> [<https://perma.cc/HCH4-3WJ6>].

40. See Engstrom, *supra* note 17, at 49.

41. *Id.* at 15.

Individuals who cannot afford representation must navigate the legal system on their own. In three quarters of civil cases, one or both sides are not represented by an attorney.⁴² If the need for legal assistance cannot be adequately met, then it is the judicial system's responsibility to reduce procedural complexities to allow unrepresented individuals to navigate the system themselves.⁴³

Some courts have addressed these barriers by streamlining processes in areas most likely to have pro se litigants.⁴⁴ Simplified processes provide opportunities for nonlawyer participation, specifically in the role of navigators.⁴⁵ Some courts provide forms to be used in filing or responding to court processes, but many pro se litigants need assistance understanding procedure in order to select the correct forms, to understand and complete the forms, and to navigate the filing process.⁴⁶ Moreover, fewer forms are available after the beginning stages of litigation.⁴⁷ Often there are "gross disparities in knowledge and expertise between unrepresented individuals and their represented opponents."⁴⁸ However, the "disparities can be narrowed substantially . . . if pro se litigants have access to someone who can take their side and legitimately promote their interests."⁴⁹

Laypersons who are appropriately trained and supervised can successfully work as navigators by assisting pro se litigants in navigating the court system, accessing information, and completing required documents.⁵⁰ Additionally, navigators may appear in court with pro se litigants in order to provide guidance and support during court proceedings, to assist in providing information to the judge, and to aid in communicating with the opposing side.⁵¹ In a survey on Nonlawyer Navigators in State Courts, The Justice Lab at Georgetown Law Center found that navigator programs:

enhance the effectiveness of, and build public trust in, the courts;
facilitate access to justice for [self-represented litigants] by helping them understand and navigate their cases; provide an additional way for justice advocates to supplement their own client services and

42. *Id.* at 8.

43. See Zorza, *supra* note 27, at 1269; Nino C. Monea, *The Administrative Power: How State Courts Can Expand Access to Justice*, 53 GONZ. L. REV. 207, 261 (2018).

44. See N.Y. CITY BAR ASS'N COMM. ON PRO. RESP., *supra* note 21, at 11.

45. *Id.*

46. *Id.* In addition, the Author held a position as Court Program Specialist at the Self-Help Center of the Alachua County Civil Courthouse, in the Eighth Judicial Circuit of Florida. This position exposed the Author to the specific needs of pro se litigants.

47. N.Y. CITY BAR ASS'N COMM. ON PRO. RESP., *supra* note 21, at 7.

48. *Id.*

49. *Id.*

50. *Id.* at 10–11.

51. See *id.* at 11–12.

allow lawyers to operate “at the top of their licenses”; and enable an array of community actors to better understand the plight of [self-represented litigants] and help them manage the often unfamiliar and daunting court process.⁵²

B. Navigator Impact

Navigator programs facilitate access to justice for self-represented litigants and enhance the effectiveness of court systems.⁵³ Court employees face extensive demands in meeting the needs of pro se litigants, and navigators aid by providing some of these services.⁵⁴ Navigators assisting court employees are so beneficial to court operations that employees note increased difficulties when student navigators are not present during school breaks and holidays.⁵⁵ Navigator programs increase the number of self-represented litigants that receive the information and assistance needed to effectively navigate court processes.⁵⁶ This results in streamlined litigation and fewer delays due to more complete and accurate filings, fewer instances of litigants failing to appear or appearing unprepared for court proceedings, and reduced time spent on these matters by court employees.⁵⁷

Navigator programs also have a positive impact on procedural fairness and increase public trust in court systems.⁵⁸ Litigants who have been assisted by a navigator report increased preparedness, trust in the court process, and satisfaction, as well as reduced anxiety, confusion, and worry.⁵⁹ Additionally, the value received when a self-represented litigant has the opportunity to discuss their situation prior to appearing in court is beneficial to litigants and the courts.⁶⁰ Many self-represented litigants want to tell their story and often begin the court process upset and defensive.⁶¹ Navigators listen and provide reassurance so that when litigants appear in court they are calmer, better prepared, and better able to interact with the court in a productive manner.⁶² Whether self-represented litigants simply want to feel heard or are not aware

52. MCCLYMONT, *supra* note 24, at 38.

53. *Id.* at 33–36.

54. *Id.* at 33.

55. *Id.*

56. *Id.*

57. *Id.*

58. *Id.* at 34.

59. *Id.* at 34–35 (finding that over 80% of self-represented litigants who received assistance from a navigator reported increased clarity and preparedness to proceed in the legal system).

60. *Id.* at 35.

61. *Id.*

62. *Id.*

of what aspects of their story are relevant to the case, having the opportunity to meet with a navigator results in less time spent in court.⁶³

Currently there are several navigator programs in operation. For example, in Ohio, Legal Navigators are volunteers trained to assist pro se litigants in landlord-tenant, debt, and family law cases by assessing the cases and explaining options.⁶⁴ The training covers court procedures, case development, and legal research.⁶⁵ Legal Navigators assist by filing required documentation according to the court rules, offering mediation, explaining court procedures and processes, providing court dates, and showing clients how to access information and case updates.⁶⁶ Legal Navigators also may attend court with the client in order to provide legal information to the client and, in some situations, speak on their behalf.⁶⁷ The program clarifies that the role of Legal Navigators differs from attorneys in that their role is to assist the client in understanding and navigating legal processes and procedures rather than to provide legal advice.⁶⁸ The program has plans to expand and include Legal Navigators as employees in courtrooms.⁶⁹

C. Types of Navigator Roles

In some jurisdictions, nonlawyers provide services in court administrative settings that include answering questions, helping fill out forms, and providing procedural direction.⁷⁰ I was previously employed in this role for approximately three years in a Self-Help Center located in a civil courthouse.⁷¹ Self-Help Center employees assist pro se litigants with procedural direction, form and case review, and set hearings.⁷² Employees also do some “hand-holding” in that they “offer some comfort and help take

63. *Id.* at 34.

64. *LAWRS Foundation Legal Navigator Program*, IOBY, <https://ioby.org/project/lawrs-foundation-legal-navigator-program> [<https://perma.cc/2RY6-FXDX>].

65. *Id.*

66. *Id.*

67. *Id.*

68. *Id.*

69. *Id.*

70. See, e.g., *Self-Help*, EIGHTH JUD. CIR. FLA., <https://circuit8.org/self-help/> [<https://perma.cc/V5EJ-E8FP>]; Beth Schwartz, *Eighth Circuit Transforms Under-Utilized Law Library into Thriving Self-Help Center*, FLA. COURTS (June 2, 2021, 8:00 AM), <https://www.flcourts.org/Resources-Services/Education-Outreach/Court-News/Court-News-2012-2021/Court-News-2021/Eighth-Circuit-Transforms-Under-Utilized-Law-Library-into-Thriving-Self-Help-Center> [<https://perma.cc/A22N-2VTX>].

71. Specifically, the Author held the position of Court Program Specialist at the Self-Help Center of the Alachua County Civil Courthouse, in the Eighth Judicial Circuit of Florida. See *Self-Help*, *supra* note 70, for more information on the Self-Help Center.

72. *Id.*; Schwartz, *supra* note 70.

some of the worry and stress out of the process.”⁷³ While providing procedural direction in person and over the phone to pro se litigants, I witnessed firsthand the extent of the need for assistance in navigating the court system without representation. Self-Help Center employees also manage the pro se family law division,⁷⁴ and I assisted by reviewing case progression to determine eligibility to proceed, contacting litigants regarding issues with their filings, setting cases for hearings, making notes of case progression for the judge’s use prior to and during court proceedings, attending and taking notes during court proceedings, and creating court orders accordingly. Through that experience, I also saw how vital assistance is to court proceedings running smoothly and cases moving efficiently through the court system. The navigator role benefits pro se litigants and court systems by streamlining pro se cases more efficiently.⁷⁵

In addition to court programs, private programs offer similar services through navigators.⁷⁶ Private navigator programs also aid unrepresented individuals, often utilizing volunteers to do so.⁷⁷ The role of navigators can be categorized into two areas of assistance: (1) out-of-court services, and (2) in-court services.⁷⁸ The aforementioned aid provided by court self-help centers or programs are out-of-court services.⁷⁹ Out-of-court services include navigational information, references, procedural direction, options guidance, and document assistance.⁸⁰ Table 1 shows the different out-of-court services that navigators may provide.

73. Schwartz, *supra* note 70.

74. The Author can confirm from prior work experience that, in this jurisdiction, all pro se family law cases are assigned to one division and, accordingly, to one judge.

75. Schwartz, *supra* note 70.

76. See, e.g., N.Y. STATE CTS. ACCESS TO JUSTICE PROGRAM, 2014 REPORT TO THE CHIEF JUDGE AND THE CHIEF ADMINISTRATIVE JUDGE OF THE STATE OF NEW YORK 37–39 (2014), https://www.nycourts.gov/LegacyPDFS/ip/nya2j/pdfs/NYA2J_2014report.pdf [<https://perma.cc/J2FM-P2DC>].

77. *Id.*

78. See McClymont, *supra* note 24, at 19–20.

79. See discussion *supra* Part II.

80. See McClymont, *supra* note 24, at 19–20.

Table 1.⁸¹

Navigator Out-of-Court Services	
Navigational Information	Look up where a court proceeding is scheduled to be held or explain where to find that information such as on a docket or court order. Provide directions on how to locate a place within the courthouse such as a specific courtroom or the clerk's office. Explain what services are provided there and how it relates to the court system.
References	Assess needs and provide information regarding available resources for additional assistance, qualification requirements if applicable, and contact information for services (legal aid or pro bono organizations, court or independent interpreters, alternative dispute resolution services such as mediation, or independent resources located at the courthouse such as domestic violence advocates).
Procedural Direction	Explain court processes including filings, court orders, the roles of judges and court personnel, and the function of court proceedings. Assess case progression, explain the procedural posture of a case, describe resources available for self-help and research, and provide information on requirements or next steps.
Options Guidance	Assess needs, reference case files if applicable, provide information and explain available options in a way that can be easily understood and encourage an informed decision. Court forms and instructions are often utilized during this step to eliminate any suggestion that the navigator is recommending a particular option.
Document Assistance	Identify needed forms, provide forms or information on where to access forms, explain how to properly complete and file forms, and review forms for accuracy and completeness.

In-court services are distinctive because, generally, nonlawyers may not accompany litigants to court proceedings.⁸² Navigators may attend court proceedings with a litigant in order to assist them before, during, or after the proceeding.⁸³ In-court services include taking notes on the proceeding to assist a litigant in understanding what occurred, what may be subsequently required, or what to expect next.⁸⁴ Additional in-court services may include speaking on behalf of a litigant if necessary to provide information to the judge or court personnel and assisting in negotiations with an opposing party.⁸⁵ Another aspect of in-court services is emotional support during court proceedings, since these are often unfamiliar or daunting to litigants.⁸⁶

81. *Id.*

82. *See id.* at 14.

83. *See id.*

84. *Id.* at 20.

85. *Id.*

86. *Id.*

III. STUDENT PRACTICE RULES

A. *How Student Practice Fits into the Legal Profession*

Generally, the practice of law is limited to lawyers who have been admitted to practice in a particular state,⁸⁷ but student practice rules provide an exception by allowing students enrolled in a school of law to participate in the limited practice of law under the supervision of a licensed attorney.⁸⁸ This exception exists as a service to the legal community and those who utilize it.⁸⁹ Student practice provides a resource for the resolution of legal issues by utilizing law students to fill gaps in areas where assignment of counsel is not required by law and in service to indigent clients who otherwise would not have access to legal assistance.⁹⁰ Student practice rules also provide an opportunity for students to learn practical skills while in law school, in line with the American Bar Association's requirements.⁹¹

Student practice rules became widespread when the American Bar Association passed a model rule for student practice in 1969.⁹² This model rule "acknowledged the court's and the bar's duties to provide legal representation to the poor and encouraged law schools to join that effort by creating clinical instruction in trial work."⁹³ Today, every state has student practice rules which shape a law student's experience and scope of practice.⁹⁴

There has been no previous assessment of student practice rules and how they compare.⁹⁵ The following Section reports the results of the first survey of student practice rules in all fifty states. The goal of the survey is to assess the feasibility of using law students as navigators to expand the availability of basic legal assistance.

87. See MODEL RULES OF PRO. CONDUCT r. 5.5(b) (AM. BAR ASS'N 2020).

88. Wallace J. Mlyniec & Haley D. Etchison, *Conceptualizing Student Practice for the 21st Century: Educational and Ethical Considerations in Modernizing the District of Columbia Student Practice Rules*, 28 GEO. J.L. & ETHICS 207, 208–09 (2015).

89. *Id.*

90. *Id.*

91. *Id.*; see generally STANDARDS & RULES OF PROC. FOR APPROVAL OF L. SCHS.: 2022–2023 ch. 3 (AM. BAR ASS'N 2022) [hereinafter APPROVAL OF L. SCHS.].

92. Mlyniec & Etchison, *supra* note 88, at 212.

93. *Id.*

94. See *Student Practice Rules—Clinical Research Guide*, GEORGETOWN LAW LIBRARY, <https://guides.ll.georgetown.edu/c.php?g=271042&p=1808947> [https://perma.cc/SBK2-UEA3].

95. At the time of writing, the Author is not aware of any other fifty state survey or published data on the student practice rules collectively.

B. An Analysis of Student Practice Rules by State

Each state independently establishes student practice rules, so the rules vary widely in how they are established as well as the scope of practice permitted.⁹⁶ Student practice rules vary by the setting in which eligible law students are allowed to participate and by the level of supervision required.⁹⁷

The settings in which students may be permitted to practice fall into two categories: (1) law school experiential programs, and (2) independent organizations (not in conjunction with a law school program or placement).⁹⁸ Law school experiential programs usually include clinical programs and field placement courses, often referred to as internships or externships.⁹⁹ Thirty-six states allow student practice in law school programs as well as within a variety of organizations outside the context of a law school program or placement.¹⁰⁰

In three states, the setting requirement is conditional on the amount of law school curriculum completed: students are restricted to a law school program or placement until they are eligible to practice outside a law school program or placement based on curriculum completion.¹⁰¹ This has the potential to be an effective means to expand student practice while ensuring adequate supervision in a law school program or placement until students have acquired more experience.

Eleven states restrict student practice only to a law school program or placement.¹⁰² South Carolina is one of the few states that restricts student practice to a law school program but further restricts student practice to only occur in the context of a law school clinical program, despite the fact that the state's law schools offer other experiential programs, including externships

96. See *Student Practice Rules*, *supra* note 94 (explaining that each state has a student practice rule established either in statute, court rules, or bar rules, depending on the state).

97. See *infra* Table 2.

98. A summarization made by the author from original research in reading and comparing all fifty student practice rules.

99. See APPROVAL OF L. SCHS., *supra* note 91. According to Standard 304(a)(6) and (c), a clinical program “involves advising or representing one or more actual clients or serving as a third-party neutral” with “direct supervision of the student’s performance by a faculty member.” *Id.* According to Standard 304(d), a field placement course “provides substantial lawyering experience that [] is reasonably similar to the experience of a lawyer advising or representing a client or engaging in other lawyering tasks in a setting outside a law clinic under the supervision of a licensed attorney or an individual otherwise qualified to supervise.” *Id.*

100. See *infra* Table 2.

101. S.J.C. RULE 3:03, *as amended*, 463 MASS. 1302 (1994); OR. RFA 13; TEX. RULES GOVERNING THE SUPERVISED PRACTICE OF LAW.

102. C.R.C.P. 205.7 (Colorado); R. REGULATING FLA. BAR 11-1; RSCH 7 (Hawaii); IOWA CT. R. 31.15; SCR 2.540 (Kentucky); LA. SUP. CT. R. XX; MD. R. 19-217; Rule 1-094, NMRA (New Mexico); Rule 401, SCACR (South Carolina); TENN. SUP. CT. R. 10.03; SCR 50.01-50.08 (Wisconsin).

and pro bono programs.¹⁰³ This restriction generally, but particularly in South Carolina, limits the amount of student practice that can occur, especially combined with eligibility requirements and limited placement availability in clinics and field placement courses.¹⁰⁴ For example, at the University of South Carolina School of Law, students cannot participate in a clinic until after completion of half of the total credits required for graduation,¹⁰⁵ and students are selected to participate in a clinic through a lottery process with limited placement availability.¹⁰⁶ For the past academic year, 165 students entered the lottery, but only 88 were placed in a clinic.¹⁰⁷

Every state requires oversight by a supervising lawyer, but the level of supervision required varies.¹⁰⁸ Services and activities conducted outside of a courtroom usually require general supervision, meaning the supervising lawyer takes responsibility for and provides overview of the student's work, but the work may be conducted outside the personal presence of the supervising lawyer.¹⁰⁹ However, the level of supervision required in court varies widely by state.¹¹⁰ Thirty-two states determine whether supervision in court is required based on the type of case or court setting.¹¹¹ Sixteen states require that the supervising lawyer always be present in court.¹¹² Two states condition the supervision requirement on the amount of law school curriculum completed, another strategic means to expand student practice, acknowledging that additional permissions should be allowed as students gain experience.¹¹³ South Carolina is one of sixteen states that requires the supervising lawyer always be present with a student for court proceedings.¹¹⁴ Table 2 illustrates how the aforementioned aspects of student practice rules vary by state.

103. See Rule 401, SCACR; *Experiential Learning*, UNIV. OF S.C. SCH. OF LAW, https://sc.edu/study/colleges_schools/law/academics/experiential_learning/ [https://perma.cc/277Z-SLPG].

104. See *infra* notes 106–08.

105. *Clinical Registration Lottery*, UNIV. OF S.C. SCH. OF LAW, https://www.sc.edu/study/colleges_schools/law/internal/department/clinics/students/lottery/ [https://perma.cc/FK36-8DNV].

106. *Id.*

107. E-mail from Lisa Davis, Admin. Assistant, Univ. of S.C. Sch. of L. Dep't of Clinics, to Alicia Forehand (Nov. 10, 2022) (on file with author).

108. See *infra* Table 2 (summarizing student practice rules among all fifty states).

109. See *id.*

110. See *id.*

111. See *id.*

112. See *id.*

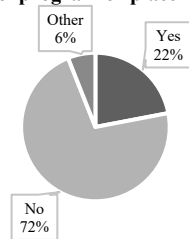
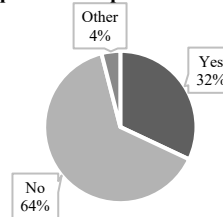
113. See *id.*

114. See *id.*

TABLE 2.¹¹⁵

State:	Comparison of Student Practice Rules By State					
	Setting In Which Student Practice is Authorized:	Level of Supervision Required in Court Appearances:				
	Restricted to Law School Program or Placement	Not Restricted to Law School Program or Placement	Dependent Upon Curriculum Completion	Supervising Lawyer Required to Be Present	Supervising Lawyer Not Required to Be Present	Dependent Upon Curriculum Completion
Alabama		X			X	
Alaska		X			X	
Arizona		X			X	
Arkansas		X		X		
California		X		X		
Colorado	X				X	
Connecticut		X		X		
Delaware		X			X	
Florida	X			X		
Georgia		X			X	
Hawaii	X				X	
Idaho		X			X	
Illinois		X			X	
Indiana		X		X		
Iowa	X					X
Kansas		X			X	
Kentucky	X				X	
Louisiana	X				X	
Maine		X			X	
Maryland	X			X		
Massachusetts			X		X	
Michigan		X			X	
Minnesota		X			X	
Mississippi		X		X		
Missouri		X			X	
Montana		X			X	
Nebraska		X			X	
Nevada		X		X		
New Hampshire		X			X	
New Jersey		X			X	
New Mexico	X			X		
New York		X			X	
North Carolina		X		X		
North Dakota		X			X	
Ohio		X			X	
Oklahoma		X				X
Oregon			X		X	
Pennsylvania		X		X		
Rhode Island		X			X	
South Carolina	X			X		
South Dakota		X			X	
Tennessee	X			X		
Texas			X	X		
Utah		X			X	
Vermont		X			X	
Virginia		X		X		
Washington		X			X	
West Virginia		X		X		
Wisconsin	X				X	
Wyoming		X			X	
Total:	11	36	3	16	32	2

115. The Author compiled data on the student practice rules in all fifty states by locating each state's student practice rule.

Is student practice limited to a law school program or placement?**Is the supervising lawyer always required to be present in court?**

Based on the aforementioned aspects of student practice rules, twenty-five states have the fewest restrictions, twenty states have moderate restrictions, and only five states have the most restrictions.¹¹⁶ The majority of states have student practice rules that do not limit the setting of student practice to a law school program or placement and do not always require the supervising lawyer to be present in court appearances.¹¹⁷ While a similar number of states have rules that vary in those aspects, only five states have student practice rules that limit the setting of student practice to a law school program or placement and always require the supervising lawyer to be present in court appearances.¹¹⁸ The table below shows the distribution of states amongst these categories.

116. *See supra* Table 2.

117. *See id.*

118. *See id.*

Table 3.¹¹⁹

Comparison of Student Practice Rules by State		
Least Restrictive:	Moderately Restrictive:	Most Restrictive:
<ul style="list-style-type: none"> Alabama Alaska Arizona Delaware Georgia Idaho Illinois Kansas Maine Michigan Minnesota Missouri Montana Nebraska New Hampshire New Jersey New York North Dakota Ohio Rhode Island South Dakota Utah Vermont Washington Wyoming 	<ul style="list-style-type: none"> Arkansas California Colorado Connecticut Hawaii Indiana Iowa Kentucky Louisiana Massachusetts Mississippi Nevada North Carolina Oklahoma Oregon Pennsylvania Texas Virginia West Virginia Wisconsin 	<ul style="list-style-type: none"> Florida Maryland New Mexico South Carolina Tennessee

C. Recent Expansions

States are expanding their student practice rules in response to the access to justice crisis.¹²⁰ Last year, Wisconsin amended its student practice rule to address how the previous rule “unnecessarily delayed . . . the ability to obtain crucial practical experience while providing legal services to those in need.”¹²¹ The student practice rule in Wisconsin limits student practice to a

119. Table 3 is the Author’s summary of the data shown in Table 2.

120. See *infra* notes 121 and 125.

121. Joe Forward, *Wisconsin Supreme Court Approves Law Student Practice Petition*, STATE BAR OF WIS. (Mar. 9, 2021), <https://www.wisbar.org/NewsPublications/Pages/General-Article.aspx?ArticleID=28277> [https://perma.cc/WDK2-43X9]; *In re* Petition to

law school program or placement, but the law schools in the state have multiple experiential programs where student practice is allowed, including clinics, externships, practicums, field placements, and other programs.¹²² The recent changes allow law students to practice sooner (after one year of law school, as opposed to halfway through the second year) and reduces when a supervising lawyer is required to be present in court with the student.¹²³ The state recognized that law students could help achieve one of its objectives: increasing the amount of help available to indigent and low-income individuals.¹²⁴

Georgia also expanded its student practice rule in 2015 to increase access to justice.¹²⁵ The student practice rules in Georgia were already relatively broad in that they did not limit student practice to a law school program or placement and did not always require a supervising lawyer to be present in court with the student.¹²⁶ However, the change allowed law students to be eligible to practice sooner by authorizing second-year students to practice.¹²⁷ The change also expanded those allowed to supervise student practice to any “member of the State Bar of Georgia,” which greatly increased the opportunities for student practice.¹²⁸ Alexander Scherr, University of Georgia law professor, reported that the rule change “expanded the number of low-income clients we could serve in an urgent, time-sensitive caseload.”¹²⁹

Notably, both Wisconsin and Georgia score in the top twenty of all states on the Justice Index, which measures the policy adoption related to access to justice.¹³⁰ These states made further advancements by expanding their student practice rules.¹³¹ The Justice Index did not consider student practice in the analysis of policy adoption,¹³² and at the time that this Note was being written there was no published data on the impact student practice has on access to justice. Until further research is conducted, any accessible methods for

Repeal and Recreate SCR Ch. 50, S. Ct. Order 20-04, 2021 WI 20 (issued Mar. 2, 2021, eff. July 1, 2021).

122. Forward, *supra* note 121; Wis. SCR Ch. 50.

123. Forward, *supra* note 121; *In re* Petition to Repeal and Recreate SCR Ch. 50, S. Ct. Order 20-04, 2021 WI 20 (issued Mar. 2, 2021, eff. July 1, 2021).

124. Forward, *supra* note 121.

125. Order Creating New Student Practice Rule, S. Ct. Ga. (issued Mar. 12, 2015, eff. Aug. 15, 2015).

126. See Order Creating New Student Practice Rule, *supra* note 125; *supra* Table 2.

127. *Id.*

128. *Id.*; Clark D. Cunningham, *Supreme Court of Georgia Dramatically Expands Student Practice*, 21 GA. BAR J. 50, 52 (2016) (“The old rule only allowed supervision by a prosecutor, public defender[,] or ‘a licensed practicing attorney who works or volunteers for a court or not-for-profit organization that provides free legal representation to indigent persons or children.’”).

129. Cunningham, *supra* note 128.

130. *Justice Index*, *supra* note 8.

131. See *supra* notes 120–30 and accompanying text.

132. See *Justice Index*, *supra* note 8.

increasing available legal services are worth considering in the movement towards decreasing the access to justice gap.

D. South Carolina's Student Practice Rule

South Carolina's student practice rule was last amended in 2018.¹³³ The amendment expanded the rule to allow students to appear in any court, whereas previously, students were limited to inferior courts.¹³⁴ The amendment made two additional changes: expanded the list of activities a law student may perform under the supervising lawyer's general supervision to include services to "any indigent person or to any non-profit organization";¹³⁵ and changed the eligibility requirement for student participation from the third year to the second semester of the second year (with the added requirement of completing a course in Professional Responsibility, and, to appear in court, completion of a course in Evidence).¹³⁶

This expansion was proposed in 2016 by the President and the Dean of the Charleston School of Law when they suggested the student practice rule be modified to allow students to participate in pre-trial and non-trial activities after completion of two semesters of law school.¹³⁷ The proposal clarified that it did not intend to allow students to appear in court earlier, but to allow greater participation in other aspects of cases.¹³⁸ Ultimately, the Supreme Court of South Carolina did not adopt that change. In a letter to the Dean of the

133. Rule 401, SCACR.

134. *Compare id.*, with SOUTH CAROLINA RULES OF COURT 58 (2018 ed. 2018) (providing the previous version of Rule 401).

135. *Compare* SOUTH CAROLINA RULES OF COURT 58 (2018 ed. 2018), with Rule 401(c)(4), SCACR.

136. *See* SOUTH CAROLINA RULES OF COURT 58 (2018 ed. 2018) (noting that the previous Rule 401(d)(2) stated, "completed the equivalent of four (4) semesters of legal studies"); Rule 401(d)(2), SCACR ("[Students must have] completed not less than 50% of the total number of credit hours required for graduation with a law degree and have completed a course in Professional Responsibility. Students appearing in court under this Rule must have also completed a course in Evidence."); *Section III – Degree Requirements*, UNIV. OF S.C. SCH. OF LAW, https://sc.edu/study/colleges_schools/law/internal/current_students/handbook/section_003.php [<https://perma.cc/49EX-3LJS>] (using the University of South Carolina School of Law as an example, the law school graduation requirement is 90 credit hours—with 30 set hours the first year and a maximum of 16 hours each subsequent semester—over the course of three years, meaning completion of four semesters would equate to two full years, and half of the total credit hours required for graduation would happen after spring semester of the second year); *Clinics*, UNIV. OF S.C. SCH. OF LAW, https://sc.edu/study/colleges_schools/law/academics/experiential_learning/clinics/index.php [<https://perma.cc/8SVN-UT9N>] (denoting that credit hours may vary based on credit hours earned in the summer, but the University of South Carolina School of Law specifies that students are eligible in the second semester of their second year).

137. Letter from J. Edward Bell, III, President, and Andrew L. Abrams, Dean, Charleston Sch. of L., to Costa M. Pleicones, Chief Just., Sup. Ct. S.C. (July 8, 2016) (on file with author).

138. *Id.*

University of South Carolina School of Law and the Dean of the Charleston School of Law, the Supreme Court of South Carolina explained this was due to concerns raised as to whether the public would be protected and whether it would be useful to student education.¹³⁹

Despite the expansions adopted, South Carolina still has a relatively narrow student practice rule compared to other states, as evidenced above.¹⁴⁰ While other states allow student practice to occur outside the context of law school programs and placements and vary in the level of supervision required in court, South Carolina limits student practice to a law school clinical legal education program and requires that a supervising lawyer always be present in court.¹⁴¹ The supervising lawyer must be present with the student for court proceedings and must supervise the activities that the student is allowed to do outside the lawyer's presence.¹⁴² South Carolina is one of only eleven states that limit student practice to a law school program or placement and one of only sixteen states that require a supervising lawyer be present with the student for court proceedings.¹⁴³ Moreover, South Carolina is only one of five states that have both of those limitations in place.¹⁴⁴ While there is a wide variation in states' student practice rules, South Carolina is one of very few states that still have extensive restrictions on student practice.¹⁴⁵ These limitations arguably place an unnecessary limit on South Carolina's ability to ensure that people in need of legal services receive them.

IV. ALTERNATIVE APPROACH: LAW STUDENTS IN NAVIGATOR ROLES

The access to justice crisis warrants consideration of the role law students could play in increasing availability of legal services. The navigator model of nonlawyer limited legal assistance provides a helpful context. The following analysis is based in part on my experience employed in a Self-Help Center located within a civil courthouse.

Navigators play a vital role in assisting self-represented litigants navigate the legal system by providing general instruction and direction.¹⁴⁶ Navigators are laypersons with training specific to a court or jurisdiction and who work

139. Letter from Daniel E. Shearouse, Clerk of Ct., Sup. Ct. S.C., to Robert M. Wilcox, Dean, Univ. of S.C. Sch. of L., and Andrew Louis Abrams, Dean, Charleston Sch. of L. (July 9, 2018) (on file with author).

140. *See supra* Table 2.

141. *See* Rule 401, SCACR.

142. *Id.*

143. *See supra* Table 2.

144. *See id.*

145. *See id.*

146. *See* McClymont, *supra* note 24, at 5–6.

within a program that is usually managed by a lawyer.¹⁴⁷ Law students could make valuable contributions in the role of a navigator by providing similar services in specified areas with minimal training and supervision.

Proposals exist that recommend law students be allowed to obtain a limited license to practice law after two years of law school in order to work full time in areas of need.¹⁴⁸ These efforts recognize that innovative means are required in order to address the justice gap.¹⁴⁹ Moreover, these proposals demonstrate there is movement towards considering the role students could play in closing this gap and acknowledging that law students are competent to handle limited legal assistance while still in law school.¹⁵⁰

Law students may be especially qualified to act as navigators to assist self-represented individuals. Navigators have varied backgrounds and experience and receive training specialized to the role.¹⁵¹ The curriculum required in the first year of law school covers foundational topics and skills such as legal reading, writing, and research; critical thinking; and application of legal principles to fact patterns,¹⁵² all of which would prove useful in the functions of a navigator. After the first year of law school, students have knowledge of most areas covered in navigator training, such as: “[d]istinction between legal information and advice . . . [d]escriptions of court system, personnel, basic rules, operations, and glossary of relevant legal or court terms . . . [s]ubstantive law—case types or issues . . . [c]ommon fact patterns . . . [r]elevant legal and social services resources and references . . . ethical concerns . . . [and c]ommunications skills.”¹⁵³

147. *Id.*

148. See Joan W. Howarth & Judith Welch Wegner, *Ringling Changes: Systems Thinking About Legal Licensing*, 13 FIU L. REV. 383, 446 (2019) (suggesting one such proposal, with the added requirement that a student’s second-year curriculum be tailored to the area of law in which the student seeks to practice).

149. *Id.* at 446–47.

150. *Id.*

151. MCCLYMONT, *supra* note 24, at 23 (explaining that trainings provided in navigator programs vary based on the specific court, jurisdiction, and qualifications of the volunteers).

152. Howarth & Wegner, *supra* note 148, at 415; *First Year Law School Curriculum: What to Expect*, BARBRI, <https://lawpreview.barbri.com/law-school-curriculum/> [<https://perma.cc/U4R5-JFZW>] (discussing how most law schools require students to take a series of foundational courses during their first-year curriculum, including Civil Procedure, Constitutional Law, Contracts, Torts, Criminal Law, Legal Research & Writing, and Property Law); APPROVAL OF L. SCHS., *supra* note 91 (“A law school shall maintain a rigorous program of legal education that prepares its students, upon graduation, for admission to the bar and for effective, ethical, and responsible participation as members of the legal profession.”); see also *First-Year Curriculum*, BERKELEY L., <https://www.law.berkeley.edu/academics/jd/first-year-curriculum/> [<https://perma.cc/D2X7-8A2S>] (explaining that the purpose of first year courses is to lay “an essential foundation for subsequent legal study”).

153. MCCLYMONT, *supra* note 24, at 23.

Often, training is “on the job,” to observe court proceedings and services provided.¹⁵⁴ A substantial portion of training involves shadowing to learn to apply the principles of assistance.¹⁵⁵ Additionally, a manual is usually provided for reference.¹⁵⁶ During my employment at the Self-Help Center, employees regularly referenced checklists and guidelines independently and with litigants as a visual aid. Due to the substantial knowledge law students would bring to the navigator role, likely minimal initial training would be required and therefore could be reduced or accelerated to begin with observation.

In addition to the benefits to self-represented litigants and the court systems, the opportunity for law students to work in the role of navigators would also benefit students and the legal profession.¹⁵⁷ The additional opportunity for experiential learning would have pedagogical benefits and help students meet requirements (such as experiential credit or court observation). In the long run, exposing students to the access to justice crisis has the potential to increase their involvement in pro bono work and social service commitments.¹⁵⁸ The work as a navigator would provide law students with tangible experience in the court system that would benefit their future legal careers.¹⁵⁹

A. *Placement Opportunities*

The recommendation that law students may act as navigators requires a determination of where law students may effectively perform tasks that would be beneficial to unrepresented individuals. Some navigator programs partner with law schools to create experiential programs where law students can earn educational credit or meet pro bono requirements while working in a navigator role.¹⁶⁰ Other navigator programs do not have formal arrangements with law schools in place but, depending on the applicable student practice rule, allow students to coordinate with their law school to secure program placement or to independently work with the program.¹⁶¹ For example, in Ohio, the Legal Navigators Program partners with law schools in order for law students to volunteer with the program.¹⁶²

154. *Id.*

155. *Id.*

156. *Id.*

157. *See id.* at 36.

158. *See id.*

159. *Id.* at 16.

160. *Id.* at 28.

161. *Id.*

162. *LAWRS Foundation Legal Navigator Program*, *supra* note 64.

Law students could also participate in limited legal assistance in various settings outside of navigator programs. Clinics sponsored by court administrations and law firms often utilize nonlawyer and law student volunteers to provide services similar to navigators.¹⁶³ In this setting, lawyers or software (such as that used by Rasa Legal) determine litigant eligibility, then nonlawyers assist litigants in completing required forms.¹⁶⁴ For example, in Utah, Utah Legal Advocates is a law firm that trains and supervises law students to provide limited legal services through simple legal advice and assistance with form completion.¹⁶⁵ These services are reviewed by licensed lawyers but are offered at a lower price.¹⁶⁶ Also, in New York, a software system creates court documents and instructions to assist pro se litigants and partners with a law school to implement the program.¹⁶⁷

The areas in which law navigators assist may depend on the program or placement.¹⁶⁸ Differing views exist as to whether navigators should be limited to certain types of cases based on complexity, but many program managers surveyed did not find such restrictions necessary.¹⁶⁹ Some navigator programs only offer assistance in one area of law, but most navigator programs and court programs like self-help centers offer assistance in many areas of law. Although most of the assistance needed is concentrated in one or two case types—like family law.¹⁷⁰ As an employee of the Self-Help Center located in a court, I could assist in any area where procedural direction could be provided, but pro se litigants most often sought assistance in the area of family law, followed by landlord-tenant, small claims, and probate areas.¹⁷¹

163. See, e.g., *Drivers License Reinstatement Clinic*, EIGHTH JUD. CIR. BAR ASS'N, INC., <https://www.8jcba.org/news/9382134> [<https://perma.cc/H2ED-WE7W>] (discussing a driver's license clinic in which lawyers are assisted by law students). While the Author was employed as a Summer Associate at a law firm in Columbia, South Carolina, the law firm held a driver's license reinstatement clinic utilizing law students as volunteers.

164. ENGSTROM, *supra* note 17, at 34.

165. OFFICE OF LEGAL SERVICES INNOVATION: AN OFFICE OF THE UTAH SUPREME COURT, SANDBOX AUTHORIZATION PACKET: UTAH LEGAL ADVOCATES (2021) [hereinafter SANDBOX AUTHORIZATION PACKET]; ENGSTROM, *supra* note 17, at 35.

166. SANDBOX AUTHORIZATION PACKET, *supra* note 165; ENGSTROM, *supra* note 17, at 35.

167. See Rochelle Klempner, *The Case for Court-Based Document Assembly Programs: A Review of the New York State Court System's "DIY" Forms*, 41 FORDHAM URBAN L.J. 1189, 1193 (2016).

168. See MCCLYMONT, *supra* note 24, at 18.

169. *Id.* (highlighting the conclusions of a survey on Nonlawyer Navigators in State Courts conducted by The Justice Lab at Georgetown Law Center).

170. See *id.*

171. See generally, *Self-Help*, *supra* note 70; Schwartz, *supra* note 70.

Similarly, in South Carolina, the types of cases that most often require assistance are family law, landlord-tenant, and consumer finance.¹⁷²

B. Student Practice Rule as a Safe Harbor

Because they are not authorized to practice law, navigators assist clients in alternative capacities, such as by providing procedural direction.¹⁷³ There is a “critical distinction” between procedural direction and legal advice.¹⁷⁴ In order to provide meaningful assistance, navigators must assess specific situations and explain available procedural options without making recommendations.¹⁷⁵ Also, navigators must review forms for accuracy and completeness without instructing what to put in the forms.¹⁷⁶ The line between the definitions of direction and advice is blurry in concept and, oftentimes, no clearer in practice. Navigators must exercise great caution in not performing their duties in a way that could be construed as the practice of law.¹⁷⁷

Navigators employed by private organizations are at risk for unauthorized practice of law claims.¹⁷⁸ In one example, Upsolve, a nonprofit organization, created a program where nonlawyers would assist low-income individuals facing debt collection actions in filling out state-provided forms; this was held to constitute legal advice and a violation of the unauthorized practice of law rules.¹⁷⁹ The organization sought an injunction preventing enforcement of the unauthorized practice of law rules against them, and the court granted the injunction, holding that the First Amendment of the United States Constitution protects certain types of limited legal advice as speech that cannot be prosecuted as the unauthorized practice of law.¹⁸⁰ The court noted the fact that the program was limited to advice provided outside of a court setting meant it would “not threaten the overall regulatory exclusivity of the legal

172. CHAMBLISS ET AL., *supra* note 2, at 10 (discussing the type of cases that require assistance from South Carolina Legal Services).

173. MCCLYMONT, *supra* note 24, at 19.

174. *Id.* at 17.

175. *See id.* at 5–6.

176. *See id.* at 6.

177. *See id.*

178. *See, e.g.,* Upsolve, Inc., v. James, No. 22-cv-627 (PAC), 2022 U.S. Dist. LEXIS 93388 (S.D.N.Y. 2022) (holding a non-profit plaintiffs’ program that trained nonlawyers to provide legal advice to eligible low-income not to be an unauthorized practice of law because the First Amendment protected this legal advice as speech, the unauthorized practice of law rules are not narrowly tailored to satisfy scrutiny in this instance, and the balance of equities favors this decision because the program would assist in combating the multitude of these type of cases that go unanswered while mitigating the risk of consumer or ethical harm).

179. *Id.* at *1.

180. *Id.* at *1, *17.

profession.”¹⁸¹ Like in *Upsolve*, law students should be allowed to provide legal advice in a limited scope with specialized training.

As nonlawyers, navigators are limited to providing procedural direction due to unauthorized practice of law rules; but law students, under student practice rules, could provide much-needed limited legal advice to pro se litigants.¹⁸² The student practice rule would be a safe harbor under which students could provide legal advice in a navigator role but not be vulnerable to unauthorized practice of law claims.

C. Potential Limitations

Student practice rules determine the scope of law student participation.¹⁸³ Student practice rules vary in whether student practice is limited to a law school program or placement.¹⁸⁴ This will determine whether law students may work with navigator programs independently or whether they are limited to those available through law school program or placement.¹⁸⁵ Student practice rules also vary in the level of supervision required for student appearances in court.¹⁸⁶ Supervision in navigator programs varies depending on the services being provided and the qualifications of the navigator, but most programs are managed and supervised by a lawyer.¹⁸⁷ Navigator program participation could easily be tailored to the applicable student practice rule based on the in-court and out-of-court services offered as well as supervision availability.¹⁸⁸

181. *Id.* at *1.

182. See ENGSTROM, *supra* note 17, at 13.

183. See Mlyniec & Etchison, *supra* note 88, at 258.

184. See *supra* Table 2.

185. A summarization made by the Author from original research in reading and comparing all fifty student practice rules.

186. See Mlyniec & Etchison, *supra* note 88, at 258.

187. MCCLYMONT, *supra* note 24, at 24.

188. At the Self-Help Center where the Author was employed, the director was a lawyer who generally supervised the staff and was available for consultation when needed. In the Author's experience, after sufficient training and observation, continued direct supervision was not required for providing procedural direction. If Self-Help Center staff needed support and the director was unavailable, the staff scheduled a follow up with a litigant or consulted other court staff for assistance.

V. A PROPOSAL: RECOMMENDATION FOR MODIFICATIONS TO THE SOUTH CAROLINA STUDENT PRACTICE RULE

South Carolina ranks the sixth lowest of all states in ensuring equal access to justice for self-represented litigants.¹⁸⁹ The Justice Index identifies numerous policies that South Carolina lacks but should adopt to expand access to justice moving forward.¹⁹⁰ Many of these policies would provide opportunities for law student placement including self-help services, navigator programs, and explanation of financial hardship waiver to litigants.

South Carolina provides waiver requirements for attorneys providing pro bono services to obtain a license to practice law.¹⁹¹ Retired attorneys, inactive attorneys, in-house counsel, and law professors are permitted to obtain a limited certificate of admission to practice law in South Carolina.¹⁹² The state has broad practice of law policies to assist in areas of need, and student practice could be similarly utilized for this purpose.

Currently, in South Carolina, court systems offer forms but not self-help centers or designated representatives to assist pro se litigants.¹⁹³ Outside the court system, few independent resources for limited legal assistance exist. The only organization that currently provides limited legal assistance by nonlawyers is the Housing Navigator Program, a pilot eviction diversion program recently launched by the NAACP and Appleseed Legal Justice

189. *See Self-Representation*, NAT'L CTR. FOR ACCESS TO JUST., <https://ncj.org/state-rankings/2020/self-representation> [<https://perma.cc/ZA5K-CJRW>].

190. *See* Justice Index, *supra* note 8.

191. GUIDE TO SELECT RULES FOR PRO BONO PRAC., CORP. PRO BONO (2020); Rule 410(h) & (q), SCACR.

192. Rules 410(h) & (q), 414(b), 415(a), SCACR.

193. *Self-Help Resources*, S.C. JUD. BRANCH, <https://www.sccourts.org/selfhelp/> [<https://perma.cc/L4M8-PSXE>] (showcasing an interactive program provided by South Carolina Legal Services that assists self-represented litigants complete forms while also offering information on Legal Clinics that provide legal information and assistance through <https://www.sccourts.org/public/public-programs/free-legal-clinics/>, however, the link is to a South Carolina Bar webpage that no longer exists); *Welcome to South Carolina Court*, S.C. ACCESS TO JUST., <https://www.sccourts.org/clerkOfCourtManual/clerkSign.pdf> [<https://perma.cc/5884-6NYX>] (according to the South Carolina Judicial Branch website, court staff can only do the following to assist pro se litigants: “[e]xplain and answer questions about how the court works”; “[p]oint you to organizations and online legal information that might be able to help you”; “[g]ive general information about where to find court procedures, deadlines, rules, and practices”; “[p]rovide court schedules and information about how to get a case scheduled”; “[p]rovide basic information about your own case file”; “[p]rovide approved/authorized court forms and available instructions”; and to “[m]ake sure your papers are complete.” Alternatively, Court staff cannot: “[t]ell you whether or not you should bring your case to the court”; “[t]ell you what to say in your court papers”; “[t]ell you what to say in court”; “[g]ive you an opinion about what will happen if you bring your case to court”; “[t]alk to the judge for you”; “[l]et you talk to the judge outside of court”; “[c]hange an order signed by a judge”; nor “give you legal advice.”).

Center.¹⁹⁴ The program uses volunteer navigators to inform individuals of their rights and to refer them to appropriate resources.¹⁹⁵

Within the movement toward evidence-based reform of legal services,¹⁹⁶ student practice should not be excluded. To date, there is no published data analyzing student practice rules and their impact. Currently, the only information to consider is the recent reforms expanding limited legal assistance. While there is no evidence of harm, the reforms are still in inception and results are not conclusive.¹⁹⁷ There is a need for information relating to the impact of student practice on access to justice. Surveys analyzing access to justice should include student practice as a component and the impact of recent student practice rule expansion should be evaluated.

Generally, opposition to the expansion of limited legal assistance centers around three ideas. First, the expansion may result in a decrease in the quality of legal services provided.¹⁹⁸ Opponents are concerned that nonlawyers will not be able to adequately handle legal services.¹⁹⁹ Second, the reform may negatively affect the independence of the legal profession and the value of the attorney license.²⁰⁰ If nonlawyers provide incompetent or ineffective legal services, the legal profession will lose credibility and overall diminish in quality.²⁰¹ Finally, the proposed reforms will not increase access to justice.²⁰² Opponents argue that the magnitude of assistance needed for indigent clients is too substantial to be impacted by these changes.²⁰³

Evidence indicates that nonlawyers can be as effective as lawyers in specialized tasks, and early assessments suggest the reforms increase access to legal services.²⁰⁴ When considering the expansion in the context of student practice, an additional concern is whether it will be beneficial to students.²⁰⁵ The navigator experience provides pedagogical benefits, helps students meet

194. NAACP Eviction Navigators & Diversion Program in South Carolina, EVICTION INNOVATION, <https://evictioninnovation.org/2021/03/25/columbia-south-carolina-eviction-navigators-diversion-program/> [https://perma.cc/QN46-7YTH]; *Let Us Help You Fight an Eviction*, NAACP S.C. STATE CONF., <https://navigator.scnaacp.org/> [https://perma.cc/8ARD-3R4L].

195. Scott Morgan, *Columbia Program Bridges Landlords, Tenants in Eviction Crisis*, S.C. PUB. RADIO, <https://www.southcarolinapublicradio.org/sc-news/2021-03-03/columbia-program-bridges-landlords-tenants-in-eviction-crisis> [https://perma.cc/ZH5B-EXK7].

196. See generally Chambliss, *supra* note 15.

197. See ENGSTROM, *supra* note 17, at 45–48.

198. *Id.* at 16.

199. See N.Y. CITY BAR ASS'N COMM. ON PRO. RESP., *supra* note 21, at 4.

200. Reynolds, *supra* note 23.

201. *Can Nonlawyers Close the Legal Services Gap?*, *supra* note 24.

202. *Id.*

203. *Id.*

204. See N.Y. CITY BAR ASS'N COMM. ON PRO. RESP., *supra* note 21, at 4; see also ENGSTROM, *supra* note 17, at 49.

205. See E-mail from Jason Bobertz, *supra* note 137.

educational requirements, increases involvement in public service, and provides hands-on training.²⁰⁶

Other jurisdictions provide an increasing number of examples of how to make legal services more accessible, and it is up to South Carolina to implement the information into creating innovative solutions. The first step in evaluating potential options is a pilot test conducting navigator programs with law student participation. The need for legal assistance is well established, and the positive impact of navigator programs has been proven.²⁰⁷ The remaining challenge is to collect evidence about additional settings in which law students may participate. A question of particular importance is whether strict supervision requirements under student practice rules are justified and whether any prevalence of harm exists as the result of unsupervised student practice.

These recommendations are feasible and would accomplish a number of objectives. Additional evidence is needed to guide reconsideration and modification of the regulations preventing clients in need from receiving assistance, including narrowly tailored student practice rules. The recent developments in states such as Wisconsin and Georgia suggest there is much more opportunity for law students to contribute than is currently permitted by South Carolina's student practice rule. A just, accessible legal system is one that works for all in need of legal services. For the unrepresented, this requires access to assistance tailored to individual needs. According to University of South Carolina law professor Elizabeth Chambliss, the legal profession "has a responsibility to engage in the growing national research conversation about access to justice, and to expand its commitment to evidence-based lawyer regulation."²⁰⁸

By following the lead of other states' innovative developments, South Carolina has the opportunity to reduce its access to justice gap. Expansion of the student practice rule in South Carolina would allow law students to fill roles like court navigators in providing specific services such as explaining procedures and assistance in the completion of court forms. Further, under student practice rules, law students could increase meaningful assistance by providing limited legal assistance to pro se litigants in these areas.

At a minimum, South Carolina should expand the student practice rule to allow student practice outside the context of law school clinical education programs. There is a great need and opportunity for law students in navigator roles providing out-of-court services. This would preserve the prohibition of student appearance in court without supervision under the current student practice rule. However, for a more transformative approach, South Carolina

206. MCCLYMONT, *supra* note 24, at 16, 36.

207. S.C. ACCESS TO JUST., *supra* note 2, at 4; MCCLYMONT, *supra* note 24, at 33–36.

208. Chambliss, *supra* note 15, at 350.

should expand the student practice rule to allow students to appear in court without supervision. This would allow law students to work in navigator roles providing in-court services. The fact that so few states have this strict supervision requirement in their student practice rule suggests that such stringent limitations are not necessary. Moving forward, the Supreme Court of South Carolina should consider making these amendments.

VI. CONCLUSION

The continuing prevalence of the access to justice crisis indicates that current efforts are not sufficient.²⁰⁹ Barriers put in place by the legal profession account for a portion of the issue.²¹⁰ States are attempting to address these issues through various means and at varying rates.²¹¹

Law students could aid in decreasing the access to justice gap by serving in navigator roles in a variety of settings, but in South Carolina, law students are restricted by the state's narrow student practice rule.²¹² State Carolina should expand the student practice rule to allow limited legal assistance, conduct pilot tests, and collect evidence on the impact of student practice. This would provide invaluable information on closing the access to justice gap and would create additional opportunities for experiential learning for law students, positively impacting the legal profession and society as a whole.

Access to justice for all is attainable with responsive and innovative actions from the legal profession. The legal profession is seemingly “asleep at the wheel” and is arguably less prepared than it should be to respond to persisting crises and emerging reforms.²¹³ But as the state motto indicates, South Carolina is “Animis Opibusque Parati”²¹⁴—prepared in mind and resources—and, fortunately, there is ample opportunity for change.

209. See INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS., *supra* note 1, at 9.

210. See, e.g., *id.*

211. See generally *Can Nonlawyers Close the Legal Services Gap?*, *supra* note 24.

212. See generally Rule 401, SCACR.

213. Chambliss, *supra* note 15, at 297.

214. *Seals, Flags, House & Senate Emblems*, S.C. STATE HOUSE, <https://www.scstatehouse.gov/studentpage/coolstuff/seal.shtml> [https://perma.cc/6TQZ-EVW5].