

27 August 2021

Arizona Supreme Court
Certification and Licensing Division
1501 W. Washington
Phoenix, AZ 85007

RE: Proposal to change ACJA 7-208: Legal Document Preparer

The undersigned has read the proposed changes to ACJA §7-208 and feels compelled to reply. I could reply in simple terms: *Don't fix that which isn't broken*. However, under the circumstances, I must specify my several objections.

The AOC has failed to state a compelling argument for the proposed changes. It appears the proposed changes are a means to bypass previously approved committee decisions in the formation of the LDP program. In reviewing the published results of (2021) disciplinary actions, not one has come due to a Legal Document Preparer (LDP) being accused of having too much education. Nor has the undersigned noted any incidents of unauthorized practice of law (UPL) on the part of an LDP because of too much education.

Instead, in the two incidents documented in the Board minutes of 2021 where there was a finding of UPL, it was found in both incidents that the LDP's failed to have their clients actively participate in the procedure of drafting the documents. If the AOC cares to use these (and any other, similar) incidents as justification for changes to ACJA §7-208, these incidents are isolated, and not a pattern with the LDP profession.

Unregulated, non-certified persons in the past (and present) have caused havoc among those representing themselves before the courts. The Certified Legal Document Preparer (LDP) in Arizona has been a blessing for the Self-Represented

Litigants (SRL's) to the former alternative of finding a rogue unprofessional preying on unsuspecting litigants.

The contradiction in the proposed revisions to ACJA §7-208 against the goal of *helping* the SRL are plainly apparent in the proposed changes. LDP's provide a valuable service to SRL's. Their contributions to the due process deserved by the SRL should not be weakened by wrongful over-regulation or burdensome restrictions.

The proposed changes do not seek to, and will not result in benefit to the SRL, the courts, or the legal community, but place another obstacle within an already cluttered system to which the SRL must navigate.

Needless to say, I strongly object to the proposed changes.

Proposed reduction in mandated continuing education hours¹

Firstly, the AOC, in its proposal, seeks to reduce the mandatory continuing legal education for LDP's. That just doesn't make sense.

Education is a cornerstone of professionalism. Certified Legal Document Preparers (LDP) in Arizona have long been required to attend ten hours of continuing education each year. That is not an unreasonable number of hours, especially in considering that in a full-time work year there are 2,000 hours from which to choose. To lower the educational requirement to less than ten hours per year is a disservice not only to our professional requirements, but to the public, as well.

A better educated LDP is an asset to the self-represented litigant (SRL), as well as the courts. An LDP who is less educated is more apt to make mistakes and cause

¹ Specifically addressing proposed changes to ACJA §7-208(G)(2) and ACJA §7-208(L)(2)

the SRL to have documents redrawn, suffer financial injury, and suffer a failure of being able to adequately represent themselves.

The under-educated LDP is also more likely to face disciplinary charges, resulting in the Board ordering not only financial sanctions, but also additional continuing legal education. Reducing the continuing education requirements is not a real solution, but a proposal that inadvertently creates other potential problems.

Proposed change to ACJA §§7-208(G)(2) and 7-208(L)(3):

Proposed change to ACJA §7-208(G)(2): Continuing Education. All certified legal document preparers shall complete ~~ten~~ fifteen hours of continuing education ~~each year for a total of twenty hours~~ every certification period pursuant to subsection (L).

While it looks as if the AOC is proposing more continuing education, the details are in the fine print. The certification period is two years – that means that although the AOC uses a larger number in the cumulative, the AOC actually proposes a reduction of continuing education hours by twenty-five percent from the current regulation from the current twenty to fifteen hours in each two-year renewal period.

Then, under the AOC's proposal, even after our current (mandated) continuing education hours are reduced, a further thirteen percent of the reduced hours are wiped out to accommodate "...professionalism training..." designed by "staff" under the proposed changes to ACJA §7-208(L)(3). It just doesn't make sense to increase professionalism by reducing continuing education.

Proposed change to ACJA §7-208(L)(3): "Upon receipt of notice of board approval of individual certification and before April 30th of the following odd numbered year, each legal document preparer shall attend and complete a two hour professionalism training course on the role and responsibilities of the certified legal document preparer as provided by division staff."

Aside from this type of mandated "...professionalism training...", reducing continuing educational hours, it also doesn't make sense for the experienced professional in the private sector to take a "professionalism" class from a government employee spouting their opinion who knows little of private industry. That type of mandated class appears to be more of an indoctrination into the opinions of someone within the AOC, and makes it appear that the collective opinion of the AOC is that LDP's are incompetent. We've seen how "re-education" reduces individual initiative and drives people to groupthink.

The public judges our professionalism. Regulations have been set down establishing professional behavior. Collectively, we abide by them. Those who don't are disciplined or driven out of business by a lack of business.

Our continuing education hour requirements are just fine. They don't need to be changed for the sake of change.

Proposed restriction on LDP's drafting motions, etc. [ACJA § 7-208(F)(1)(a)]

Quite frankly, this section bothers me the most. This proposal eliminates many SRL's from utilizing the services of an LDP.

By restricting the LDP from "drafting" "...substantive legal motions, supporting memorandum or appellate briefs..." the proponents forget that it is the SRL who has the final say and approval of any drafted document. The decision to file a document stands with the SRL, not the LDP. It the responsibility of the SRL to *review* and *understand* the document and its consequences before it is filed by the SRL.

Regardless of if it is filling in a pre-printed form or typing something on pleading paper, the LDP can only craft a document based on the SRL's wishes and at his/her direction. The LDP does not work independently in writing documents for the SRL, but rather at the SRL's direction. Thus, the proposed restrictive covenants to

ACJA §7-208(F)(1) would prevent the LDP from offering the SRL any options, in essence, throwing an SRL without means and ability to the street.

Proposed change to ACJA §7-208(F)(1): Authorized Services. A certified legal document preparer is authorized to: (a) Prepare or provide legal documents, without the supervision of an attorney, for a person or entity in any legal matter when that person or entity is not represented by an attorney. A legal document preparer shall not draft substantive legal motions, supporting memorandum or appellate briefs, except that a legal document preparer may assist a client with the completion of motions in family court proceedings using the appropriate court approved motions form;

Not every LDP focuses his or her practice on family law, and those who do will have their own objections. Enactment of this restriction to practice would result in the potential to put many LDP's out of business and SRL's at risk. In non-family law matters, it would limit or otherwise eliminate the availability of access to justice for persons unable to afford the services of an attorney. Most SRL's do not have a firm grasp of legal research, or writing ability, resources, or legal experience. The "system" scares them, and rightfully so. It wasn't designed for the average person to easily comprehend and navigate.

The use of the term, "substantive" is a term of art. Whether looking at the term, *substantive*, that which is "having a firm basis in reality and therefore important, meaningful, or considerable", or one in which "belonging to the real nature or essential part of a thing", any document making a request to the court, filed by a self-represented litigant or one represented by his/her attorney, whether it be in the form of a motion or otherwise will have an impact on the rights of that person. All forms and documents filed requesting the court take an action may be considered a "substantive motion", especially, but not necessarily when they are original, or novel in nature. All motions may affect the substantive rights of an individual.

The proposal seeks to limit or eliminate the services an LDP may provide to an appellant. Most of the SRL's the LDP assists cannot afford their own attorney.

According to information, 13.8% of Arizona residents never graduated high school.² When was the last time a high school dropout, or even a high school graduate wrote a cogent legal argument to prevail at the appeals stage?

- Thirty-four percent of job applicants lack the literacy skills needed to do the job they seek. – The American Management Association
- Twenty percent of Americans read below the level needed to earn a living wage. – National Institute for Literacy
- High school dropouts earn 48% less than those with a high school education. – National Center for Education Statistics
- On average, adults at the lowest level of literacy are 10 times more likely to live below the poverty line. – National Adult Literacy Survey
- High school dropouts earn 48% less than those with a high school education, contributing less to the tax base and society. – National Center for Education Statistics
- Two-thirds of students who cannot read by the end of 4th grade will end up in jail or on welfare. – US Department of Justice³

This proposed restriction further puts the LDP who assists the SRL with drafting, filing or otherwise consulting on appeals issues or otherwise assisting the SRL in other areas subject to discipline. The proposal prevents the SRL from utilizing the talents and resources of the LDP to construct for filing documents in support of the SRL's position, preponderances, or answers, where the SRL seeks to utilize existing statute and case law to protect their interests in areas other than family law.

Examples of SRL's in non-family law matters who file the following will be affected:

- Motion to vacate a judgment under ARCP Rule 60

² <https://statisticalatlas.com/state/Arizona/Educational-Attainment>

³ <http://stand.org/campaigns> [16 August 2021]

- for lack of proper service of process
- abuse of judicial discretion
- unlawful or improper evictions
- other, numerous bases of appeals
- Drafting a claim (notice before suit) against a government agency as required by statute⁴
- Criminal matters
 - Appeals and administrative responses in criminal self-representation
- Claims and appeals to administrative agencies for workers compensation, tax-related issues, unemployment, filing administrative complaints with substantive supporting documentation for abusive collection practices, and other matters
- Drafting a brief, motion, citation of points and authorities
 - Motions to continue
 - Motions for reconsideration
 - Motions for in-camera interview
- Otherwise constructing documents relating to answers, responses, objections, lines of inquiry or concern in matters not necessarily as an appellant, but as a plaintiff, defendant, third party or other interested person in an administrative, civil, criminal or family law matter which requires either research into a legal issue or other statement of fact which must be comprehensively prepared.
- Those SRL's seeking assistance under Arizona Rules of Criminal Procedure, Rule 36. Expunging Marijuana Records and Restoring Civil Rights – re: A.R.S. § 36-2862.

⁴ ARS §12-821.01. Authorization of claim against public entity, public school or public employee

- Under the proposed amendment to ACJA §7-208, an LDP would be prohibited in assisting a SRL with obtaining expungement of a marijuana-related conviction per Proposition 207. Prohibiting an LDP from engaging in such an aspect of practice, assisting SRL's with motions and filings would not only deny the SRL his/her due process rights under Prop. 207, but also prohibit the LDP from engaging in lawful commerce.

While some attorneys and other professionals would like to see the LDP relegated to the position of a mere “scribe”, it is incumbent that the legal profession recognize the LDP in Arizona as a vital part of the due process access to which all SRL's are entitled.

None of us wants to see SRL's who go to court and clog it with unresearched and improperly written motions and other documents, resulting in further delays or having their cases or motions unnecessarily and summarily dismissed. This would create miscarriages of justice we so often have wanted to avoid for the SRL.

For the SRL who cannot afford the services of an attorney, but who wishes to have their day in court, rather than foregoing due process, access to the LDP is a need which must be met.

The restrictive proposals, if passed, will further cause a schism in the “have's” and “have not's” – those who can afford to pay for their own attorney, and those who formerly were able to use an LDP but cannot get access to justice because of regulatory changes. The changes proposed would result in severe inequities for all concerned.

Conclusion

I restate from my opening paragraph: *Don't fix that which isn't broken.*

The proposed changes would have not only a major negative impact on the LDP, but the public, specifically the self-represented litigant (SRL). The AOC has not provided any basis for the proposed changes. The proposed changes are a bad idea, in their entirety. The LDP program was approved by committee after long and thorough examination, and those decisions and regulations enacted are still valid.

The proposed changes to ACJA §7-208 by the AOC do a disservice to the legal community. The proposals seek to circumvent the long standing and proven worth of the LDP, and effectively neuter the ability of the LDP to assist the people of Arizona. Unfortunately, if passed, not only will the proposed changes affect the LDP, but those consumers with moderate economic means, as well as consumers dependent on volunteer or other private charitable organizations.

The proposed changes make ACJA §7-208 go from a set of regulations that guide and establish the professionalism of the LDP, to one in which prevents the LDP from offering beneficial services to the self-represented litigant – members of the public who choose to represent themselves before the courts.

In this case, the proposed changes from the AOC, if passed, will do more harm than good, and should be disapproved in their entirety.

Respectfully submitted,

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