

**ARIZONA SUPREME COURT
CERTIFICATION AND LICENSING DIVISION
WORKING DRAFT AMENDMENT TO ARIZONA CODE OF
JUDICIAL ADMINISTRATION § 7-208**

**IN RE: PROPOSED CHANGES TO)
 SECTION 7-208: LEGAL)
 DOCUMENT PREPARER)**

**Comment Regarding Proposed Changes to Arizona Code
Of Judicial Administration Section 7-208**

I, Cherie Koch, respectfully submit my public comment to the proposed changes to Section 7-208 of the Arizona Code of Judicial Administration. It is my opinion that the proposed changes will: 1) cause irreparable injury to Arizonans who rely upon CLDP's to have affordable access to legal services, and 2) will force hundreds of CLDP's out of business. The proposed changes will gut the program and deprive Arizonans of their opportunity to be heard in Arizona Courts in civil, probate, juvenile or criminal matters as well as curtail their ability to have a CLDP draft other documents (e.g., Will, Mechanic's Lien, Power of Attorney, etc.) where there is no "court-approved form."

The proponents of these changes, whether the CLDP Board or the Certification and Licensing Division (CLD) of the Administrative Office of the Courts (AOC), appear to be unmindful of the history of the CLDP Program and/or they recklessly disregard the consequences of their modifications to the Program. The public policy concerns and fall-out are so great and substantial that it's astonishing that its proponents are not cognizant. Once the Arizona public realizes the devastating and irreversible losses that these changes will cause, the public outcry will be massive.

The public policy considerations are staggering, including loss of property, financial reversals, weakening of families, harm to children, and more. At a time when people are trying to

put themselves back together after a pandemic, this proposed rule change does nothing but create additional roadblocks and burdens for Arizonans.

CLDP PROGRAM:

In 1933 the Arizona legislature passed a statute regarding the unauthorized practice of law. In 1984, all statutes in Title 32 of the Arizona Revised Statutes relating to the practice of law were sunsetted. Independent paralegals went into business and helped the public with legal document preparation for almost two decades. In or about 2002, attorneys contemplated reviving the statute but, instead, petitioned the Arizona Supreme Court to adopt a rule. Independent paralegals picketed the State Bar Convention and enlisted the assistance of the Institute for Justice. This important piece of UPL in Arizona history is memorialized on the Institute for Justice website¹ and shows that there is nothing new under the Arizona sun:

The Institute for Justice Arizona Chapter (IJ-AZ) recently caught the State Bar with its hand in the cookie jar. The Bar petitioned the Arizona Supreme Court to adopt a rule prohibiting consumers from hiring non-lawyers to “prepare any document in any medium intended to affect or secure legal rights for a specific person or entity.”

The proposed rule would have shut down more than 200 independent paralegals and document preparers who currently offer Arizonans a low-cost alternative to high-priced attorneys and would have made the legal cartel the sole provider of paralegal services. The Bar claimed it had received 400 consumer complaints against “non-lawyers” practicing law in Arizona.

IJ-AZ met with the Arizona Association of Independent Paralegals and confirmed its members capably prepared routine legal documents. Given the complexity of our legal system, there is a pressing need for alternative, affordable legal service providers.

The Arizona Chapter immediately went to work in the court of public opinion to expose the Bar’s attempt to crush its competition. IJ-AZ also sent a letter to Arizona’s Chief Justice detailing our opposition to the proposed rule and our commitment to protecting economic liberty in the court of law.

We got the cartel’s attention.

¹ <https://ij.org/11/april-2003-volume-12-number-2/keeps-independent-paralegals-in-business/>

Bar officials at once requested a meeting with the Institute's Arizona Chapter and shortly thereafter the Chief Justice formed an ad hoc committee to explore regulating rather than prohibiting independent paralegals. IJ-AZ did not participate as a member of the committee so as to not compromise our ability to challenge any onerous regulations ultimately adopted.

But before the committee was officially organized, the Chapter went to bat for the independent paralegals on one crucial matter: gaining access to the alleged 400 complaints. Up to this point the Bar had denied anyone access. How could the committee craft regulations to protect consumers from harm if only a select few committee members understood the harm consumers were purportedly suffering?

The court staff overseeing the creation of the committee recognized that the independent paralegals would never sit down at the table without reviewing the complaints. The staff then strongly suggested that the Bar permit us an opportunity to inspect the complaints.

IJ-AZ led a team of lawyers and independent paralegals into the heart of the State Bar's office and our findings truly shocked us. Of the supposed complaints that had been submitted to the Bar we found that:

- 123 were nothing more than flyers advertising paralegal services and estate seminars
- 26 were actually against licensed attorneys
- 74 were filed by lawyers, not consumers
- 24 were complaints against 13 disbarred attorneys

Perhaps most telling of all: only 11 complaints were filed by consumers against an independent paralegal. And these are only a representative sample of our findings.

IJ-AZ submitted the results of our survey in the form of a public comment on the proposed rules and concluded that the Bar's petition was nothing more than a solution in desperate search of a problem. Once these findings were made a public record, the Supreme Court's ad hoc committee worked diligently and adopted a reasonable licensing scheme that satisfied IJ-AZ's concerns.

In January, the Supreme Court adopted a Legal Document Preparer certification program much to the relief of hundreds of independent paralegals who no longer face extinction.

IJ-AZ's efforts were recently lauded by the East Valley Tribune for "throwing legal muscle behind a fledgling industry that has expanded consumer choice in an important area." This is a terrific victory for IJ-AZ and the Grand Canyon State.

Tim Keller is an Institute for Justice Arizona Chapter attorney.

We seem to have cyclical phenomena here which has the appearance of turf protecting disguised as 'protecting the public.' Similar Rule changes attempted several years were eventually

abandoned and not adopted. Yet here we are again with another unjustified assault on the established and successful CLDP Program without establishing demonstrable harm. Some of these changes are minor housekeeping revisions, but the changes to § 7-208(F)(1)(a) will drastically cripple the entire CLD Program.

I object to the reduction of Continuing Education requirements. It truly appears that there is an agenda to dismantle the program and turn the CLDPs into fill-in-the-blank scriveners. In that case, they wouldn't need much in the way of Continuing Education. Interestingly, the ethics requirements increase in the proposed amendment while the overall number of hours is reduced. It appears that the proponents want an ethical bunch of form-fillers. This is offensive to those of us who take our profession seriously. I don't want to reduce the number of CE hours and I don't want to become a form-filler.

The CLDP Program has been in place for nearly two decades. Independent paralegals have been competently and successfully helping Arizonans since 1984. The Program does not need to be overhauled as this amendment proposes.

ANY LEGAL MATTER:

The existing rules strictly prohibit the following: 1) "A legal document preparer shall accept only those assignments for which the legal document preparer's level of competence will result in the preparation of an accurate document."

I concur with other commenters that our present Code already provides the standard and a remedy for any member of the public who is harmed by a CLDP who endeavors to take on assignments that are above his or her level of competence. Attorneys are similarly cautioned not to take cases beyond their ability or outside their specialization. The truth is that attorneys have been accusing document preparers of harming the public for a very long time, but the converse is the case.

Chief Justice Jones authorized formation of the Arizona Supreme Court Ad hoc committee which drafted ACJA 7-208. At least two of the commenters regarding this proposed rule change served on that ad hoc committee: Donald Steward and Allen Merrill. Their comments deserve extra attention given their background and participation in establishing the Code at the outset of this Program.

In his Administrative Order in 2003, Chief Justice Jones clearly recognized the need to protect the public from possible harm caused by nonlawyers providing legal services must be balanced against the public's need for access to legal services. The program was established to "Protect the public through the certification of legal document preparers to ensure conformance to the highest ethical standards and performance of responsibilities in a professional and competent manner." ACJA 7-208(C)(1).

The CLDP Program has been in place for nearly two decades. Independent paralegals have been successfully helping Arizonans since 1984 when the UPL law(s) were sunsetted. When § 7-208 was promulgated, Chief Justice Jones stated: "Legal document preparers are nonlawyers who prepare or provide legal documents, without the supervision of an attorney, for an entity or member of the public who is engaging in self-representation IN ANY LEGAL MATTER." (emphasis added). ACJA § 7-208(F)(1)(a) provides that: "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." (emphasis added). There is no reason to fix what is not broken.

The proposed amendment to § 7-208(F)(1)(a) states:

Authorized Services. 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 completion of motions in **family court proceedings** using the appropriate **court approved motions form**.

There are a myriad of problems with this amendment. The definition of "substantive motions" is problematic and intentionally vague. This is reminiscent of the time in or about 2002 when the American Bar Association set up a special task force whose goal was to propose a "model definition of the practice of law." The Department of Justice and the Federal Trade Commission had to intervene, because the ABA's ultimate definition was so overly broad.² It would have an adverse effect on commerce, financial sector, and overall welfare of the American public. It would have been devastating. The DOJ and the FTC had to stop the American Bar Assn. or risk no one in our country to be able to participate in commerce or write a check without being a lawyer!

Other onerous provisions in this section are the limitation of: 1) only using Court-approved forms, and 2) only in family court. This clause demonstrates that the drafters really don't understand the profession or the Program. The Court-approved forms are known to be incorrect. Currently, CLDPs may create their own forms and templates, but the proposed amendment removes that provision. Additionally, Court-approved forms do not adequately meet the needs of the litigant in most situations without adding an addendum.

The more you attempt to curtail and redefine inalienable rights, the murkier the waters become. There are constitutional liberty rights at issue here. Good cause does not exist in this instance to place more and unnecessary restrictions on CLDPs. We must remember that in our national history it was not always this way, and the pendulum keeps moving in the direction of excessive governmental and bureaucratic regulation that is restrictive, burdensome, and costly to police and enforce. From a Wikipedia article:

“In the early United States, most states' requirements for admission to the bar included a period of study under a lawyer or judge (a practice called "reading the law") and a brief examination. Examinations were generally oral, and applicants were sometimes exempted from the examination if they had clerked in a law office for a certain number of years. During the 19th century, admission requirements

² See article from the Department of Justice: <https://www.justice.gov/atr/comments-american-bar-associations-proposed-model-definition-practice-law>

became lower in many states. Most states continued to require both a period of apprenticeship and some form of examination, but these periods became shorter, and examinations were generally brief and casual.”³

While we are not going to return to past practices, we should be mindful of our past and not allow the pendulum to swing so far the other direction and experience an avalanche of unintended consequences.

BALANCING OF HARMS

The present Code is sufficient to protect the public from harm allowing CLDP's to continue to prepare documents IN ANY LEGAL MATTER. In fact, most complaints filed against CLDP's are attorneys or opposing parties who have an axe to grind and just want to hurt the CLDP. I understand CLDP complaints are negligible and few and no one has published stats showing otherwise.

The balance scales tip drastically the other direction when considering the tremendous harm to the public if CLDPs are reduced to mere scribes who fill in blanks on court-approved forms. It is my opinion that the proposed changes will: 1) cause irreparable injury to Arizonans who rely upon CLDP's to have affordable access to legal services, and 2) will force hundreds of CLDP's out of business.

The CLDP Board and/or Certification and Licensing Division (CLD) of the Administrative Office of the Courts (AOC) has shown that, by proposing these changes, they are forgetful of the history of the CLDP Program, or they recklessly disregard the consequences of their modifications to the Program. The public policy concerns and fall-out are so great and substantial that it's astonishing that its proponents are not cognizant. Once the Arizona public realizes the devastating and irreversible losses that these changes will cause, the public outcry will be massive.

³ https://en.wikipedia.org/wiki/Admission_to_the_bar_in_the_United_States#History

The public policy considerations are staggering, including loss of property, financial reversals, weakening of families, harm to children, and more. At a time when people are trying to put themselves back together after a pandemic, this proposed rule change does nothing but create additional roadblocks and burdens for Arizonans. Now, after nearly two decades since the CLDP Program was established, the proponents of this rule change want to gut the CLDP Program without justification for the proposed amendments. CLDPs have been preparing legal documents IN ANY LEGAL MATTER for decades without demonstrable harm. This proposed rule change is reckless and short-sighted and tips the scales the wrong direction when balancing the potential harms. The damage to Arizona and Arizonans is completely foreseeable and should be avoided.

/s/

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