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January 11, 2022

Certified Legal Document Preparers Program
Attn: Aaron Nash
Certification and Licensing Division

Re: December 8, 2021-Proposed Changes to ACJA § 7-208
Second Posting

In Response:

Here we go again. Attempts to change rule language that will inevitably put a CERTIFIED Legal Document Preparer in the cross-hairs of many aggrieved attorneys and/or put us out of business. The proposed rule changes and code language still sounds eerily the same as the suggestions that were made that ended up with a TASK FORCE being commissioned to review the rules and responsibilities of CLDPs. A G A I N , that Task Force did not change any of the language that allows us to prepare the paperwork necessary to assist the general public who are unrepresented, Self-Represented Litigant ("SRL"), however, it is under attack once more.

First, I agree with all other responses and points of view provided in this forum to date, AND I refer to ALL of the initial responses provided when this issue first arose, AGAIN, in July of 2021, and incorporate them as inclusive in this, my current response. In reading other current responding statements, I agree with them and can determine that they all are grounded in day-to-day experience and use in what we do for the SRL.

Please allow me to provide another example of HOW the rule language of "Legal Outcome-Based Research" WILL stop me from effectively assisting others in our area who actively use my services to assist them.

Among other documents prepared by this office in other areas of law, I prepare innumerous amounts of real property deeds and documents to effectively CHANGE title and vesting from one person to another. I assist many SRL's that are guided to my office by local title companies, local attorneys, judges, and Navajo County official government offices for these purposes. Under the new rule language change, the rules will fully stop me from being an effective document preparer for documents that I currently provide.

Currently, when a SRL comes in to request a deed change (changing someone's rights to property), I generally ask them if they have a copy or original deed for whatever property they are working with for reference and vesting, or a title company has informed them that something specific needs to be done and they provide a title report. Our office is a referred place to call/go to for many of those services. Most of the time the response regarding a deed is that they do not have one (many long-term property owners). I then ask them if they will allow me to look up their property to find current vesting. I usually do get permission (AND, thankfully, it is public record). Upon RESEARCHING the vesting on property, about 35% of the time, there is something else that is different than what the SRL was expecting to do.

My question now becomes, what is "LEGAL OUTCOME-BASED RESEARCH?" Is this not "Legal Outcome-Based Research" as defined? And if I do not do an allowed search (double-check) on property prior to preparing a document as requested, am I not doing a disservice to the person(s) who has come to me for assistance regarding the changes to their title/vesting? If I blindly agree to preparing a document as that person has requested WITHOUT making sure that I am not creating a huge legal problem with their property, am I not causing harm to others? You all have no idea the problems I have helped fix from other CLDP's who HAVE NOT DONE any research by doing "Legal Outcome-Based Research."

To me, if you incorporate this language, "Legal document preparers may not perform legal research for the purpose of providing specific advice, opinions, or recommendations about possible legal rights, remedies, defenses, options or strategies" the staff has effectively made me INEFFECTIVE as a resource for our community, our title companies, and our official County government offices that I work with directly in correcting so many problems with our rural parcels and real property issues. If our office is not allowed to do "LEGAL OUTCOME-BASED RESEARCH," even at the permission of the land-owner, my hands have become tied to correctly providing our services. Real property documents and civil procedures have become around 50% of my business requests. This percentage does not include the services provided toward estate planning and property vesting for those purposes. Legal Outcome-Based Research is necessary for those real property transfer documents as well.

This language not only STOPS us from doing simple motions, but also stops everything we do to make sure that we are not causing harm to the general public. ALL RESEARCH can be interpreted as "Legal Outcome-Based Research." What research is not, or does not have, legal outcome? Research is done to assist in making a decision about everything, and to make sure that the proper statute still applies to whatever basic pleading is being used (after statutory changes to our laws), and/or the proper rule is being followed according to the Arizona Rules of Court in ALL legal procedures (because they change too or I would not receive a new book every year).

The term "Legal Outcome-Based Research" is very broad term and can be interpreted in any way that any attorney wants in order to make complaint against a CLDP. And I will go so far as to state again that my perception from being AT the Task Force meeting and these rule change requests are being designed to stop us from LEGALLY assisting the unrepresented general public in their legal matters when they cannot afford to pay attorneys. And that is a HUGE DISSERVICE to the public. There is really little to no evidence that we are harming others in our current capacities.

In comprehending the newly worded legal term addition and definition, it appears that whomever is attempting these changes is assuming that CLDP's are focused on family law documents/procedures, and/or civil law documents/procedures, and that this is necessary to stop a CLDP from creating a legal argument that must be defended by either another SRL or an attorney. And it seems that the biggest concern is that creating a document with a stance/legal argument/remedy is what is determined as "the practice of law," which is what the change is trying to regulate. I do not have any suggestions regarding that being accomplished, however, I do believe that it is only necessary to those on the Board or involved in our program who seem to want only an attorney or a SRL to be qualified to do that. My biggest concern as a practicing CLDP is how this language has the probability of causing harm when there is none due.

We are engaged in a profession that we exercise a limited level of the practice of law. How much the Board or Supreme Court wants to restrict us from what we are doing seems to be where the issue lies. If we are restricted greatly (the first submission of language) than it is a huge disservice in continuing the LDP program and puts most of us out of business. If we are restricted minimally, or greater, in order to make some attorneys/judges more comfortable, is it only satisfying those in the industry? Or is it actually doing service to the 85%-90% of unrepresented public in Arizona that needs access to people in our program? Where to draw the line is the issue. My question is then, how much has this come up in the complaint department? Are the complaints generally from attorneys? If they are, why is that not put into perspective? Why is the goal to limit, even more, our level of limited practice of law versus limiting attorneys from filing complaints against CLDPs?

In my years of doing this limited level of the practice of law, I made a choice after I got into this (after hearing from other CLDPs) that I was not going to include any case research in legal pleadings unless a client walked in with that case research in their hands and asked for it to be included. I made that decision for a couple of reasons: 1) To me, it was a clear practice of law to research cases and use case law in an argument that a regular John Doe/Jane Doe would not do; AND 2) I did not want to be accused of and charged with the unauthorized practice of law (still on the A.R.S. books when I started this) as a result of practicing case law, because back then, most attorneys and anyone else in the system made their attitudes clear that they did not accept a CLDP as a valid person/position in the legal system (at least not up here in this rural area). It ended up affording me a much less volatile environment and personal defenses. It actually paid off. Sticking to statutes and the rules of court helped the perception of what I did to NOT BE that of an attorney, and more closely replicating that of a Self-Represented Litigant. THAT is what we do/do not do – we do NOT give advice as to what anyone should or should not do (assimilated from an old CLE on the AZ Bar website-"If it is an answer to a question that could be posed as "Should I do this? Or this?") and provide legal documents and assistance regarding legal procedure.

I will again include Arlene's Rheinfelder's quote from the first round in my response:

QUOTE:

"When establishing the legal document preparer program, the purpose was clearly stated: "… 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." ACJA 7-208(C) emphasis added. 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)"

QUOTE:

"After a two-year task force on increasing access to legal services and introducing the LP program, which has yet to have any certificates issued and will only include practitioners in family law at the beginning, we see a proposed change to ACJA 7-208 that will reduce access to legal services. This is at a time when the recently released 2020 Arizona Access to Justice Commission Annual Report states:

"Legal aid agencies remain overwhelmed with demand for civil legal assistance. These agencies face actual or potential loss of funding, threatening not only the timely delivery of legal services but also the capacity to administer an effective volunteer lawyer program. Quick access to useful legal information that can be understood and used by self-represented litigants ("SRLs") remains a critical need." (p. 3) (March 2021)"

Let us move on to some of the even more specific changes:

ACJA 7-208 F(1)(a)

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 “a” legal matter when that person or entity is not represented by an attorney. A legal document preparer shall not draft “documents that require legal outcome-based research, 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:”

If I read this correctly, again, it applies strict limits to the documents a CLDP is allowed to do and how they must be done. I, personally, DO NOT USE court supplied template documents. If a document is a hand-written document by a client, my name/CLDP number WILL NOT BE PLACED ON THAT DOCUMENT. All of my documents have been type-written and are computer-generated documents that are locked/secured if transferred by email or printed and signed in front of a Notary Public in order to avoid client manipulation and to avoid any claim from a client that may decide to be vindictive due loss of a case, changing/placing language that was not used by me, the CLDP.

“d. Conduct legal research necessary to understand general legal principles to assist a client identify and complete a competent legal form or document. A legal document preparer shall not perform legal outcome-based research as defined in this code.”

See all of the above in rebuttal to this paragraph.

ACJA 7-208 K(5)(f)

f. Delinquent Continuing Education $250.00

Is this not a little extreme??? With EVERYTHING going up in price at an extremely fast pace, can we not push this to this level at this time? I get that you want it to hurt, but seriously? Can this be reconsidered at the $100-$150 level?

Any other changes not specifically addressed here generally means that I am not opposed to said proposed changes.

I will reiterate from the first proposed change:
What I do not understand is why do we go through the trouble to obtain the schooling and/or experience required, pay fees to get certified, have to pass a lengthy test to prove our competence, and then be required to keep our knowledge base updated with continuing education, if the board that oversees us, and the attorney who is supposed to be defending us, CONTINUES to want to tie our hands and strip us of the exact things that are needed to help the general public?? Prior to the task force being commissioned, it was similar proposed language, stripping us of being able to prepare documentsand turning us into glorified space filler-inners. This new proposal, to me, is just a back-door approach to achieving the same thing – start with small things to prohibit and work our way through prohibiting each document over time. Seriously? Who else is seeing this??

WE ARE CERTIFIED. We are doing what we do, under SUPREME COURT REGULATIONS, because we WANT TO HELP those who cannot navigate the system or do not have the means to obtain an attorney AND do it legally.

If you strip us of the tools and the means to help the general public, why would we need to get certified??? I could just be a Notary Public and help people fill in the blanks! Then, the Supreme Court would have no jurisdiction over me if I harm the general public. And since THERE IS NO LONGER an UNAUTHORIZED PRACTICE OF LAW statute on the books, I will repeat what a Court Administrative professional/pro tem Justice (who used to be a CLDP) said upon learning that, "Then why would ANYBODY need to get/be certified?"

PLEASE consider, in the attempts to tie our hands, it eliminates the option people have to use the option of a CLDP effectively, which will in turn give less options to the legal system in our state, and we reach a group of people that other options do not reach. With our program, people at least have another affordable option available to them and that they have recourse if we do something that harms them. And in the information I have been able to obtain regarding the history of the program, that percentage has been quite low. What I do believe is that in the world of attorneys, courts, legal systems, that are in major cities and highly populated areas with many options, do NOT understand that to provide assistance to those in a county that is not directly visible to them with the highest poverty levels, do not understand the value of our program. We are a second-home community, mostly, that has only one option for people who serve that type of population, and they have to be seriously indigent in order to receive help from White Mountain Legal Aid, which they are seriously overwhelmed and restricted to the types of cases they can accept due to being overwhelmed. They, too, refer people to my office in certain cases. I receive people sent by judges, attorneys, title companies, Legal Aid, and the general public.

Respectfully,
S.L. Caley, AZ CLDP #81026