

We already saw the main portion of this proposed rule change in 2017 which was ultimately rejected. Yet, here we are again. I think it is important to understand the purpose of the legal document preparer program.

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)

For many Arizonans, the high costs of attorney fees are simply not affordable. They are forced by economics to represent themselves. It is impossible to maintain any legal action without legal documents. Self-represented litigants ("SRLs"), without legal training, often find it difficult to narrow down the legal issues in their matters and find and cite to relevant legal authority to resolve those issues. This makes it difficult, if not impossible for SRLs to protect their legal rights. Additionally, courts are placed in a position of deciphering the intentions of the SRLs before they can begin to consider the merits of claims. For this reason, the legal document preparer program was established to "Prepare or provide legal documents, without the supervision of an attorney, for an entity or a member of the public **in any legal matter** when that entity or person is not represented by an attorney." ACJA 7-208(F)(a) *emphasis added*.

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)

The proposed ban on drafting "substantive legal motions, supporting memorandum, or appellate briefs, except that a legal document preparer may assist a client with a completion of motions in family court proceedings using the appropriate court approved

motions form” will harm the public. (The court provided motion form in Yavapai County is blank. It is not clear why the use of a blank form will help protect the public from harm or do anything to assist in the drafting of a legal document that is easier to produce using word processing software.)

Denying access to affordable legal services to those who cannot afford an attorney is denying access to justice. Instead of having a justice system where an issue is determined on the merits, we will become a justice system where legal rights are determined by whether a person has the means to afford an attorney.

It is possible to write a substantive legal document (with supporting case law) without providing legal advice and while keeping the SRL firmly in the driver’s seat of determining what issues are relevant and what issues the SRL wishes to argue. This can be done by interviewing the client and asking the client to explain why the client thinks his/her position is correct and putting that in legal terms, researching the law, and citing cases that support the client’s argument. Additionally, the legal document preparer (“LDP”) may ask the client to consult with an attorney in a limited scope to determine issues and legal theory which is then used by the LDP to draft the substantive document. The proposed rule changes 7-208(F) do not even consider that an LDP can collaborate with an attorney, who is involved in a limited scope.

Furthermore, when this very same issue was brought up with the last proposed change in 2017, division staff could not provide one single instance of a consumer who had been harmed by an LDP preparing a substantive motion. The only complaints related to substantive motions were filed by judges and attorneys, who did not feel the LDP should be allowed to prepare these types of documents. There simply is no good reason for adopting this change, and a very good public policy reason to not make this change: to promote access to legal services for SRLs.

Between the first posting of this rule change and the current posting, I had no less than three potential clients that I turned away (based on the proposed rule change) because they needed 1) an Appellate Brief, and 2) substantive motions with case law to support the argument. Their response to me was, “Where can I go for help? I can’t afford an attorney.” So that is the question, that I pose to division staff and the board members who are pushing this rule change: Where can they go for help when they can’t afford an attorney? Will we allow Arizona to become a system of justice where only those who can afford an attorney receive justice?

I understand the argument that “the LP can provide those services.” However, there are few at present and their scope of practice is limited to family law because that is the only specialization test available at the present time. This leaves a huge gap in access to legal services. Perhaps in time the LP program will become more viable as a solution, but at

the present time it is not. To restrict LDPs in the hope that the LP program might someday provide a solution is bad public policy and leaves SRLs in a terrible situation of losing legal rights because they are not wealthy enough to afford them. We will have a system of justice for wealthy, but not for the poor. That is not justice.

I object to any proposals to prevent a legal document preparer from preparing documents that require “legal outcome based research.” I object to the definition. Even Judge Swann, who does not believe the legal document preparer program should exist, stated to the effect in the 2 year task force, that if you are going to allow legal document preparers to practice law, then you cannot tie their hands by not allowing them to do the job properly

I think a major issue is that division staff and the non LDP board members do not actually understand what legal document preparers do for the public. This was evident during the 2-year task force.

7-208(L). I disagree with the requirement of 3(b). I do not believe that division staff needs to be tasked with providing a 2-hour long class that takes away from substantive continuing education. I think if division staff (who already have plenty to do) want to prepare a class, they should provide an outline of what will be taught to determine if this is actually relevant to the profession. Then, we as LDPs could perhaps have some input. As it stands, this class on the “role and responsibilities” is covered by our professional association, Arizona Association of Independent Paralegals, as part of ethics training at each seminar.

I disagree with the increase in ethics hours. If the continuing education period is two years, then ethics should be two hours. Again, I think the priority for continuing education should be in substantive areas.

I disagree with the change to credit hours from tax related curriculum. Taxes are an integral part of understanding how to avoid estate and income tax implications when preparing a trust. For those who prepare trusts, they need to stay competent in the tax law related to trusts.