

**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**

The Arizona Association of Independent Paralegals, by and through undersigned counsel hereby respectfully submits its Comment regarding the proposed changes to Section 7-208 of the Arizona Code of Judicial Administration (“ACJA”) as set forth in the proposed draft posted on the Arizona Code of Judicial Administration online forum on or about November 29, 2021 and proposed by the Board of Nonlawyer Legal Service Providers (the “Board”, as defined by ACJA § 7-208(A)).

**I.        THE CURRENT RULE AND PROPOSED AMENDMENTS**

This Comment focuses on proposed amendments to ACJA § 7-208(A) & (F)(1) (collectively, the “Proposed Amendments”).

**A.        ACJA § 7-208(A)**

The proposed change seeks to add a new definition which ultimately restricts the services available to the public from Certified Legal Document Preparers (“CLDPs”) by modifying ACJA § 7-208(A) as follows:

“Legal outcome-based research” means legal research beyond that required to complete forms and documents that conform to instructions and decisions communicated by clients. 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. Legal outcome-based research is required to draft substantive legal motions, supporting memoranda, or appellate briefs. Applying legal research to the facts of a client's case to advocate for an outcome is prohibited legal outcome-based research.

**B. ACJA § 7-208(F)(1)**

**1. The Current Rule**

The proposed change to ACJA § 7-208(F)(1) incorporates the definition of “legal outcome-based research” from Section A to severely restrict the services CLDPs can perform. The current ACJA § 7-208(F)(1) provides as follows:

*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;*
- b. Provide general legal information, but may not provide any kind of specific advice, opinion, or recommendation to a person or entity about possible legal rights, remedies, defenses, options, or strategies;*
- c. Provide general factual information pertaining to legal rights, procedures, or options available to a person or entity in a legal matter when that person or entity is not represented by an attorney;*
- d. Make legal forms and documents available to a person or entity who is not represented by an attorney; and*
- e. File, record, and arrange for service of legal forms and documents for a person or entity in a legal matter when that person or entity is not represented by an attorney. A certified legal document preparer may not sign any document he or she prepares for or provides to a person or entity, but this provision does not prohibit the signing of (i) 20-Day Notices prepared pursuant to A.R.S. § 33-992.01, (ii) notices related to condominium or planned community association liens that are created pursuant to A.R.S. §*

33-1256 (condominiums) and § 33-1807 (planned communities);  
(iii) health care provider liens that are created pursuant to A.R.S.  
§ 33-932, or (iv) mechanic's liens created pursuant to A.R.S. § 33-  
993.

## 2. The Proposed Amendments

The proposed rule change seeks to restrict the services available to consumers from CLDPs by modifying ACJA § 7-208(F)(1) as follows:

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 documents that require legal outcome-based research 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;*
  - b. *[no change]*
  - c. *[no change]*
  - 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-base research as defined in this code for the purpose of providing a legal opinion, advice, or advocating a legal theory.*
  - e. *[no change]*
  - f. *[no change]*
2. *through 8. [no change]*

### C. **Note: Prior Proposed Amendments to ACJA § 7-208.**

Notably, the current proposal is not the first time the Board has attempted to amend Section 7-208 to substantially limit a CLDP's role in the legal system. Previous proposals

in September 2017 and July 2021 failed to meet constitutional muster, would have resulted in contraction of Arizona citizens' right to access the judicial system and would harm the public by leaving those who cannot afford an attorney to "go it alone" in most civil cases. Like previous proposals, the most recent incarnation of Section 7-208 fails to have a positive impact, and harms Arizonans. The Proposed Amendments should be rejected.

## **II. OBJECTION TO THE PROPOSED AMENDMENTS**

This Comment makes four primary objections to the Proposed Amendments: 1) they do not promote and in fact restrict access to justice; 2) proponents of the Proposed Amendments have not shown justification for same; 3) the proposed prohibited conduct is actually contemplated by ACJA § 7-208 and has been practiced by CLDPs for decades without demonstrable harm; 4) the Proposed Amendments are unconstitutionally vague and overbroad and likely to lead to troubling interpretations and prosecution of otherwise law-abiding CLDPs. The Proposed Amendments to ACJA § 7-208 must be rejected.

### **A. The Proposed Amendments Do Not Promote Access to Justice.**

ACJA § 7-208(C) states, in part, "[the] court recognizes . . . that 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." This summarizes the reason for CLDPs. Specifically, the public (the "Consumer") needs access to affordable legal services, but also needs protection from the potential harm caused by nonlawyers providing legal services. As such, any amendment to ACJA § 7-208 must first pass the following test: **Does the proposed amendment maintain the balance between the**

## Consumer’s access to affordable legal services and protection of the public? The

Proposed Amendments fail this test.

For the vast majority of Consumers, lawyers are prohibitively expensive forcing litigants to represent themselves *in propria persona* (“pro per”), i.e., without an attorney. As stated in Arizona’s Task Force on the Delivery of Legal Services Report (2019), “[in] 2017, the Legal Services Corporation released a report, finding that 86% of civil legal matters reported by low-income Americans in the prior year received no or inadequate legal help.”<sup>1</sup> “And according to a report issued by the National Center for State Courts, 76% of 900,000 civil cases examined from July 1, 2012 through June 30, 2013 involved at least one self-represented party.”<sup>2</sup> A Florida Association of Legal Document Preparers (“FALDP”) survey of pro per litigants found that eighty percent (80%) of respondents were doing so because they could not afford an attorney.<sup>3</sup>

In its 2019 Annual Report, Maricopa County acknowledged the issue of accessibility and, in response, adopted access to justice as its #1 Strategic Focus Area, recognizing that it is “vital” to make the public’s interaction with the Justice System “as ***accessible*** and simple as possible.”<sup>4</sup> (emphasis added). It follows that Arizona should be seeking to expand access to civil justice. The Proposed Amendments hinder progress made

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<sup>1</sup> Supreme Court, State of Arizona, *Task Force on the Delivery of Legal Services Report and Recommendations* at 6 (Oct. 4, 2019)

<sup>2</sup> *Id.* at 7.

<sup>3</sup> Pro Se Survey re: Legal Access, The Florida Association of Legal Document Preparers, <<https://www.faldp.org/Pro-Se-Survey.html>>

<sup>4</sup> See Maricopa County Judiciary. Maricopa County Superior Court Annual Report, 2019. (Strategic Focus Area #1: “Access to Justice & Delivery of Services. The Judicial Branch of Arizona for Maricopa County is the leading edge for residents’ interactions with their Justice System, which means it’s vital to make that interaction as accessible and simple as possible.”).

in providing affordable access to our legal system and create an increased “justice gap.” Prohibiting CLDPs from performing “legal outcome-based research” and drafting documents requiring same makes the legal system far less accessible to Consumers.

If a CLDP cannot assist a low-income litigant with “legal outcome-based research” and drafting documents requiring same, it is unlikely that litigant will hire a lawyer due to the prohibitive cost. It is far more likely that the litigant will either perform the work themselves (lowering court efficiency)<sup>5</sup> or pro pers will simply ignore their legal issue altogether.<sup>6</sup> The result of the Proposed Amendments will increase the burden on pro per litigants to research issues and draft legal documents requiring “legal outcome-based research”.<sup>7</sup> As one law professor puts it, self-represented litigants often “don’t know what they don’t know” and their “internet-guided self-help” is equivalent to using the internet to diagnose your symptoms instead of visiting a doctor.<sup>8</sup> Preventing pro per litigants from receiving help from certified, trained and experienced CLDPs does not align with Maricopa County’s findings and alleged commitment to expanding access to the legal system.

As discussed in more detail below, the Board has not demonstrated that CLDPs who provide these services have harmed the public in any meaningful way, especially when compared to the immeasurable benefit provided to low-income Consumers who would

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<sup>5</sup> Courts will have to decipher these pro pers’ court filings and possibly provide additional opportunities and multiple court appearances so decisions can be made on the merits

<sup>6</sup> *See Task Force Report* at 7. (“One reason for the current ‘justice gap’ is that the costs of hiring lawyers has increased since the 1970s, and many individual litigants have been forced to forego using professional legal services and either represent themselves or ignore their legal problems.”)

<sup>7</sup> In FALDP’s survey of pro se litigants, the respondents stated that understanding rules and legal information are the most difficult parts of self-representation, with most turning to internet searches for guidance. <<https://www.faldp.org/Pro-Se-Survey.html>>

<sup>8</sup> Tom Sharbaugh, “Everyday Low Price” for Legal Services in Arizona?, *Legal Evolution* <<https://www.legalevolution.org/2020/09/everyday-low-price-for-legal-services-in-arizona-198/>>.

otherwise have no assistance at all. Essentially, the Proposed Amendments address a non-issue while exacerbating a major problem for Arizonans.

For the foregoing reasons alone, the Proposed Amendments should be rejected.

**B. There is No Justification or Evidence for the Proposed Amendments.**

In the second half of ACJA § 7-208(C), the Arizona Supreme Court affirms it has an interest in protecting Consumers from non-lawyers engaging in the practice of law. As explained above, this interest is in tension with the overarching policy of providing the Consumer with access to civil justice. However, in the case of the Proposed Amendments, there is no justification, nor evidence that there is harm prevented. In fact, the available evidence shows the contrary.

In 2001, the Arizona State Bar attempted to pass over-broad and sweeping changes to the Arizona Unauthorized Practice of Law Statute in an effort to severely restrict and effectively put CLDPs out of business. In support of their proposed changes, the State Bar alleged that it had received 400 complaints alleging consumer harm via non-lawyers. At the time, the Institute for Justice Arizona Chapter analyzed the State Bar's claims and made incredible findings. Specifically, of the 378 complaints (not 400 as alleged), "only 11 complaints were filed by a consumer against an independent paralegal/document preparer." Less than three percent (3%) of the complaints received by the Bar alleging consumer harm at the hands of non-lawyers were actually against document preparers.

Further, CLDPs are certified to provide services to Consumers pursuant to rules and regulations. An important feature of requiring a license or certification is that these credentials may be revoked if a CLDP causes harm to a Consumer. The Board has failed

to prove that the risk of harm is widespread among CLDPs and the Board has a method to sanction individual CLDPs that cause harm to Consumers.

If the Supreme Court of Arizona wants to inhibit Consumers' access to civil justice (which the Proposed Amendments unquestionably do), ACJA § 7-208(C) requires that it only do so to the extent necessary to balance the harm inflicted on Consumers. If the harm cannot be demonstrated, the proposed restrictions must fail. Here, no such harm exists.

**C. The Proposed Prohibited Conduct is Contemplated by the Rules and has Been Practiced by CLDPs for Decades Without Demonstrable Harm.**

Under the current decades old rules, CLDPs are authorized to: “(1) *Prepare or provide legal documents*, without the supervision of an attorney, for an entity or member of the public *in any legal matter* when that entity or person is not represented by an attorney” (emphasis added).<sup>9</sup> The Proposed Amendments seek to restrict CLDPs ability to assist Consumers *prepare legal documents in any legal matter* by limiting what research CLDPs can perform and what documents they can draft. As previously explained, there does not appear to be any harm caused by CLDPs and, on the contrary, CLDPs clearly provide a service to Arizonans. The current decades old rule has implicitly been blessed by the Arizona Supreme Court and State Bar of Arizona.

The Arizona Supreme Court recognizes and allows for CLDPs to perform legal services in conformance with the ACJA: “Legal Document Preparers and Legal Paraprofessionals. Certified legal document preparers and legal paraprofessionals may perform services in compliance with the Arizona Code of Judicial Administration....” *Rule 31.3(e)(4)*. This allowance is under the

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<sup>9</sup> ACJA § 7-208(F)(1)(a)

current rules. The Proposed Amendments seek to prohibit services performed by CLDPs, despite the Arizona Supreme Court already allowing these services and there being no known harm.

The State Bar of Arizona has weighed in via a series of Advisory Opinions concerning the limits of CLDPs in preparing documents for Consumers. The Proposed Amendments seek to constrain CLDPs further than the Arizona Bar found appropriate. Specifically, UPL ADVISORY OPINION 04-02 found that CLDPs may draft late payment notices, demand letters seeking payment of rent or association fees, and eviction notices relating to property being managed. They may also record liens relating to the property being managed. Similarly, UPL ADVISORY OPINION 04-01 found that CLDPs may prepare, serve, and record mechanic's lien notices for contractors.

The documents contemplated by UPL 04-01 and 04-02 require, among other things, citation to statutes, and in some instances, case law. Under the Proposed Amendments, CLDP-prepared documents sanctioned by the State Bar of Arizona would suddenly become dangerous territory, causing a chilling effect. This standard is both unrealistic and counter to the prevailing public policy.

The Proposed Amendments seek to arbitrarily and without justification limit the type of research CLDPs can perform and the type of documents they can prepare. This would-be change in policy deprives Arizonans of a lifeline to civil justice. Prohibiting CLDPs from performing research and drafting integral legal documents, redefines the role of CLDPs despite there being no apparent harm to Consumers.

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**D. The Proposed Amendments are Vague and Overbroad and Violate the Due Process Clause of the United States Constitution.**

Due process requires that enacted prohibitions be clearly defined, otherwise they are void for vagueness.<sup>10</sup> Vague prohibitions entrap the innocent and expose them to arbitrary enforcement. In *Grayned*, the United State Supreme Court identified the dangers of vague laws as follows:

Vague laws offend several important values. First, because we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning. Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them. A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an *ad hoc* and subjective basis, with the attendant dangers of arbitrary and discriminatory application.<sup>11</sup>

The Proposed Amendments violates these bedrock principles.

**1. The Proposed Amendments Prohibiting Legal Outcome-Based Research.**

The definition of “legal outcome-based research” is incomprehensible. It includes both vague/overbroad statements, but also lists specific documents that apparently include “legal outcome-based research”. The Proposed Amendments prohibit CLDPs from “[performing] legal research beyond that required to complete forms and documents that conform to instructions and decisions communicated by clients... [and they] may not perform legal research for the purpose of providing specific advice, opinions, or recommendations about legal rights, remedies, defenses, options or strategies.... Applying

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<sup>10</sup> *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972).

<sup>11</sup> *Grayned*, at 108-109.

legal research to the facts of a client’s case to advocate for an outcome is prohibited legal outcome-based research.”<sup>12</sup> This vast definition makes it unclear what, if any, legal research CLDPs can perform. It is uncertain how a CLDP could reconcile this proposed restriction on legal research and their ability to competently provide legal services.

Confusingly, part of the definition specifically identifies documents that allegedly require “legal outcome-based research” to include “substantive legal motions, supporting memoranda, or appellate briefs.”<sup>13</sup> It is unclear if the Proposed Amendments are specifically identifying these legal documents as the only document contemplated by the definition, or if these are just examples.

The Proposed Amendments should be rejected as overly broad and vague as prohibited by the U.S. Constitution.

## **2. Exceptions to the Definitions.**

The exceptions in the Proposed Amendments allowing for CLDPs to assist Consumers in family-law matters to draft motions using court-approved forms<sup>14</sup> and allowing for CLDPs to “[c]onduct legal research necessary to understand general legal principles to assist a client identify and complete a competent legal form or document”<sup>15</sup> do not ease CLDPs’ concerns and cause greater confusion. Form documents are extremely basic and a CLDP is not adequately informed of their limits in assisting Consumers. It is unclear what legal research can be performed to “understand general legal principles.” The

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<sup>12</sup> ACJA § 7-208(A)

<sup>13</sup> *Id.*

<sup>14</sup> ACJA § 7-208(F)(1)(a)

<sup>15</sup> ACJA § 7-208(F)(1)(d)

vague Proposed Amendments leave a CLDP vulnerable to arbitrary decisions on what is considered acceptable.

### **III. CONCLUSION**

In sum, the Proposed Amendments present a litany of issues. Not only are they contrary to the express purpose of ACJA § 7-208, but they run afoul of the United States Constitution. Unfortunately, the Proposed Amendments illustrate the Board's fundamental misunderstanding of a CLDP's role in Arizona's legal system. To that end, the Board seeks to redefine the role of CLDPs in Arizona and roll back the clock on the strides made for access to civil justice. Should the Proposed Amendments be upheld, the Arizona Association of Independent Paralegals will not hesitate to challenge their constitutionality. The importance of this issue cannot be understated. For the reasons stated above, we ask that the Proposed Amendments be rejected.

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