

BARRY R. GOLDMAN

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6 January 2022

VIA USPS FIRST CLASS MAIL
EMAIL TO ACJA WEB FORUM

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

RE: Objection to proposal to change §ACJA 7-208: Legal Document Preparer: Second Posting (Pending Code Proposals-ACJA Web Forum)

In this instance, with respect, I am writing this letter to address and strenuously object to not only to the content of the proposed revisions, but also to the form, and the manner which AOC and the Board of Nonlawyer Legal Service Providers (together, "Petitioner") has presented a bifurcated "second" proposal for amending ACJA §7-208, after receiving resounding objections to the first proposed changes.

This is the second time Petitioner has attempted to make significant proposed change(s) to ACJA §7-208 in 2021. In the current ("second") Petition, Petitioner evidently seeks to have previous comments and objections to its prior proposal posted in the rules forum (Pending Code Proposals-ACJA Web Forum) ignored, disqualified, or otherwise not admitted for consideration by the Court by bifurcating the two proposals and only presenting the second as an active proposal, when there were overwhelming negative comments from not only the public, but Certified Legal Document Preparers (collectively, "LDP's") with extensive experience, as well as outside counsel for the Arizona Association of Independent Paralegals (AAIP) about its previous incarnation, posted on or about 22 July 2021.

The two proposals for amending ACJA §7-208 are substantially the same, in that the proposals would create a scheme of wrongful over-regulation through additional, more restrictive regulations and an unfair and burdensome restraint on trade. The proposals are substantially against public policy, denying accessibility and simplicity for the self-represented litigant. The subject proposal would have a negative public and judicial impact, if enacted.

There is already substantial significance noted in the existing ACJA §7-208 between giving legal advice and rendering legal document preparation. No further exacerbation and newly formed definitions (i.e.: "outcome-based research:") by Petitioner are necessary or warranted.

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Now, Petitioner presents its revised proposal to an audience whose members believed the issue to be closed. To top it off, Petitioner has separated its prior submission, as well as all public comments on the subject from the Forum into the instant “ACJA 7-208: Legal Document Preparer: Second Posting”.

In this instance, by Petitioner setting aside, or otherwise bifurcating its proposal into a “second” proposed set of amended rules to ACJA §7-208, it is evident it wishes to engage in a charade of presenting a “clean” proposal less the substantial objections posted by those affected. Further, unlike the prior proposed amendments to §7-208, this second proposal was posted on or about November 29, 2021, without notice given to those affected in any meaningful manner, which shows a marked lack of respect for the parties most concerned with and affected by the proposed changes.

If the Court is even to consider Petitioner’s proposal, considering the Petitioner’s lack of notice and failure to comply with rules set forth in ACJA §1-201, et seq., then it would be incumbent on the court to consider the comments posted to the rules forum about the Petitioner’s prior attempt in revising ACJA §7-208.

In its previous incarnation, I wrote in my objection, “...*Don't fix that which isn't broken.*” I again reiterate the statement, “*Don't fix that which isn't broken.*”

Petitioner willfully violated its own mandates under ACJA §1-201, et seq.

Under ACJA §7-201(d)(5)(c), the Professional and Occupational Board may “Make recommendations to the supreme court regarding rules, policies and procedures for regulation of the profession or occupation”, but there is nothing stating Petitioner is exempt from that which has been established in proposing, adopting, or setting such rules.

In the introduction to its second posting, Petitioner writes the CLD claims there is a “misunderstanding” of its role. To clarify, there is no such misunderstanding on the part of the undersigned. A regulatory body seeks to regulate those it admits to the profession under rules established, then at times seeks to change those rules for its own benefit or the benefit of others, including the public. There is no misunderstanding – the CLD does not advocate for the profession.

And in this instance, again there is no public benefit to the proposed rule changes.

In presenting any proposed amendment to the rules, regulations and directives the profession operates under, the regulatory body must present an argument for the need for change, as well as give notice to those affected, and obey other rules and regulations set forth by the court or other

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legislative body to give adequate notice and otherwise operate within established guidelines. Petitioner has done none of the forgoing, as noted, following.

Had it not been by chance for the undersigned logging onto the Rules Forum to look at the first posting, the undersigned would not have found out about the second, revised proposal. Although stated in the introduction to the Petition that a decision was made by the Board at its meeting held on 29 November 2021, Petitioner has failed to issue notice to any LDP of the second proposal as it did previously by electronic mail. This is a violation of its own rules in giving adequate notice. There is no cause to believe that every LDP affected by the “second” proposed rule changes has been noticed.

[ACJA §1-201(C) (Distribution of Proposals): “...the Administrative Director shall distribute the proposal for comment for at least 30 days to appropriate committees of the AJC, *members of the court community and other persons who would be affected by the proposed code section...*”].

Additionally, as there are members of the public who may or do represent themselves before the courts (the Self Represented Litigant, or SRL), who utilize the services of LDP’s, Petitioner has failed to exercise any notice to those persons, either.

Petitioner has also failed to comply with ACJA §1-201(B), wherein (excerpted):

“An administrative code proposal shall include a draft of the proposed new or changed section, *a concise explanation of the need for the proposal*, and a description of the entities or persons that would be affected if the proposal is adopted.”

Petitioner has, for the second time, in as many proposals, failed to concisely explain the need for the proposal. Petitioner was previously noticed about this shortcoming in comments to its prior proposal, but again failed to rectify this deficiency in its second proposal.

No waiver, petition for expedited consideration, or other means to circumvent the rulemaking procedures established by the Supreme Court has been made by Petitioner. Petitioner has presented the subject Petition outside the scope and rules established in the Arizona Code of Judicial Administration in both spirit and letter.

At any other time, in any other court, another party attempting to manipulate and “game the system” would be sanctioned, or at least admonished by the Court. Petitioner should be no exception for its willful failure to follow its own mandates.

The undersigned believes the proposal by the Petitioner should be denied by the Court in its entirety for not only Petitioner’s failure to act within its own rules to act candidly, give notice,

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and allow sufficient time for the public and interested parties to comment, but the following, as well.

Specific objections to proposed change to ACJA §7-208(A), Definitions.

Petitioner seeks to add a new and spurious definition to the legal dictionary, specific to Legal Document Preparers in Arizona, “Legal outcome-based research” within ACJA §7-208(A), and use that new definition in unfairly restricting access to justice for the self-represented litigant, as well as restraint of free trade and commerce.

“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.

Not only does this definition preclude, and prohibit an LDP from conducting an on-the-spot computer lookup of any information which the client may request at the time of an interview, it impedes access to justice for the self-represented litigant. This definition and its prohibition restrain the LDP from adequately understanding the needs, wants and direction to which the client is directing the LDP. It defies common sense by practice in prohibiting an understanding of the client’s needs.

Aside from this new definition being a term of art and a manipulation to that which was previously objected to and questioned in its previous incarnation (“substantive”), Petitioner precludes the LDP from providing factual information to clients, such as statutes and other public information and documents which may allow the SRL to construct their own defense or prosecution of their case. Current rules are very clear that an LDP shall not act as an advocate for the client, but may present factual information¹ to the client so the SRL may determine their best interests and protect their interests accordingly.

¹ ACJA §7-208(F)(1)(c): “Authorized Services. A certified legal document preparer is authorized to: 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;



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Such an impediment to the SRL is manifestly unfair.

This definition, and the resulting prohibition on the LDP from presenting factual information does a disservice to the SRL and prevents them from having access to not only information but stifles due process and access to justice. Additionally, it opens up the LDP to unreasonable scrutiny through troubling interpretations and may lead to the unwarranted prosecution of otherwise law-abiding LDP's.

Specific objections to proposed changes to ACJA §7-208(F)(1)(a) & §7-208(F)(1)(d)

The current rules in this regard state:

F. Role and Responsibilities of Certificate Holders. In addition to the requirements of ACJA § 7-201(F) the following requirements apply:

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.

As I stated in my previous objection, "Quite frankly, this section bothers me the most." This proposal eliminates many SRL's from utilizing the services of an LDP.



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Nothing in the current rule limits an LDP to a practice in family law, however, the following proposed changes do exactly that.

The proposed changes to this section [ACJA § 7-208(F)(1)(a)], noted below:

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;

as well as its proposed companion section [ACJA § 7-208(F)(1)(d)], below:

- 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 for the purpose of providing a legal opinion, advice, or advocating a legal theory.

are both unduly restrictive and will have a deleterious effect not only on the LDP in private practice, but the courts and self-represented litigants who are dependent on a fair public policy enforced by the judiciary.

As stated in my prior objection [ref. ACJA §7-208(A)] “This definition and its prohibition restrains the LDP from adequately understanding the needs, wants and direction to which the client is directing the LDP. It defies common sense by practice in prohibiting an understanding of the client’s needs”.

Petitioner forgets that it is the SRL who directs, has the final say and approval of any drafted document. 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. 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. This is part of adult decision making, and consumer preference. Understanding how the law and a ruling in a motion or other finding affects a person's interests is the basis of self-representation of any kind.



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Certified Legal Document Preparers in Arizona do not “represent” or “advocate” for their clients – but we do provide factual information so the client can best represent themselves before the courts. That right of the client to access to information should not be taken away by a regulatory body having control over those whom it certifies, especially in circumstances where it may be considered willful and unreasonable action without consideration to public policy.

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.

Additionally, not every LDP focuses his or her practice on family law. 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. One of the areas of study within the program to obtain a paralegal certificate, which in most instances is a requirement for certification as an LDP, is research. For the petitioner to remove the ability of the LDP by fiat to conduct research essentially is to essentially hold the LDP program in contempt and say that the curriculum in the paralegal certificate program is invalid and unnecessary.

Most of the SRL’s the LDP assists cannot afford their own attorney, and a “justice gap” is created.² According to information, 13.8% of Arizona residents never graduated high school.³ 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

² The term, “justice gap” noted in Supreme Court, State of Arizona, Task Force on the Delivery of Legal Services Report and Recommendations (Oct. 4, 2019)

³ <https://statisticalatlas.com/state/Arizona/Educational-Attainment>



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- 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 Justice⁴

The proposed restrictions further puts the LDP who assists the SRL with drafting, filing or otherwise consulting on appeals issues or 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 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 ARCP⁵ Rule 60 or other applicable rule or statute
 - 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 statute⁶
- Criminal matters
 - Pro per defense in criminal trials, and 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

⁴ <http://stand.org/campaigns> [16 August 2021]

⁵ Rules of Civil Procedure for the Superior Courts of Arizona (commonly referred to as Arizona Rules of Civil Procedure)

⁶ ARS §12-821.01. Authorization of claim against public entity, public school or public employee



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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.
 - 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.

Specific objections to proposed changes to ACJA §7-208(G)(2) -- reduction in mandated continuing education hours and related sections⁷

Although I disagree and object to the majority of Petitioner's proposal, Petitioner has presented an educational alternative which is consistent with the current state of affairs in the continuing education mandates by introducing “Interactive web-based classes” [ACJA §7-208(G)(2)(c)]. I

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



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will go on the record in support of this one insertion, with exception. I oppose any limitation in the number of hours for which an LDP may subscribe to distance learning or other web-based classes.

That being said, Petitioner, in its “second” proposal, again (for the second time) seeks to reduce the quantity of mandatory continuing legal education hours for LDP’s. From a professional standpoint, that just doesn’t make sense. A reduction in quantity does not equate an increase in quality.

As stated in (the current) ACJA §7-208(L)(1)(a), “Ongoing continuing education (“CE”) is one method to ensure legal document preparers maintain competence in the field after certification is obtained. Continuing education also provides opportunities for legal document preparers to keep abreast of changes in the profession and the Arizona judicial system.”

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.

Other certifications/licenses administered under the ACJA noted require at least 10 hours of continuing education annually.⁸ Petitioner has not put forth any information or argument that reducing the number of continuing education hours will increase the professionalism of the LDP, enhance the public good, or provide benefit for any concerned party, including the courts.

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 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 Petitioner 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.

⁸ ACJA §7- 202(G)(2) [Fiduciaries]; ACJA §7-204(F)(7) [Private Process Server]; ACJA §§7-206(G)(3) [Certified Court Reporter; ACJA §7-203(G)(2) [Confidential Intermediaries – requiring 12 hours of continuing education annually]; ACJA §7-210(I)(2) [Legal Paraprofessional – requiring adherence to Rule 45, Arizona Rules of Supreme Court – mandating 15 hours of annual continuing education (ref. Sup.Ct.Rules, Rule 45(1)(a)]



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Proposed changes to ACJA §7-208(G)(2):

- a. Pursuant to subsection (G)(2), all legal document preparers who hold individual certification shall attend and complete no less than a total of ten fifteen hours of approved continuing education ~~each year~~ between the period of May 1st of every odd numbered year and April 30th of the following odd numbered year, ~~for a total of no less than twenty hours of continuing education completed on or before April 30th of every odd numbered year.~~ The continuing education requirements do not apply to certified legal document preparer business entities. Hours of participation are not transferable to certification periods other than the one in which the participation occurred.

The certification period is two years – that means that although Petitioner uses a larger number in the cumulative, Petitioner 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. This is just plain wrong -- wrong for the public, the LDP, the courts and all others concerned.

Additionally, in other areas mentioned in the educational requirements, where Petitioner seeks to reduce the educational hours or adjust the curriculum, the undersigned objects to such changes [i.e.: ACJA 7-208(L), et seq.].

Specific objections to proposed change to ACJA §7-208(L)(3)(b):

Within its proposal, even after our current (mandated) continuing education hours are reduced, Petitioner seeks a further thirteen percent reduction to accommodate "...professionalism training..." designed by division under the proposed changes to ACJA §7-208(L)(3). It just doesn't make sense to increase professionalism by reducing continuing education.

"Upon receipt of notice of board approval of individual initial certification and before April 30th of the following odd numbered year, each the 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 the division staff."

Aside from this type of mandated "...professionalism training...", reducing continuing educational hours, it also doesn't make sense for the 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



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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.

Conclusion

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

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.

The proposed changes would have not only a major negative impact on the LDP, but the public, specifically the self-represented litigant (SRL). Petitioner 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 Petitioner 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.

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

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participate in the procedure of drafting the documents. If Petitioner 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.

There is no need for a change in rules, and thus practice, based on these isolated incidents.

Unregulated, non-certified persons in the past (and present) “assisting” members of the public have caused havoc among those representing themselves before the courts. The Certified Legal Document Preparer (LDP) in Arizona was accordingly established and has been a blessing for the Self-Represented Litigant (SRL) to the former alternative of the SRL finding a rogue unprofessional preying on unsuspecting litigants.

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

There is already substantial significance noted in the existing rules between giving legal advice and rendering legal document preparation. Additional, and more restrictive regulations are not necessary and are an unfair and burdensome restraint on trade.

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, with exception as noted, the undersigned strongly objects to the proposed changes.

Respectfully submitted,



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cc:

- Clerk of the Arizona Supreme Court
- Chief Justice Robert M. Brutinel
- Vice Chief Justice Ann A. Scott Timmer
- Justice Clint Bolick
- Justice John R Lopez IV
- Justice James Beene
- Justice William G. Montgomery
- Justice Kathryn H. King

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