

MEMORANDUM

DATE: November 21, 2023

TO: Arizona Supreme Court

FROM: Marc L. Miller, Dean & Ralph W. Bilby Professor of Law; Professor Keith Swisher, Director, BA in Law and Master of Legal Studies Program; Professor Kristy Clairmont, LP Program Coordinator; Professor Dr. Linus Kafka, Assistant Director, BA in Law and Master of Legal Studies Program; Professor Catherine Monro, Master of Legal Studies Academic Advisor

RE: Comments to proposed modifications to Arizona Code of Judicial Administration (ACJA) § 7-210

Pursuant to Rule 28(e) of the Arizona Rules of Supreme Court, please accept this comment in response to the proposed modifications of ACJA (Arizona Code of Judicial Administration) § 7-210—Legal Paraprofessionals.

INTRODUCTION

Nearly three years ago, the Arizona Supreme Court made history by approving ACJA 7-210 and codifying the Legal Paraprofessional (LP) tier of legal service provider. With over 50 licensed LPs and many more in the educational pipelines, the program is off to a remarkably successful start. Any new program of this magnitude can benefit from improvements, and we applaud the improvements embedded in the proposed revisions. We support:

- Elimination of the term “endorsement” when referring to authorized practice areas
- Separation of the family and civil practice areas when defining educational requirements
- Defining a year of substantive experience as 1500 hours
- Addition of licensed LPs as authorized supervisors for substantive law-related experience
- Authorization for LPs to appear in front of all state agencies as the default for administrative law practice.
- General efforts to streamline and simplify language throughout 7-210

SUGGESTIONS FOR FURTHER IMPROVEMENT

While the College of Law remains in full support of the Legal Paraprofessional program, the College has the following suggestions for improvement to the recently proposed modifications. First, we offer some suggested edits to the proposed educational requirements. Second, we offer some suggested edits to the proposed scope of practice.

Part 1: (E)(6) -- Educational Requirements

General Observations:

1. Family Law Course Requirements: Several modifications were made to the course requirements for the family and civil practice areas. We agree with many of the proposed changes; however, we urge the preservation of the procedure requirement for the family law practice area, and further believe procedure should be required for all practice areas.

Our degree programs (both the BA in Law and MLS (Master of Legal Studies)) require a procedure course; however, this is an internal requirement. Educational programs are not static, and absent an express requirement, are free to make modifications. Procedure is a foundational legal course and should be required of all aspiring LPs; therefore, we propose that the ACJA maintain the requirement of 3 credits of procedure for all LPs regardless of practice area.

2. Experiential Learning: At the University of Arizona experiential learning is not required for BA in Law students unless they are preparing for LP licensure. Experiential learning thus became a requirement for LP students to meet the code provisions. Per the proposed modification, students would no longer need to fulfill this requirement as part of their BA in Law to qualify for licensure. We are not sure if this was the intention since experiential learning was not removed from any other pathway, and we believe experiential learning is an important key to success for aspiring LPs.

We suggest preserving the original experiential learning requirement of at least 120 hours for the BA in Law. Further, we urge that the experiential section reference the number of credits required instead of hours. A 3-credit course is equivalent to 135 hours. As an ABA approved program, all experiential learning opportunities we provide must also comply with ABA guidelines and as such, it would be best to incorporate by reference the ABA definition of experiential learning.

3. JD (Juris Doctor) Requirements: Before the proposed changes, a JD degree (with no specific course requirements) was sufficient to qualify for licensure upon passage of the licensing exams. The proposed changes to the JD requirements may result in many graduates not qualifying for LP licensure despite successfully earning a JD. For example, experiential learning is required of all JD students, but the opportunities often involve areas of the law beyond the scope of LPs. Further,

many of the practice area specific courses like Family Law are optional and not required to obtain a JD. This restriction on the eligibility of JDs may be intentional, but it bears mentioning in case restriction of this pathway was not intended.

4. Experience-Based Pathway: The modifications to the experiential pathway seem to indicate that a person must have 7 years of experience (equivalent to at least 1500 hours per year) in *each* area of practice that the person is seeking licensure. This is a higher requirement than the current code section and may have a chilling effect on the rate of licensure based on experience. Most LPs to date have obtained their license via the experience-based pathway, and it is not uncommon that paralegals will work in a variety of practice areas over the course of 7 years. Again, this higher standard may be intentional, but it bears mentioning in case the restriction of this pathway was not intended.
5. Certification Program: The language added to this section references code sections that have differing requirements. For example, (E)(6)(a) OR (b) have the following differences:
 - (E)(6)(a): requires 24 units/clock hours with practice area specifics to include--family law LPs must complete 15 specific units, civil law LPs must complete 12 specific units, and the remaining practice areas each require an LP to complete 9 specific units.
 - (E)(6)(b): no specific credit/clock hour with family law requiring 9 specific units, civil law requiring 12 specific units, and the remaining practice areas each at 9.

The substantive law-related experience requirements reference all educational and experiential pathways, and many of the pathways have differing requirements.

- Seven years of full-time experience (at least 1500 hours a year) -- Experiential (E)(6)(f)
- 1500 hours—Associates (E)(6)(a)
- 120 hours (but 0 in the posted revisions)—BA in Law (E)(6)(b)
- 120 hours of experiential learning—MLS/JD/LLM (E)(6)(d)-(e)

Additionally, changing the first word in this section from “completed” to “attended” could allow a person who did not satisfactorily pass a certification program to still qualify for licensure.

Since this section is pertaining to licensure requirements for a legal paraprofessional and not what a certification program must include to be approved by the AJC (Arizona Judicial Council), it may be better to maintain the existing language without the additional requirements, which will allow the AJC to determine what a Certification Program must include in the future.





Suggested Modifications:

For the above general observations, we have made modification suggestions if appropriate. We have also added or deleted language to a redlined copy and highlighted each addition/deletion for ease of locating the suggested changes as they would appear in the Code.

Course Requirements/Experiential Learning:

Although stylistic in nature, it is our suggestion to group the educational items required of *all* LPs in one section followed by the specific practice area requirements, followed by the experiential learning requirements. Therefore, we propose the following organization and language be used in the sections (E)(6)(b) and (d)-(e):

1. *For all practice areas a minimum of 3 credit hours in professional responsibility; 3 credit hours in evidence; 3 credit hours in legal research and writing; and 3 credit hours in procedure*
2. *For family law: 3 credit hours in family law*
3. *For civil law: 3 additional credit hours in procedure*
4. *For criminal law: 3 credit hours in criminal law*
5. *For administrative law: 3 credit hours in administrative law*
6. *For juvenile law: 3 credit hours in dependency law or completion of the Attorney General's Office internal employee dependency training program for potential legal paraprofessionals employed by the Attorney General's office.*
7. *For all practice areas, a minimum of 3 credit hours of experiential learning as defined by the ABA and this section, including content on advocacy, supervised by a licensed attorney or legal paraprofessional.*

Certification Program:

- ~~{c}. Completed a Attended a certification program, for credit or non-credit, for legal paraprofessionals approved by the Arizona Judicial Council. Certification programs may be for credit or non-credit but must be; offered through an educational institution that is at least regionally accredited.; and, while attending the certification program, the applicant must have completed:~~
- ~~{1} The credit hours, or equivalent clock hours, in courses required under subsections (E)(6)(a) or (b) for the practice area in which licensure is sought; and~~
- ~~{2} The supervised hours of substantive law-related experience or experiential learning required under subsections (E)(6)(a), (b), or (d) — (f).~~

Part 2: (F)(1)(b) Scope of Practice

General Observations and Suggested Modifications:

Family Law (F)(1)(b)(1)(a)

The existing language states that LPs may not prepare a Qualified Domestic Relations Order (QDRO) and **supplemental orders** (emphasis added) dividing retirement assets. This language makes it necessary for an attorney to be involved in ANY division of retirement accounts assuming that “supplemental orders” includes a divorce decree, which is an order of the court. As written, an LP would be able to plead their client’s position regarding retirement assets and even negotiate retirement issues, but not draft the final decree that reflects the division of those assets. Most family law attorneys do not complete QDROs, and it is common practice to refer the completion of this document to another attorney. We therefore suggest removal of the words “and supplemental orders” from this section.

Suggested Modification:

Preparation of a Qualified Domestic Relations Order (QDRO) ~~and supplemental orders~~ dividing retirement assets;

Civil Law (F)(1)(b)(2)

The current code permits licensed civil LPs to provide legal services in a matter that may be or is in a municipal or justice court. The proposed revision removes the “may be” language from this scope. This may unintentionally limit LP practice to matters that are already “in” municipal or justice court, removing the LPs ability to work on cases *before* they are filed “in” court. For example, it is not clear that an LP could permissibly draft a demand letter or even a complaint involving a matter within the jurisdiction of a justice or municipal court until after an action has been commenced. Therefore, we recommend maintaining the “may be or is” language in the current code or using the phrase “within the jurisdiction of a municipal or justice court in this state.”

Suggested Modification:

~~Limited Jurisdiction~~ Civil. Legal paraprofessionals licensed to practice in civil law may ~~engage in~~ provide authorized services in any civil matter, ~~except that~~ *may be or is* ~~before for matters in~~ a municipal or justice court of this state, except in matters in which a licensed attorney is not permitted to appear.

Juvenile Law (F)(1)(b)(5)

As a preliminary matter, most practice area names to date use the word “Law” not “Court” (e.g., Family Law). The new juvenile area, however, is titled “Juvenile Court.” To remain consistent with the other practice area names, we recommend changing the name to “Juvenile Law.” Further, as written, absent employment by the Attorney General’s office, it is unclear whether the scope of practice would provide a viable source of income. Student interest in this pathway remains extremely low due to employment concerns. The following suggested language would allow LPs to represent private petitioners and intervenors, thus making the practice area a more viable option economically while still serving those who most often go unrepresented.

Suggested Modifications:

Juvenile ~~Court~~ **Law**. Legal paraprofessionals licensed in juvenile law may render authorized services in:

- (a) Juvenile dependency proceedings for any party, except that they may not:
 - (i) Conduct a contested dependency adjudication *on behalf of DCS, a respondent parent, or a child subject to the petition;*
 - (ii) Conduct a contested termination adjudication proceeding *on behalf of DCS, a respondent parent, or a child subject to the petition;* or
 - (iii) Represent any party in a matter in which the child named in the petition is subject to the Indian Child Welfare Act (ICWA) as defined in Rule 102, Arizona Rules of Procedure for the Juvenile Court; *except that they may represent an intervening tribe.*
- (b) Adoption, to assist clients in all aspects of the adoption process, if the legal paraprofessional has met additional qualifications as established by the supreme court.

CONCLUSION

As demonstrated by the very existence of code section 7-210, it is an exciting time in legal practice and education. Making modifications to this groundbreaking program offers an opportunity to improve and clarify in ways that will have a lasting impact on our legal systems, and we offer our suggestions in the truest spirit of innovation, collaboration, and continued assurance of access to the highest quality legal education possible. The College of Law looks forward to continuing as an educational partner as we all endeavor to bridge the access to justice gap in our state.

