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Committee on the Review of Supreme Court Rules
Governing Professional Conduct and the Practice of Law
State Courts Building
1501 West Washington
Phoenix, Arizona 85007

Re: Petition to Amend Rule 31, Rules of the Supreme Court

Dear Members of the Committee:

I respectfully urge the following redline tweaks to the introductory portion of the Timmer Report and to the proposed amendments to Rule 31 to clarify the permissible scope and limits of the services non-attorney mediators, including document preparers, may render, as well as to avoid what I believe may have been an unintended consequence in the proposed revision to the rule itself.

Timmer Report Introduction at pp 2-3:

“These changes would clarify that mediation is not the practice of law, and that mediators who are not active members of the State Bar and who prepare written mediation agreements resolving all or part of a dispute or other legal documents must be certified legal document preparers.”

My Proposed tweak to the above introduction:

These changes would clarify that *although conducting a mediation as a mediator* is not the practice of law *as long as the mediator only “provide[s] general legal information, [and does] not provide any kind of specific advice, opinion, or recommendation to a person or entity about possible legal rights, remedies, defenses, options, or strategies” [Ariz.CodeJud.Admin. §7-208F(1)b], the preparation of a written mediation agreement resolving all or part of a dispute is the practice of law. Accordingly, to balance the need for access for legal services and a reasonable measure of protection for the public, and that* if mediators who are not active members of the State Bar ~~and who~~ prepare written mediation

agreements resolving all or part of a dispute or other legal documents, they must be certified legal document preparers or otherwise permitted to do so under Arizona Supreme Court Rule 31(d)24, 25.

My Proposed Tweaks to the proposed rule change itself:

At page 24, Rule 31(a)(2)D:

D. "Mediator" means an impartial individual who is appointed by a court or government entity or engaged by disputants through written agreement to mediate a dispute. Serving as a mediator is not the practice of law as long as the mediator only provides general legal information and does not provide any kind of specific advice, opinion, or recommendation to a consumer about possible legal rights, remedies, defenses, options, or strategies, and similarly provides only general factual information pertaining to legal rights, procedures, or options available to a person in a legal matter when that person is not represented by an attorney. [See Ariz.CodeJudAdmin.§7-208F1b,c].

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At page 29, Rule 31(d)25:

As indicated in my above suggested revision to the introductory portion of the Timmer Report, I humbly and respectfully submit that the proposed revisions to subparagraph 25 of Rule 31(d) are unnecessary, and that my above-proposed revisions to the introduction and to Rule 31(a)(2)D more effectively serve the court's interest in balancing both accessibility for the public to mediation services and reasonable protection from unqualified persons -- as previously determined by the court in its having prescribed certain standards for licensing of legal document preparers and limitations on their permitted scope of conduct.

I believe my suggested revisions would also resolve the concern expressed by several judges from around the state about the adverse financial and other practical effects the proposed revision to Rule 31(d)25 would have on their ADR programs if adopted. That was the reason I concluded my suggested tweak to the introductory portion of the Timmer Report with the phrase: "or otherwise permitted to do so under Arizona Supreme Court Rule 31(d)24, 25."

If and to the extent relevant, although I am writing solely as a member of the State Bar, I am currently a member of the executive council of the ADR Section and a member of the UPL Committee; was a former Vice-Chair and longtime member of the Florida Bar Standing Committee on UPL, a former chair of one of the Florida Bar's circuit (local, investigatory) UPL Committees, and a former chair of the Florida Bar Professional Ethics Committee and of a circuit Grievance (probable cause) Committee.

Respectfully submitted,

Kenneth L. Mann
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