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9 **IN THE SUPREME COURT**  
10 **STATE OF ARIZONA**

11 In the Matter of:

12 **PETITION TO AMEND RULES 31,**  
13 **34, 38, 39, and 42, RULES OF THE**  
14 **SUPREME COURT**

Supreme Court No. R-15-0018

**Comment of Director of the**  
**Lodestar Mediation Clinic, Sandra**  
**Day O'Connor College of Law,**  
**Arizona State University**

15 The Lodestar Mediation Clinic at the Sandra Day O'Connor College of Law,  
16 through its Director, Professor Art Hinshaw, respectfully suggests the Court refrain  
17 from modifying Rule 31(d)(25) to revoke the unauthorized practice of law  
18 protections granted to mediators appointed or referred by a governmental entity  
19 and serving at the direction of that entity.

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21 Supreme Court Rule 31 sets the parameters for the Court's regulation of the  
22 practice of law and includes in the definition of the practice of law preparing any  
23 document "intended to affect or secure legal rights." Rule 31(a)(2)(A)(2). In light  
24 of that definition, the Committee on the Review of Supreme Court Rules  
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1 Governing Professional Conduct has recommended the adoption of Proposed Rule  
2 31(a)(D) which would limit who can document an agreement reached in mediation  
3 to two groups of people - active members of the state bar and certified document  
4 preparers.  
5

6 As already stated in comments filed by the Committee on Limited  
7 Jurisdiction Courts (CLJC), many of the state's justice courts rely on non-attorney  
8 volunteer mediators to help provide access to justice and to help move their civil  
9 dockets. According to the CLJC, these volunteers are unlikely to become licensed  
10 document preparers simply to donate their time to the courts, which would likely  
11 result in the dissolution of the justice court mediation programs. The Lodestar  
12 Mediation Clinic's curriculum is based on current law students acting as justice  
13 court mediators. If the justice court's mediation program were to dissolve, the  
14 Clinic would be hard pressed to find a substitute referral source for mediations, and  
15 may be forced to dissolve.  
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19 To put this situation in context, the ASU College of Law has been working  
20 closely with the Maricopa County Justice Court's Mediation Program since 1993,  
21 when Civil Justice Clinic students first acted as mediators. Because of the  
22 successful relationship between the law school and the Justice Courts, in 1996 the  
23 law school created a stand-alone mediation clinic that eventually became the  
24 Lodestar Mediation Clinic. This clinic is the cornerstone of the law school's  
25

1 Lodestar Dispute Resolution Program, a program recently ranked as the 11<sup>th</sup> best  
2 law school dispute resolution program in the country by the US News law school  
3 specialty program rankings. If the Maricopa County Justice Court were to shelve  
4 its mediation program, the law school's dispute resolution program would be  
5 directly impacted.

7 If proposed Rule 31(d)(25) is adopted, the Court should consider  
8 maintaining Rule 31(d)(25)(A) because it provides an exception to the  
9 unauthorized practice of law rule to mediators appointed "by a court or  
10 government entity [serving] .... at the direction of the court or government entity."  
11 Maintaining this exception would ensure the viability of court-connected mediation  
12 in Arizona's justice courts.

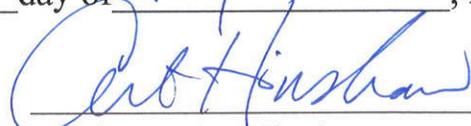
15 At its core, the proposal to bar certain mediators from drafting parties'  
16 mediation settlement agreements appears to be an attempt to regulate mediation, a  
17 worthwhile goal. But limiting who can draft a mediation settlement is an  
18 inadequate proxy for regulating the entire mediation field. If Arizona wants to  
19 regulate mediators, it should follow the example set by states like Florida, Georgia,  
20 and Virginia, where court-connected mediators are regulated by separate programs  
21 established and administered by their state supreme courts. See  
22 [http://www.flcourts.org/resources-and-services/alternative-dispute-  
24 resolution/about-adr-mediation.shtml](http://www.flcourts.org/resources-and-services/alternative-dispute-<br/>23 resolution/about-adr-mediation.shtml) (Florida), <http://www.godr.org/> (Georgia), and

1 <http://www.courts.state.va.us/courtadmin/aoc/djs/programs/drs/home.html>

2 (Virginia). By establishing an entity solely devoted to regulating mediators, these  
3 states' programs protect the public from bad mediators, act as a clearinghouse of  
4 information about mediators and mediation, address important mediation policy  
5 information about mediators and mediation, address important mediation policy  
6 issues, focus on improving mediator ability, enhance the credibility of the  
7 mediation field, and enhance the public's access to justice. Indirect attempts to  
8 regulate mediators, such as proposed Rule 31(d)(25), will not achieve these  
9 important policy goals.  
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11 For the reasons stated above the Lodestar Mediation Clinic suggests the  
12 Court refrain from modifying Az. Sup. Ct. Rule 31(d)(25) as proposed by the  
13 Committee on the Review of Supreme Court Rules Governing Professional  
14 Conduct.  
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16 RESPECTFULLY SUBMITTED this 20<sup>th</sup> day of May, 2015.

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19 Professor Art Hinshaw,  
20 Director, Lodestar Mediation Clinic,  
21 Sandra Day O'Connor College of  
Law,  
Arizona State University

22 Electronic copy filed with the  
23 Clerk of the Arizona Supreme Court  
24 this 20<sup>th</sup> day of May, 2015.

25 by: Art Hinshaw