

The following are draft recommendations for consideration during the August 14, 2019, task force meeting.

General:

The workgroup reviewed various court coordinator and court navigator programs around Arizona. The task force also reviewed the report of the Justice Lab at Georgetown Law Center, titled [Nonlawyer Navigators in State Courts: An Emerging Consensus](#).^[1] Programs reviewed demonstrate that well-trained and appropriately supervised non-lawyers can perform a wide array of tasks while enhancing the effectiveness of and building trust in the courts, helping self-represented litigants understand and manage their cases.

The group recommend that the Supreme Court pursue means to advance local courts establishment of non-lawyer staff who are located within the court and who provide direct person-to-person assistance to self-represented litigants.

LDP-Related Draft Recommendations:

- a) Recommend that the Arizona Code of Administration be amended to allow LDPs to speak in court when asked addressed by a judge. This requires a single word change to ACJA 7-208(J)(5)(b), as show below. This does not give an LDP the right to attend court or to advocate for a client, maintaining the spirit of the original rule. However, after hearing from LDPs and members of the task force familiar with LDPs, the workgroup came to understand that if an LDP is in the courtroom or hearing room and a client matter some judges will directly address an LDP knowing that they will be helping complete the legal form or legal document the client needs to next draft and file. Therefore, allowing the LDP to respond to the judge and interact with a judge with the judge's authorization, LDPs would be free from possible disciplinary action.

ACJA 7-208(J)(5)(b) does state: *A legal document preparer shall not attend court with a consumer for the purpose of assisting the consumer in the court proceeding, unless otherwise ~~ordered~~ authorized by the court.*

b) Recommendation an amendment to the Arizona Code of Administration § 7-208 to further define permissible and prohibited activities of LDPs. The workgroup considered the input of LDPs, members of the task force, and others as to the question of what a legal document is and whether legal research amounts to legal advice. The workgroup recommends the Arizona Code of Administration § 7-208 be amended to include the following.

- i. *Other than performing research to determine the legal document preparer is using the appropriate form, the legal document preparer shall not perform legal research concerning particular statutes, case law, or other sources of information concerning legal theory or authority on behalf of a client. The legal document preparer may perform such research to develop an understanding of general legal principles or to assist in completion of court forms.*
- ii. *A Legal Document Preparer must not draft substantive legal motions, memorandums in support of substantive motions or memorandums of points and authorities related to substantive motions that compel a court to reach a specific result.*
- iii. *A Legal Document Preparer must not conduct legal research for or draft appellate briefs.*

c) Recommend that the Arizona Supreme Court pursue a campaign of educating the bench and members of the bar on what a legal document preparer is, what they can do, and what they are prohibited from doing. The following are educational and informational opportunities the Court should consider pursuing

- i. Producing information sheets that can be available in paper and electronically for self-help centers in courts, court websites, AZCourtHelp.org, and azcourts.gov about Legal Document Preparers services.
- ii. Develop presentations for the annual judicial conference to educate the bench about legal document preparers.

- iii. The State Bar should educate its membership about legal document preparers through a presentation at the annual bar conference, articles in e-news and the Arizona Attorney Magazine or other appropriate publications.
- d) Recommend that the Arizona Code of Administration § 7-208 be amended to remove the restrictions prohibiting legal document preparers from assisting clients who are represented by counsel. The following should be considered in making amendments to the ACJA to accomplish this recommendation:
- i. The task force has recommended that ethical rule (ER) 5.4 be eliminated, removing the barrier for attorneys to partner with non-lawyers, such as legal document preparers.
 - ii. Arizona has long allowed limited scope representation. The task force is considering recommendations to expand knowledge about such representation and to encourage more attorneys to engage in limited scope representation. Antidotally, limited scope representation already occurs often in family law matters, an area LDPs often assist clients in as well. It is very likely an individual may hire an legal document preparer to assist in drafting the majority of the legal documents in a matter, but that a lawyer may be need for a discreet portion of an action or to advise an otherwise self-represented litigant on a discreet matter within that action. Requiring a self-represented person to forgo the services of a legal document preparer just because an attorney was involved in some portion of the matter widens, the justice gap that the legal document preparer program, the ability of lawyer to engage in limited scope representation, and this task force are all designed to narrow.
 - iii. This recommendation is meant to allow an otherwise self-represented litigant to benefit from both legal document preparer and attorney services as they can afford or deem necessary to ensure their legal rights. Amendment to the ACJA recommended here are not meant to create a relationship between a legal document preparer and attorney akin to that

of a paralegal. But rather allow both legal services providers to work with a client simultaneously where there is disclosure that the client is working with both type of provider and where the client continues to direct the work of a legal document preparer, as required under the rules currently.

- e) Recommend that there be increased access to training, especially online, for LDPs, particularly for LDPs in rural areas.

- f) Recommend amendment to the Arizona Code of Administration and any other rules governing the investigation or and seeking of legal sanctions for engaging in unauthorized practice of law when the actions in question involve a person acting in a manner that a legal document preparer would act if certified. Specifically, the task force recommends that such matters be brought before the Presiding Disciplinary Judge (PDJ) rather than a superior court judge. In support of this recommendation the task force notes the following:
 - i. The LDP Code already provides authority for cease and desist orders in ACJA 7-201(E)(6).
 - ii. The current process results in these UPL claims being brought before Superior Court Judges that may be unfamiliar with the LDP program, and risks to the public caused by non-certified persons engaging in legal document preparation services.
 - iii. It has also been noted that superior court judges are familiar with civil matters but not regulatory ones. Conversely the PDJ's primary function is centered in regulatory matters, specifically enforcement of ethical rules and regulations surrounding the practice of law.
 - iv. The PDJ already is familiar with and presiding over appeals from LDP Boar disciplinary sanctions and with UPL, therefore is familiar with ACJA 7-208 and Rule 31.
 - v. It is in keeping with other processes in Arizona to regulate the practice of law to make a change to have the PDJ preside over these UPL matters involving persons acting as LDPs but who are not certified, just as the PDJ

presiding over matters where a disbarred attorney or attorney in disability inactive status continues to engage in the practice of law.