

## MEMORANDUM

DATE: April 30, 2024

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 in support of proposed amendment to Arizona Supreme Court Rule 31.3

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Pursuant to Rule 28(e) of the Arizona Rules of Supreme Court, please accept this comment in response to the proposed modification of Rule 31.3(e)(4). In particular, the petition requests that the Court change the name “legal paraprofessional” to “legal practitioner.” Because this change would promote legal paraprofessionals’ standing in the legal community and more clearly signal to the public their ability to practice law, we write in support of the proposed name change.

### INTRODUCTION

Like many other states, Arizona struggles to meet the legal needs of its citizens. The Arizona Supreme Court in response has been working to bridge the access to justice gap in Arizona by creating some much-needed additions to the legal services landscape. In 2003, Arizona authorized the licensure of certified legal document preparers (CLDP). Although nearly 3,000 CLDPs<sup>1</sup> have helped to meet the legal needs of Arizonans, they have a very significant limitation—they cannot give legal advice.

In 2020, the ABA ranked Arizona 50<sup>th</sup> in the US for the number of attorneys per capita. Arizona’s rural areas were deemed “legal deserts.”<sup>2</sup> Subsequently, the Arizona Supreme Court took a groundbreaking step in 2021 and amended Arizona Supreme Court Rule 31.3 to add a new tier of legal service provider titled the “legal paraprofessional.” After promulgating ACJA 7-210, the legal paraprofessional was authorized to provide legal services without the supervision of an attorney. Legal paraprofessionals may:

- Prepare and sign legal documents;
- Provide specific advice, opinions, or recommendations about possible legal rights, remedies, defenses, options, or strategies;

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<sup>1</sup> <https://azcldp.org/>

<sup>2</sup> ABA Profile of the Legal Profession, at 3,

<https://www.americanbar.org/content/dam/aba/administrative/news/2020/07/potlp2020.pdf>

- Draft and file documents, including initiating and responding to actions, related motions, discovery, interim and final orders, and modification of orders, and arrange for service of documents;
- Appear before a court or tribunal on behalf of a party, including mediation, arbitration, and settlement conferences where not prohibited by the rules and procedures of the forum; and Negotiate legal rights or responsibilities for a specific person or entity.<sup>3</sup>

The authority to provide the authorized services identified above is limited to specific areas of practice, including:

- 1) Family Law
- 2) Limited Jurisdiction Civil
- 3) Administrative Law (Arizona Agencies only)
- 4) Criminal Law
- 5) Juvenile Dependency

To become licensed, a legal paraprofessional (LP) must pass both core and practice area exams. The licensure process includes a background check very similar to the character and fitness process required of lawyers. The candidate must also have successfully completed a qualified educational pathway or have professional experience in the chosen practice area for 7 out of the past 10 years. Upon admission, the LP is issued an Arizona Bar Number authorizing them to provide legal services within the limited scope of their license.

There are now 57 licensed LPs practicing in Arizona. Most of them are long-time, seasoned paralegals who leverage the experience they have for the benefit of Arizonans.

One of the LPs drafted the name change petition, and many of the comments posted in support were likewise written by some of the very first LPs practicing in this state. As these comments have emphasized, every new program must start somewhere. Time and experience must guide refinement as programs evolve.

### **CHALLENGES POSED BY THE TERM “PARAPROFESSIONAL”**

As Ms. Mitchell explains in her proposal, and as confirmed by other LPs who have commented publicly in support of this proposal or who have spoken with our professors, the term “paraprofessional” does not fully or clearly capture what the new tier of legal professional is authorized to do. From the perspective of a potential consumer looking for legal assistance or attempting to understand what a paraprofessional is,

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<sup>3</sup> ACJA 7-210(F)(1)(a)

the consumer might consult the dictionary definition of the word “paraprofessional.” A search of the online Merriam-Webster dictionary provides the following definition:

*a trained aide who assists a professional person (such as a teacher or doctor)*<sup>4</sup>

This definition showcases that the word is inadequate to describe the functions of the professional defined in ACJA 7-210.

Furthermore, the term “paraprofessional” is widely used by the education profession. When searching popular job search engines using the term “paraprofessional,” the job postings relate to education. As the job market changes, so will the search algorithms, but this overlap creates confusion for consumers. They may draw incorrect parallels between the authority and services provided by legal paraprofessionals with those of educational paraprofessionals with which they might already be familiar. Legal paraprofessionals are more comparable to a nurse practitioner in terms of operating on their own license within a specified scope of services. Adopting a term like “practitioner” would be more likely to resonate with consumers as they are already familiar with and comfortable with the term being used in the medical setting to represent different tiers of service providers. As the profession continues to grow, it is important to consider consumer understanding so that people in need of legal services can connect with what is available to them in the changing landscape.

## KEY CONSIDERATIONS FOR A NEW TITLE

It is no small task to name a new idea. When something new is created, there is always the challenge of picking a name that captures its purpose effectively. There are ample examples of this. The first patent submitted for the telephone gave it the name “sound telegraph.” The light bulb was called the “electric arc lamp,” and the computer mouse was called a “bug.” Even the television was first named an “image dissector.” Thankfully these names changed as the product developed and became mainstream.

The task force that created the legal paraprofessional grappled with the need to be concise and clear, while also conveying professionalism. No title may accomplish all of this, however, there are titles such as “legal practitioner” that are closer to achieving these goals. Early naming approaches adopted in other states have mostly emphasized the limitations of the new professional. This approach neglects consumers and how they understand the profession, including how non-English speakers may interpret the name. An overly restrictive or confusing name also stifles the LP’s practice because consumers may not understand the LP’s ability to practice law and to practice law independently. The 2023 Allied Legal Professionals report published by the Institute for the Advancement of the American Legal System (IAALS), urged states

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<sup>4</sup> [https://www.merriam-webster.com/dictionary/paraprofessional?utm\\_campaign=sd&utm\\_medium=serp&utm\\_source=jsonld](https://www.merriam-webster.com/dictionary/paraprofessional?utm_campaign=sd&utm_medium=serp&utm_source=jsonld)

to use names that “convey professionalism instead of limitations, creates clarity instead of confusion, and translates well into other languages.”<sup>5</sup>

According to the 2022 US Census, 20% of Arizonans speak Spanish.<sup>6</sup> Unfortunately, the term “paraprofessional” does not readily translate. In fact, IAALS reports that when California explored the creation of a similar tier of legal service providers, they hired two companies to address the translation and interpretation challenges of job titles, including the title “paraprofessional.” The companies narrowed the list to three titles that translated best: 1) Limited Legal Advisor, 2) Licensed Legal Advisor, and 3) Limited License Legal Practitioner.<sup>7</sup> Choosing a title that translates clearly to Spanish is important for Arizona.

Looking beyond the current name change petition in Arizona, the ABA has recently received a petition asking the ABA to strike the word “nonlawyer” from its vocabulary. The petition was drafted by Olga V. Mack, a fellow at Stanford Center for Legal Informatics and Damien Riehl, vice president of a legal tech company called vLex. It argues that the term “nonlawyer” marginalizes the contributions made by all legal professionals and urges the ABA to find a more inclusive term.<sup>8</sup> Similarly, as we work to refine our program, we may also benefit from developing a more appropriate term for our legal professionals who are not lawyers. As selected by LPs themselves, the term legal practitioner fulfills these goals.

## REPLIES TO THE FEW OBJECTIONS

Finally, we would like to reply to the arguments against the name change to Legal Practitioner. Denise Blommel and the Commission on Access to Justice argued that the title Legal Practitioner is too expansive because LPs may practice law only within their particular practice area (e.g., family law or criminal law)<sup>9</sup> and simply saying “Legal Practitioner” may imply the ability to practice law beyond this scope and potentially confuse consumers. Although undoubtedly submitted in good faith, these arguments are not persuasive for the reasons listed below.

First, the arguments ignore the other rules clarifying the LPs’ scope. ACJA 7-210 requires that LPs refrain from referring to themselves as attorneys, lawyers, or counselors, and it requires that LPs affirmatively

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<sup>5</sup> Houlberg & Knowlton, *Allied Legal Professionals: A National Framework for Program Growth*, 2023 [https://iaals.du.edu/sites/default/files/documents/publications/alp\\_national\\_framework.pdf](https://iaals.du.edu/sites/default/files/documents/publications/alp_national_framework.pdf)

<sup>6</sup> <https://data.census.gov/profile/Arizona?g=040XX00US04>

<sup>7</sup> To its credit, the current title of legal paraprofessional is only two words and avoids the negative word “limited.” As the Court knows, Washington’s program used the clunky and limiting title of Limited License Legal Technicians.

<sup>8</sup> [https://www.abajournal.com/news/article/should-the-aba-strike-the-word-nonlawyer-from-its-vocabulary-petition-says-its-time?utm\\_source=sfmc&utm\\_medium=email&utm\\_campaign=weekly\\_email&promo=&utm\\_id=827324&sfmc\\_id=46721536](https://www.abajournal.com/news/article/should-the-aba-strike-the-word-nonlawyer-from-its-vocabulary-petition-says-its-time?utm_source=sfmc&utm_medium=email&utm_campaign=weekly_email&promo=&utm_id=827324&sfmc_id=46721536)

<sup>9</sup> A few LPs are licensed in more than one practice area, however.

identify themselves as LPs in every written communication. Moreover, they must inform their clients that they are not lawyers or attorneys and that they can practice law only in their authorized practice area (e.g., family law). *See* ACJA 7-210(F), (J). Second, there are clear, established titles for those with a general license: lawyers, attorneys, and counselors.

Third, there are already titles appropriately applied to both lawyers and LPs; in other words, arguing that lawyers may also call themselves legal practitioners is not dispositive. For example, lawyers and LPs are both called legal professionals, officers of the court, and members of the bar without causing confusion. Moreover, within their practice area, LPs are indeed legal practitioners to the exact same degree as lawyers. In any event, members of the public almost never refer to lawyers as “legal practitioners.” Lastly, neither comment offered evidence to support their arguments of consumer confusion; thus, the evidence of consumer confusion regarding the term “paraprofessional” stands alone and un rebutted.

In sum, the title Legal Practitioner would not mislead the public.

## CONCLUSION

The fact that this petition is coming from and supported by current legal paraprofessionals speaks volumes. The people who undertake complex legal tasks and contribute significantly to the legal process are not functioning as “paraprofessionals,” who, by definition, are assistants to professionals. The requested title of “legal practitioner” is a better term because it faithfully represents the breadth of their responsibilities, recognizes their vital contribution to the legal profession, and helps potential consumers understand where this new tier of legal service provider stands within the legal profession.

