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6 **IN THE SUPREME COURT**
7 **STATE OF ARIZONA**

8
9 In the Matter of:

Supreme Court No. R-24-0040

10 **PETITION TO AMEND RULE**
11 **31.3(e)(4), ARIZONA RULES OF**
12 **SUPREME COURT**

COMMENT OPPOSING THE
PETITION

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14 In accordance with Rule 28(d), Ariz. R. Sup. Ct., the undersigned submits the
15 following Comment opposing the Petition.

16 **DISCUSSION**

17 Petitioner advocates for changing the title of the Arizona legal paraprofessional to
18 “Legal Practitioner” based on the belief the proposed title “better reflects their
19 responsibilities and contributions to the legal ecosystem.” Unfortunately, an unintended
20 consequence of the proposed change is a strong likelihood of consumer confusion. This is
21 because the term, legal practitioner, has long been understood to mean a lawyer. Indeed,
22

1 even a cursory online search of the term confirms it is synonymous with lawyer.¹

2 Historically, the term has also been used interchangeably with lawyer in everyday
3 common usage, such as online job postings.² Jurisdictions have likewise understood the
4 meaning statutorily to define what constitutes the unauthorized practice of law to prohibit
5 a person not admitted to practice and in good standing to “assume, use or advertise the title
6 of lawyer, attorney and counselor-at-law, attorney-at-law, counselor-at-law, attorney,
7 counselor, attorney and counselor, or an equivalent term, in such manner as to convey the
8 impression that he or she is a legal practitioner of law.”³ Scholarship⁴ and books⁵ likewise
9 demonstrate the same common understanding. One can point to the same synonymy in
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15 ¹ See https://www.powerthesaurus.org/legal_practitioner/synonyms ;
16 https://thesaurus.plus/synonyms/legal_practitioner ; https://www.wordhippo.com/what-is/another-word-for/legal_practitioner.html

17 ² See online job postings for legal practitioners meaning lawyers at
18 <https://www.lawcrossing.com/lcjssearchresults.php?keywords=legal%20practitioner&rc=1&minexp=&maxexp=&freshjob=Y&lq=Chandler%2C%20Arizona&lqc=United%20States&et=&w=&usersearch=1>

19 And <https://www.linkedin.com/jobs/legal-practitioner-jobs-scottsdale-az>

20 ³ CONN. GEN. STAT. § Sec. 51-88. (2024) For similar language, also see WV ST § 30-2-4 and NY Judiciary Law §478.

21 ⁴ Robert B. Yegge, *The Future Legal Practitioner in the United States: What Training He Must Receive*, 44
22 Denv. L.J. 12 (1967); Samuel C. Waters, *A View from the Trenches: The Legal Practitioner and Loss Mitigation*, 60
23 S. C. L. Rev.807 (2009); Jeffrey P. Gray, *In Defense of Occupational Licensing: A Legal Practitioner's Perspective*,
24 43 CAMPBELL L.; REV. 423 (2021);

25 ⁵ Dike, Annie, *The Billable Hour: A Legal Practitioner's Guide to Smarter Hourly Billing*. Bill Smarter. Bill More, CreateSpace Independent Publishing Platform, (2013); Batman, Jean, *Advising the Small Business: Forms and Advice for the Legal Practitioner*, American Bar Association, Third Edition (2019); Batman, Jean, *Of Counsel, Forms and Advice for the Legal Practitioner*, American Bar Association; 4th edition (2014); Hunt, Lara Rae and Hunt III, Leon Rushing, *A Lawyer's Guide to Estate Planning: Fundamentals for the Legal Practitioner*, Fourth Edition, American Bar Association (2018); Williamson, Harvey J., *The Attorney's Handbook on Small Business Reorganization Under Chapter 11: A Legal Practitioner's Handbook on Chapter 11 Bankruptcy*, Argyle Publishing Company (2017); Lambert, Katherine W., *Death in Wisconsin: A Legal Practitioner's Guide to Postmortem Administration*, 9th (Vol. 15-16, Wisconsin Practice Series), Thomson West, (2023)

1 litigation⁶, lawyer discipline adjudications⁷, ethics opinions⁸, and in lawyer continuing
2 legal education⁹. The meaning and understanding of legal practitioner as lawyer remain
3 consistent to the present day.

4 **Likelihood of Confusion.**

5
6 Under English common law, a *legal practitioner* refers to a lawyer. The term has a
7 long history. Writing, for example, in the Notre Dame Law Review at *Legal Profession*
8 *during the Middle Ages: The Emergence of the English Lawyer Prior to 1400 XVIII*, Notre
9 Dame Law Professor Anton-Hermann Chroust discusses the nascent beginnings and
10 development of the legal profession and of “legal practitioners” prior to 1300.

11
12 The legal practitioners of mediaeval England, who developed out of a variety of
13 rather primitive notions concerning forensic assistance and representation in
14 litigation, originated in the main with two basic forms of "a helper in forensic
15 distress," namely, the advisor-advocate or pleader, and the agent-substitute or
16 attornatus. These two fundamental types of "legal aid" and their different functions
17 subsequently became the foundation of the two main branches of the English legal
18 profession.¹⁰

17 ⁶ *U.S. v. Scherl*, 923 F.2d 64 (7th Cir. 1991) (denying defendant’s ineffective assistance of counsel claim that the
18 case was too complex for a "sole legal practitioner . . ."); *U.S. v. Kowalski*, 502 F.2d 203 (7th Cir. 1974)
19 (describing the Assistant United States Attorney as “an experienced and veteran legal practitioner.”; *United States v.*
20 *Judson*, 322 F.2d 460 (9th Cir. 1963) (noting that “the ramifications of tax law are often a stubborn challenge to the
21 most expert legal practitioner.”); *Mahfouz v. Old Republic Ins. Co.*, 570 So.2d 136 (La. App. 1990) (Plaintiff
22 "suing for his own damages suffered at the hands of the alleged tortfeasor, the legal practitioner.")

23 ⁷ *State ex rel. Oklahoma Bar Ass'n v. Landman*, 784 P.2d 1064, 1989 OK 162 (Okla. 1989) (noting “respondent's
24 unblemished past record of some 14 years as a legal practitioner.”); *Office of Disciplinary Counsel v. Lynch*, 2722
25 Disciplinary Docket 3, 70 DB 2020 (Pa. Jan 06, 2022) (testimony “that Respondent was well-prepared as a legal
practitioner and had a very good reputation.”)

⁸ AS. Ethics Op 84-1 (1984); MASS. Ethics Op 86-3 (1986);

⁹ See LexisNexis CLE, “Technology and the Legal Practitioner: Ethical Concerns & Best Practices,” December 15,
2023, at <https://www.lexisnexis.com/university/course.aspx?classInfo=Crs~686~56568> and National Academy of
Continuing Legal Education, “Cultural Awareness, Tips, and Tools for Today's Legal Practitioner” at
<https://www.nacle.com/CLE/Courses/Cultural-Awareness-Tips-and-Tools-for-Todays-Legal-Practitioner-1855> and
NYSBA CLE, “Practical Implications of Decriminalized Marijuana for the Legal Practitioner,” October 3, 2018.

¹⁰ Anton-Hermann Chroust, *Legal Profession during the Middle Ages: The Emergence of the English Lawyer Prior*
to 1400 XVIII, 32 Notre Dame L. Rev. 268 at pp. 297-298 (1957)

1 In the UK, the precise meaning of the term continues. In point of fact, this is
2 underscored at the business website of DLS Solicitors, an English law firm:

3 In the old English system, various types of legal practitioners, including barristers,
4 special pleaders, certified conveyancers, and solicitors, assisted individuals with
5 legal matters. While some legal practitioners were allowed to charge fees for their
6 services, others were not. Additionally, legal practitioners were not liable to be
sued for any mistakes they made.

7 A legal practitioner, in the traditional English system, refers to a lawyer or a
8 member of one of the recognized branches of practice. These branches include
9 barristers, special pleaders not at the bar, certified conveyancers, and solicitors.
10 While the first three types of legal practitioners are allowed to recover their fees,
11 barristers cannot do so as their acting is considered voluntary and their fees are
12 seen as honorary payments. This means they cannot be held liable for negligence
or unskilfulness. For example, if a person hires a solicitor, they can recover their
fees for their services, but if they hire a barrister, the barrister cannot recover their
fees and their acting is considered voluntary.¹¹

13 Moreover, inasmuch as the vast majority of legal systems in the British
14 Commonwealth were founded on English common law, the term retains its vitality and its
15 currency that, “the qualification of a legal practitioner in all Commonwealth countries
16 requires at least a law degree and/or post-graduate legal qualifications and experience.”¹²

17 In U.S. Immigration Court, the word, practitioner, also has a precise meaning.
18 According to the Immigration Court Practice Manual, Chapter 2 - Appearances Before the
19 Immigration Court, specifically, 2.1 - Representation and Appearances Generally, at 2.1(a),
20 “under the regulations, parties appearing before the immigration court may represent
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22

23
24 ¹¹ <https://dlssolicitors.com/define/legal-practitioner/>

25 ¹² “The legal sector in the Commonwealth,” Commonwealth Network, at
<https://www.commonwealthofnations.org/?sectors=business/legal>

1 themselves or represented by practitioners. Practitioners include: attorneys, accredited
2 representatives, and certain categories of persons who are expressly recognized by the
3 immigration court.”¹³

4
5 **No evidence a name change will promote more affordable access to justice or**
6 **stimulate more pro bono.**

7 Finally, the petitioner makes much ado about an American Bar Association 2018
8 report describing “a shocking fact: a whopping 48% of attorneys did not participate in any
9 pro bono work.¹⁴ Ignore for the moment that a good number of lawyers choose not to
10 disclose their pro bono hours or to report them to a regulatory authority, it being no one’s
11 business but their own. But from this comes the leap of purely unsubstantiated conjecture.
12 It premises a proposed name change as “pivotal” to an anticipated attendant increase “of
13 pro bono services and offering legal services at reduced rates” and that “it frees up time for
14 attorneys to dedicate more of their own valuable time to engaging in pro bono services.”
15 Were it only so simple.

16
17 Here it is also important to revisit my comment¹⁵ four years ago opposing Supreme
18 Court No. R-20 – 0034 where I quoted from Rebecca M. Donaldson’s *Law by Non-*
19 *Lawyers: The Limit to Limited License Legal Technicians Increasing Access to Justice* that
20

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23 ¹³ <https://www.justice.gov/eoir/reference-materials/ic/chapter-2/1>

24 ¹⁴ ABA Profile of the Legal Profession 2023, authored by the American Bar Association, available at
<https://www.abalegalprofile.com/probono.html>

25 ¹⁵ See <https://www.azcourts.gov/Rules-Forum/aft/1118/afpg/6>

1 was opportunely published in the *Seattle Law Review*.¹⁶ Donaldson’s research about
2 Washington’s Limited License Legal Technician (LLLT) would have provided credibly-
3 sound information to ground the Legal Services Task Force’s counterfactual hypotheses
4 about its own legal paraprofessional proposal. In short, Donaldson found:

6 that the LLLT model is not designed to increase access to justice for those from
7 low- income populations. This conclusion is based on first-hand interviews with the
8 architects of the model as well as on original surveys and interviews conducted with
9 the first two cohorts of LLLTs and LLLT Candidates. LLLTs and Candidates expect
10 to keep their pricing schemes high enough to bring in a sustainable revenue stream,
11 intend to work primarily through traditional legal service delivery models at law
12 firms and as solo practitioners, and overall do not report highly salient motivation
13 to target low-income clientele relative to their other motivations for becoming an
14 LLLT. From all of this, we do not have reason to believe that low-income legal
15 consumers will better access justice through the current LLLT model.¹⁷

16 Sensitive to the criticism that LLLTs who charge \$100 to \$150 per hour are no
17 more affordable than lawyers in serving the legal needs of poor and low-income
18 individuals, program defenders attempted to absolve that failing by saying, “that the
19 program was created to solve access for only those with incomes between \$75,000 and
20 under \$100,000.”¹⁸

21 ¹⁶ 42 Seattle U. L. Rev. 1 (2018) Available at <https://digitalcommons.law.seattleu.edu/sulr/vol42/iss1/2/>

22 ¹⁷ Washington’s LLLTs were originally conceived to assist low-income Washingtonians. Arizona’s petitioners
23 repeated the same declaring “The purpose of creating this new tier of licensed legal service provider is to fill a gap
24 that exists between medium- and low-income individuals needing legal services and the cost of securing those
25 services from the traditional legal market.” See Petition p. 4. As discussed infra, Washington’s hope met reality.

¹⁸ See Mary Juetten, *The limited legal license technician is the way of the future of law*, ABA Journal, December 8,
2017, Available at
https://www.abajournal.com/news/article/the_limited_license_legal_technician_story_start_with_why

