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**IN THE SUPREME COURT
STATE OF ARIZONA**

PETITION TO AMEND RULE 31
D.24, RULES OF THE ARIZONA
SUPREME COURT: LEGAL
DOCUMENT PREPARER.

Petition No. _____

In accordance with Arizona Supreme Court Rule 28, Petitioners, both of whom are members of the American Immigration Lawyers Association, Arizona Chapter, respectfully ask the Court to amend Rule 31 D. 24 relating to the exemption from unauthorized practice of law by Court Certified Legal Document Preparers. The proposed amendment asks the Court to remove immigration and

nationality law from the exemption against unauthorized practice of law so that its certified legal document preparer program does not include preparation or filing of documents relating to immigration and nationality law. The amendment will only apply to legal document preparers who would otherwise seek to prepare and/or file immigration and nationality documents with the federal government, and not to other areas of certification under Arizona law.

The current version of Rule is actually silent on the ability of a certified legal document preparer to prepare and file immigration and nationality documents. A recent U.S. Supreme Court case, *United States v. Arizona*, <http://www.supremecourt.gov/opinions/11pdf/11-182b5e1.pdf> (2011) holds that with regard to immigration and nationality law, state law is pre-empted if it is displaced by pervasive federal rules and regulations or otherwise conflicts with federal law.

The proposed change merely seeks to clarify that preparation and filing of immigration and nationality documents by persons who are not lawyers remains the exclusive province of the federal government pursuant to regulations for the accreditation of non-lawyer representatives that it has adopted which pre-empt state law, including Arizona Court Rule 31 D. 24 in the area of immigration and nationality law. Because the proposed amendment deals with a matter of constitutional import, Petitioners request in the alternative that it be accorded

expedited treatment under Rule 28 (G), pursuant to which the Court may adopt emergency rule changes.

Discussion

Arizona law prohibits any person to render a service for compensation that constitutes the unauthorized practice of immigration and nationality law, see A.R.S. 12-2703, but since 2003, this Court has certified non-lawyers as document preparers. They are not allowed to give legal advice but are permitted, for compensation, to fill out forms and prepare many kinds of legal documents for persons who are not represented by a lawyer. Certified legal document preparers do not require lawyer training or supervision. Most of the forms and documents concern areas of state substantive law, with no federal component. Although Arizona Supreme Court Rule 31 and administrative orders 7-201 and 7-208 which established the program, do not explicitly state that document preparers are allowed to fill out applications for immigration and nationality benefits, the Certification and Licensing Division and the Board of Legal Document Preparers have interpreted the Rule and orders as though they do. Certified document preparers regularly advertise and offer immigration services to non-lawyers, in competition with lawyer-provided services and without necessarily meeting the federal requirements set forth by the Code of Federal Regulations.

This interpretation of the Arizona Supreme Court rule and orders conflicts with a detailed and comprehensive set of federal regulations that govern non-lawyer representatives who prepare forms and file paperwork in immigration cases before federal immigration officers and immigration judges. Under a recent U.S. Supreme Court decision, *United States v. Arizona*,, supra, federal immigration rules pre-empt state ones where an intent to pre-empt can be discerned from a pervasive federal regulation or there exists a conflict between state and federal law (*id.* at p.7- 8), either of which can render the state enactment unconstitutional in the area of immigration. The Arizona rules, to the extent that they permit non-lawyer document preparers to prepare immigration and nationality documentation for submission to the federal immigration authorities, have been pre-empted by the federal constitution. The authority for document preparers to be certified as legal document preparers is Rule 31. It provides in Rule 31, (b) Authority to Practice:

“Except as hereinafter provided in section (d), no person shall practice law in this state or represent in any way that he or she may practice law in this state unless the person is an active member of the state bar.”

Section (d) lists exemptions to the rule in section (b) and at subsection (d) 24 states:

“24. Nothing in these rules shall prohibit a certified legal document preparer from performing services in compliance with Arizona Code of Judicial

Administration, Part 7, Chapter 2, Section 7-208. This exemption is not subject to paragraph (c) of this rule, as long as the disbarred attorney or member has been certified as provided in § 7-208 of the Arizona Code of Judicial Administration.”

The purpose of the proposed rule change is to clarify that immigration and nationality documents cannot be prepared or filed by a certified legal document preparer under the authority of Rule 31 because in the area of immigration and nationality document preparation, the Rule and administrative orders are preempted under the federal constitution by federal regulations concerning accredited non-lawyer document preparer representatives, as set forth in the U.S. Code of Federal Regulation, 8 C.F.R §§ 292.1, 292.2; see 8 C.F.R. §1.1(i),(j),(k) and (m).

Historically, document preparers have been referred to as "notarios", a Spanish word for "notary". In certain countries that follow Napoleonic codes, such notaries are often permitted to determine the legal validity and suitability of the documents that they verify, a role that common law notaries have been denied consistently in the U.S., except for Louisiana, where vestiges of Napoleonic law can be found. In some civil law countries such as Mexico and Italy, obtaining a license as a lawyer and practicing for a number of years may be a prerequisite to becoming a civil law notary. Certified legal document preparers are an Arizona exception to the common law rule, by allowing a special class of non-lawyers to act in a role very similar to civil law notaries, except that certified document

preparers who act as common law notaries in Arizona must also qualify independently as such.

Under federal immigration regulations, persons who are not lawyers generally must be certified by the federal Board of Immigration Appeals, which is an appellate administrative court located in the U.S. Department of Justice. Its principal function is to decide appeals from decisions of immigration judges and denials of immigration benefits by the Department of Homeland Security immigration officers.

Unlike Arizona certified legal document preparers, persons who are authorized federally to file papers for others in immigration matters include two categories:

1) federally accredited representatives, who must be nominated by federally approved non-profit religious, charitable, social service, or similar organizations established in the United States that only charge nominal fees for their services; and

2) other reputable individuals of good moral character, provided that they appear:

(i) on an individual case basis, at the request of a person entitled to representation;

(ii) file a written declaration that the appearance is without direct or indirect remuneration;

(iii) unless waived as a matter of administrative discretion, show a pre-existing relationship or connection with the person entitled to representation exists (e.g., as a relative, neighbor, clergyman, business associate or personal friend); and

(iv) without otherwise regularly engaging in immigration and naturalization practice or preparation, or holding himself or herself out to the public as qualified to do so. See 8 C.F.R §§ 292.1, 292.2; see 8 C.F.R. §1.1(i),(j),(k) and (m) for definitions of terms "practice", "representative", and "preparation".

Although both state and federal authorities provide for entity certification, the contours are very different. Only designated representatives of federally accredited organizations can prepare documents for presentation to federal immigration authorities, 8 C.F.R § 292.2, in the state system, Business Entity Certification is required for all business entities that offer legal document preparation services, ACJA § 7-208(E)(3)(d), but in addition, preparers can work independently of a business entity with individual certification , ACJA § 7-208(E)(2)-(3)(d)(3) , and trainees can work under the supervision of a designated principal. ACJA § 7-208(D)(5). Federal accreditation must be renewed every three years, 8 C.F.R § 292.2; by Arizona rules governing certification ACJA § 7-201(G); 7-208(G)(1), “All standard certifications expire at midnight, on June 30th

of each odd numbered year”. The federal regulation of accredited representative defines clear procedures for investigation and revocation of organizational credentials 8 C.F.R. § 292.2(d); the state certification program also has other rules for filing of complaints and their disposition before the Board of Legal Document Preparers ACJA § 7-201(H), § 7-208(H); but while there are areas of similarity, the state system differs significantly from the federal one and conflicts with it.

Significantly, Arizona certified immigration and nationality document preparers are not required also to be accredited by the federal authorities. There is no analogue to the federal regulation of state law enforcement officers discussed in *U.S. v. Arizona, supra*, that could justify operating the Certified Legal Document preparer program even under the aegis and direction of the federal Board of Immigration Appeals to facilitate training and regulation of state certified document preparers as federally accredited deputies.

Under Arizona state law, any individual who appeared in an immigration proceeding as a relative, friend, neighbor, clergyman, business associate or personal friend who was not also a certified document preparer or a trainee of one could be disciplined for violation of the Arizona Supreme Court rules prohibiting the practice of law without a license. Rule 31(b), unless otherwise exempted under Rule 31 (d). However, such individuals are specifically authorized by federal regulations to provide such services in the administrative discretion of the

immigration official, notwithstanding a lack of state certification. 8 C.F.R. § 292.1(a)(3).

Under U.S. Supreme Court precedent, *United States v. Arizona*, *supra*, immigration certification for document preparers under Arizona Supreme Court rules should be discontinued as pre-empted legally under the U.S. Constitution.

There are important policy considerations as well for ending immigration and naturalization as a permitted area of certification for non-lawyer document preparers under Arizona law. Although the Arizona court rule and administrative orders prohibit document preparers from dispensing legal advice, ACJA § 7-208(F)(1)(b), in the immigration context, it is rarely, if ever, possible to separate out selection of the proper immigration forms from the provision of immigration and nationality legal advice. Most commonly, multiple forms must be prepared, each one required by an aspect of procedure that in turn itself requires knowledge of the substantive immigration and nationality law. For example, to adjust an immediate relative of a U.S. citizen to the status of a permanent resident from within the U.S., the standard of care applicable to lawyers can require as many as 10 separate forms with attachments often exceeding fifty pages. One of the optional forms is the I-131. It allows a foreign national applicant to obtain a document for travel abroad during the pendency of the adjustment proceeding, but if the foreign national has ever accrued unlawful presence, including residence or

work for more than six months without permission in the U.S., the act of travel abroad may result in a bar for a period of three years before returning to the U.S., unless a waiver, which requires submission of a different form or forms, is requested and obtained. (If the time period of unlawful presence is one year or more, the period of the bar is ten years.) Because the person cannot re-enter the U.S. without a waiver during period of the bar, an adjustment petition will most likely be denied in such circumstances and the permanent residency case lost.

Deciding whether to file an I-131 document or a waiver document requires an in-depth understanding of federal immigration law and the act of selecting the appropriate form or group of forms involves legal advice beyond simple filling in the blanks of a form or providing a common law notarization (see 8 C.F.R. §1.1 (m)). This example is one among many; often multiple immigration forms must be considered, with supporting documentation and analysis, some involving multiple agencies, and the desirability of using each must be judged in the multi-faceted context of each immigration case. See <http://www.uscis.gov/forms> for a collection of forms commonly used to seek immigration and nationality benefits from the Department of Homeland Security. Where a person applies for a visa from abroad, additional forms should be submitted to the Department of State. See http://travel.state.gov/visa/immigrants/types/types_1326.html (immigrant visas), and http://travel.state.gov/visa/temp/types/types_1286.html (non-immigrant visas).

For employment visas, the U.S. Department of Labor likely will also have jurisdiction. It has its own separate forms that must also be completed and submitted.

Selection of proper immigration forms requires the training and skills of an immigration lawyer. Immigration forms practice is not a perfunctory function. Allowing a document preparer to select immigration forms implicitly forces a preparer to practice immigration law, which is forbidden by state law, see A.R.S. 12-2703, and notwithstanding the prohibition against law practice by document preparers as stated in the Arizona Supreme Court rule and administrative orders. See also Note, "Unauthorized Practice of Law," [Journal of the Legal Profession, University of Alabama, vol. 12, art. 10](#) pp. 154-156.

Arizona document preparers are typically certified on the basis of a 100-question, multiple question test involving mostly property, divorce, and other areas of state law apart from federal immigration and nationality law, see the 85-page study guide at <http://www.azcourts.gov/Portals/26/LDP/Docs/LDPEXAMStudyGuideJanuary2007.pdf>. (The sample questions given at pages 4-5 do not include one dealing with immigration and nationality law). Rarely are more than a few questions in a test devoted to immigration forms practice. Such perfunctory testing is woefully inadequate for the complex subject of immigration and nationality law.

Certification of document preparers in Arizona by the Arizona Supreme Court for immigration and nationality matters should cease at once. It is both unconstitutional as an impermissible encroachment upon federal immigration and nationality regulations and is suboptimal administrative policy.

Conclusion

Petitioners respectfully ask the Court to amend the Rule 31(d) 24 to clarify that legal document preparers are not certified to prepare and file immigration and nationality documents because all authority to allow non-lawyers to do so has been granted to the federal government in extensive regulations that pre-empt state certification of document preparers. A redline version of Rule 31(d) 24 reflecting the proposed change is attached as Exhibit 1.

DATED this 7th day of January, 2013.

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/s/Regina Jefferies, Esq.
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Certificate of Service

On the above date, counsel electronically filed the original of this document in Word and pdf formats with the Clerk of the Court, Arizona Supreme Court.

Exhibit 1

Proposed Amendment to Rule 31(d) 24, Arizona Rules of the Supreme Court

(Additions are shown underlined and deletions are shown ~~stricken~~.)

Sections a through c - No changes.

Section d (1-23) - No changes

24. Except for federal immigration and nationality law, n ~~Nothing~~ in these rules shall prohibit a certified legal document preparer from performing services in compliance with Arizona Code of Judicial Administration, Part 7, Chapter 2, Section 7-208. This exemption is not subject to paragraph (c) of this rule, as long as the disbarred attorney or member has been certified as provided in § 7-208 of the Arizona Code of Judicial Administration.

Section d(25-29) - No changes.