



*UPL ADVISORY OPINION*  
*UPL 06-03*  
*(April 2006)*

**Certified Legal Document Preparer and Paralegal**

This is an Advisory Opinion regarding Rule 31 of the Rules of the Supreme Court of Arizona regarding whether an attorney may ethically employ a paralegal who independently operates a certified legal document preparer business, and whether the paralegal can prepare documents for the attorney's clients as a certified legal document preparer.<sup>1</sup>

**Issues:**

1. May an attorney ethically employ a paralegal on a part-time basis who independently has her own Certified Legal Document Preparer business? Yes.
2. If the attorney may hire the paralegal to work for him on a part-time basis, can she at the same time maintain her Certified Legal Document Preparer designation and/or can she prepare documents for his clients as a Certified Legal Document Preparer? The Certified Legal Document Preparer can maintain her Certified Legal Document Preparer designation, but she cannot prepare documents for his clients as a Certified Legal Document Preparer.

**Relevant Authority<sup>2</sup>:**

Arizona Supreme Court Rule 31:

**Rule 31. Regulation of the Practice of Law**

**(a) Supreme Court Jurisdiction Over the Practice of Law**

1. *Jurisdiction.* Any person or entity engaged in the practice of law or unauthorized practice of law in this state, as defined by these rules, is subject to this court's jurisdiction.

2. *Definitions.*

A. "Practice of law" means providing legal advice or services to or for another by:

- (1) Preparing any document in any medium intended to affect or secure legal rights for a specific person or entity;
- (2) Preparing or expressing legal opinions;

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<sup>1</sup> Opinions of the Committee are advisory in nature only and are not binding in any disciplinary or other legal proceedings. © State Bar of Arizona 2006

<sup>2</sup> There may also be specific court rules discussing limited scope representation. See e.g. Arizona Rules of Family Law Procedure, Rule 9(B).

- (3) Representing another in a judicial, quasi-judicial, or administrative proceeding, or other formal dispute resolution process such as arbitration and mediation;
- (4) Preparing any document through any medium for filing in any court, administrative agency or tribunal for a specific person or entity; or
- (5) Negotiating legal rights or responsibilities for a specific person or entity.

B. "Unauthorized practice of law" includes but is not limited to:

- (1) engaging in the practice of law by persons or entities not authorized to practice pursuant to paragraphs (b) or (c) or specially admitted to practice pursuant to Rule 33(d); or
- (2) using the designations "lawyer," "attorney at law," "counselor at law," "law," "law office," "J.D.," "Esq.," or other equivalent words by any person or entity who is not authorized to practice law in this state pursuant to paragraphs (b) or (c) or specially admitted to practice pursuant to Rule 33(d), the use of which is reasonably likely to induce others to believe that the person or entity is authorized to engage in the practice of law in this state.

C. "Legal assistant/paralegal" means a person qualified by education and training who performs substantive legal work requiring a sufficient knowledge of and expertise in legal concepts and procedures, who is supervised by an active member of the State Bar of Arizona, and for whom an active member of the state bar is responsible, unless otherwise authorized by supreme court rule.

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**(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.

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**(d) Exemptions.** Notwithstanding the provisions of section (b):

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17. Nothing in this rule shall affect the ability of nonlawyer assistants to act under the supervision of a lawyer in compliance with ER 5.3 of the rules of professional conduct.

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23. 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.

**ER 1.2. Scope of Representation and Allocation of Authority between Client and Lawyer**

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(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

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## Arizona Code of Judicial Administration, 7-208

### F. Role and Responsibilities of Certificate Holders.

1. Authorized Services. A certified legal document preparer may:
  - a. Prepare or provide legal documents, without the supervision of an attorney, for an entity or a member of the public in any legal matter when that entity or person is not represented by an attorney;
  - b. Provide general legal information, but may not provide any kind of specific advice, opinion, or recommendation to a consumer about possible legal rights, remedies, defenses, options, or strategies;
  - c. Provide general factual information pertaining to legal rights, procedures, or options available to a person in a legal matter when that person is not represented by an attorney;
  - d. Make legal forms and documents available to a person who is not represented by an attorney; and
  - e. File and arrange for service of legal forms and documents for a person in a legal matter when that person is not represented by an attorney.

### J. Code of Conduct.

#### 3. Fees and Services

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- c. A legal document preparer shall at all times be aware of and avoid impropriety or the appearance of impropriety, which may include, but is not limited to:
    - (1) Establishing contingent fees as a basis of compensation;
    - (2) Directly or indirectly receiving of any gift, incentive, reward, or anything of value as a condition of the performance of professional services; and
    - (3) Directly or indirectly offering to pay any commission or other consideration in order to secure professional assignments.

#### 5. Performance in Accordance with Law

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- c. A legal document preparer shall not provide any kind of advice, opinion or recommendation to a consumer about possible legal rights, remedies, defenses, options, or strategies. This shall not, however, preclude a certified legal document preparer from providing the type of information permitted in subsection F(1) of this code section. A legal document preparer shall inform the consumer in writing that a legal document preparer is not a lawyer, is not employed by a lawyer, and cannot give legal advice, and that communications with a legal document preparer are not privileged.

### Discussion:

1. **May an attorney ethically employ a paralegal on a part-time basis who independently has her own Certified Legal Document Preparer business? Yes.**
2. **If the attorney may hire the paralegal to work for him on a part-time basis, can she at the same time maintain her Certified Legal Document Preparer designation and/or can she prepare documents for his clients as a Certified Legal Document Preparer? The Certified Legal Document Preparer can maintain her Certified Legal Document Preparer designation, but she cannot prepare documents for his clients as a Certified Legal Document Preparer.**

There is nothing in the rules that prohibits a person from working as a paralegal, while at the same time having an independent Certified Legal Document Preparer business. As such, since both services are exceptions to the Unauthorized Practice of Law rules, an individual could work part-time for a lawyer as a paralegal, and independently have a Certified Legal Document Preparer's business. There is no reason that the two cannot occur simultaneously. In fact, since E.R. 5.7 specifically allows a lawyer to provide law-related services to a client by a separate entity controlled by the lawyer individually or with others, it seems clear that the lawyer can refer to a separate entity if he has no interest in it.

However, the attorney should recognize and advise his client as to how the person is being utilized in any given situation. If the person is acting as the attorney's paralegal, then the attorney is supervising his/her role and responsibilities, and the attorney is ultimately liable for any issues that may develop as a result of the paralegal's activities. Alternatively, if a referral is being made to a person as a Certified Legal Document Preparer, then the client needs to understand that the attorney must terminate his representation of that client and that the responsibility for preparing an appropriate document is solely on the Certified Legal Document Preparer. Pursuant to E.R. 1.2 an attorney is permitted to provide limited scope representation provided that limitation is reasonable under the circumstances and the client gives informed consent. Furthermore, the Code of Conduct requires that the Certified Legal Document Preparer "shall inform the consumer in writing that a legal document preparer is not a lawyer, is not employed by a lawyer, and cannot give legal advice, and that communications with a legal document preparer are not privileged. The client is certainly entitled to know who is or who is not accepting responsibility for the preparation of a document and make an informed decision as to the extent of legal experience and responsibility they are seeking. The lawyer and the Certified Legal Document Preparer must make it clear that each is a separate entity and that as a lawyer and Certified Legal Document Preparer, they cannot represent or perform services for the client at the same time. The lawyer needs to assure that he is in no way violating either ER 1.7 or E.R. 1.8, regarding conflicts of interest, in making the referral, and the Certified Legal Document Preparer needs to assure that she is in no way violating the Code of Conduct regarding conflicts of interests in accepting a referral. The Certified Legal Document Preparer also needs to assure that she is not acting in the capacity of legal document preparer and paralegal on the same matter.