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**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF MARICOPA**

**THE STATE BAR OF ARIZONA,**

Plaintiff,

vs.

**RICHARD S. BERRY,**

Respondent.

**Case No. CV 2017-000456**

**JUDGMENT  
AND ORDER**

(Unauthorized Practice of Law;  
Rules 75-80, Ariz. R. Sup. Ct.)

Assigned to the Honorable Joseph C. Welty

This matter, having been tried to the Court, and the Court, being fully informed, finds by clear and convincing evidence that Respondent engaged in the unauthorized practice of law in Arizona, as set forth in Counts One, Two, Four and Five of the State Bar's complaint.

The Court finds that injunctive relief in the form of a cease and desist order, which will prohibit Respondent from engaging in the practice of law and the unauthorized practice of law, is appropriate.

**IT IS HEREBY ORDERED,** pursuant to Rules 76(a) and 76(b)(2), Ariz. R. Sup.

1 Ct., that Respondent Richard S. Berry is permanently enjoined from engaging in the  
2 unauthorized practice of law in Arizona, as defined by Rule 31, Ariz. R. Sup. Ct., and  
3 relevant case law.

4 **IT IS FURTHER ORDERED** that Respondent is permanently enjoined from  
5 using the designations “lawyer,” “attorney at law,” “counselor at law,” “law,” “law  
6 office,” “J.D.,” “Esq.,” or other equivalent words, the use of which is reasonably likely  
7 to induce others to believe that he is authorized to engage in the practice of law in  
8 Arizona.

9 The Court finds that restitution is appropriate only to those individuals who believed  
10 they were paying for more than they were entitled to receive from Respondent or Why  
11 Pay a Lawyer?

12 a. Rev. Newman (Count One) is entitled to \$250 in restitution because he  
13 believed he was visiting with a lawyer, and the demand letter drafted and sent by  
14 Respondent was wholly rejected by the recipient based on the fact that Respondent  
15 was not a lawyer.

16 b. Ms. Vyskocil (Count Two) is entitled to \$730 in restitution because  
17 Respondent told her that he was an attorney.

18 c. Patricia Rae Dennis (Count Four) was placed on notice on several  
19 occasions that the bankruptcy documents or forms would be filed in her name and  
20 that she was not to mention Respondent’s name in court. Ms. Dennis is not entitled  
21 to restitution because she received what she understood she would receive (i.e.,  
documents she could file in Bankruptcy Court).

d. Mr. Dunn (Count Five) is not entitled to restitution because there is no evidence that he believed he was visiting a lawyer or obtaining the services of a lawyer when he consulted with Respondent, and he received what he understood he would receive (i.e., documents he could file in Maricopa County Superior Court).

**THEREFORE, IT IS FURTHER ORDERED** that Respondent Richard S. Berry pay restitution to Rev. Mark Newman (Count One) in the amount of \$250, and to DiAnne Vyskocil (Count Two) in the amount of \$730.

This judgment is entered pursuant to Rules 75 through 80, Ariz. R. Sup. Ct., and Rule 54(c), Ariz. R. Civ. P., as no further matters remain pending.

**DATED** this       day of August, 2018.

Judge Joseph C. Welty  
Maricopa County Superior Court

Original filed with the Clerk of  
the Maricopa County Superior Court  
this \_\_\_\_\_ day of August, 2018.

by: \_\_\_\_\_

# eSignature Page 1 of 1

Filing ID: 9724752 Case Number: CV2017-000456  
Original Filing ID: 9577012

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Granted with Modifications



/S/ Joseph Welty Date: 9/20/2018  
Judicial Officer of Superior Court

NOTICE: NOT FOR OFFICIAL PUBLICATION.  
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION ONE

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THE STATE BAR OF ARIZONA, *Plaintiff/Appellee*,

*v.*

RICHARD S. BERRY, *Defendant/Appellant*.

No. 1 CA-CV 18-0661  
FILED 1-16-2020

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Appeal from the Superior Court in Maricopa County  
No. CV2017-000456  
The Honorable Joseph C. Welty, Judge

**AFFIRMED**

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COUNSEL

State Bar of Arizona, Phoenix  
By James D. Lee  
*Counsel for Plaintiff/Appellee*

Richard S. Berry, Tempe  
*Defendant/Appellant*

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**MEMORANDUM DECISION**

Presiding Judge Kenton D. Jones delivered the decision of the Court, in  
which Judge James B. Morse Jr. and Judge Diane M. Johnsen joined.

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*Appendix B*

STATE BAR v. BERRY  
Decision of the Court

J O N E S, Judge:

¶1 Richard Berry appeals the superior court's judgment finding he engaged in the unauthorized practice of law, as defined by Arizona Rule of the Supreme Court (Rule) 31, and enjoining him from further unauthorized conduct. For the following reasons, we affirm.

**LEGAL BACKGROUND**

¶2 The power to regulate the practice of law in Arizona is vested exclusively in our supreme court, whose authority extends over those admitted to the Arizona bar as well as non-lawyers and disbarred attorneys. *See In re Creasy*, 198 Ariz. 539, 541, ¶¶ 7-8 (2000); *Sobol v. Alarcon*, 212 Ariz. 315, 319, ¶¶ 18-19 (App. 2006). In a lawful exercise of this power, "the supreme court has promulgated rules defining and describing both the practice of law and the unauthorized practice of law." *Sobol*, 212 Ariz. at 319, ¶ 19; *see generally* Ariz. R. Sup. Ct. 31,<sup>1</sup> 75. These rules identify the activities that may only be performed by a licensed attorney and seek to "protect the public from the intolerable evils which are brought upon people by those who assume to practice law without having the proper qualifications." *Morley v. J. Pagel Realty & Ins.*, 27 Ariz. App. 62, 65 (1976) (quoting *Gardner v. Conway*, 48 N.W.2d 788, 794 (Minn. 1951)).

¶3 As such, under Arizona law, subject to certain exemptions not applicable here, "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." Ariz. R. Sup. Ct. 31(b); *see also* Ariz. R. Sup. Ct. 31(d) (identifying exemptions). Rule 31 specifically prohibits a non-active member of the state bar from using designations such as "lawyer" or "counselor at law," Ariz. R. Sup. Ct. 31(a)(2)(B) (defining the unauthorized practice of law), and "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> Absent material changes from the relevant date, we cite the current version of rules and statutes.

STATE BAR v. BERRY  
Decision of the Court

- (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.

Ariz. R. Sup. Ct. 31(a)(2)(A) (defining the practice of law).

**FACTS AND PROCEDURAL HISTORY**

¶4 In January 2017, forty years after Berry was disbarred by our supreme court, the State Bar of Arizona (State Bar) filed a complaint against Berry alleging six counts of the unauthorized practice of law.

¶5 After a two-day bench trial, the superior court found clear and convincing evidence that Berry engaged in the unauthorized practice of law on four occasions.<sup>2</sup> Specifically, the court found Berry, while affiliated with a paralegal firm called “Why Pay a Lawyer?,” had: (1) prepared, signed, and mailed a demand letter on behalf of another person that included legal analysis the person did not specifically direct; (2) represented himself as a lawyer to a second person; drafted a demand letter for the second person that included legal analysis the person did not specifically direct; and prepared a breach of contract complaint for the second person that was later filed in superior court; (3) selected or prepared various bankruptcy documents for a third person that required legal analysis and were ultimately filed in bankruptcy court; and (4) selected or prepared legal documents for a fourth person that addressed legal issues related to a specific landlord-tenant dispute.

¶6 The superior court determined Berry’s conduct was sanctionable, permanently enjoined Berry from engaging in the unauthorized practice of law in Arizona, and ordered Berry to pay restitution. *See* Ariz. R. Sup. Ct. 76(a) (describing the grounds for sanctions, including “[a]ny act found to constitute the unauthorized practice of law pursuant to Rule 31”), (b) (describing the available sanctions to include

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<sup>2</sup> The State Bar voluntarily dismissed one count; the superior court dismissed another.

STATE BAR v. BERRY  
Decision of the Court

imposition of an injunction and restitution). Berry timely appealed, and we have jurisdiction pursuant to Arizona Revised Statutes (A.R.S.) §§ 12-120.21(A)(1) and -2101(A)(1).

**DISCUSSION**

**I. Sufficiency of the Evidence**

¶7 Berry first argues the State Bar failed to prove by clear and convincing evidence that he engaged in the unauthorized practice of law as defined by Rule 31.<sup>3</sup> However, when an appellant “contend[s] on appeal that a judgment, finding or conclusion[] is unsupported by the evidence or is contrary to the evidence, the appellant must include in the record transcripts of all proceedings containing evidence relevant to that judgment, finding or conclusion.” ARCAP 11(c)(1)(B); *see also Myrick v. Maloney*, 235 Ariz. 491, 495, ¶ 11 (App. 2014) (“An appellant also has an obligation to provide transcripts and other documents necessary to consider the issues raised on appeal.”) (citing *Baker v. Baker*, 183 Ariz. 70, 73 (App. 1995)). “We presume the items not included in the appellate record support a trial court’s ruling.” *Myrick*, 235 Ariz. at 495, ¶ 11 (citing *Baker*, 183 Ariz. at 73).

¶8 Berry did not provide transcripts of the two-day bench trial; nor does his appellate case management statement indicate compliance with ARCAP 11(c)(1)-(3) (describing the appellant’s duty to order transcripts). Berry has thus waived any argument regarding the sufficiency of the evidence to support the superior court’s findings. *See Boltz & Odegard v. Hohn*, 148 Ariz. 361, 366 (App. 1985) (“Where no transcript of evidence is made part of the record on appeal, a reviewing court will not

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<sup>3</sup> Berry presents several arguments not raised before the superior court. However, “matters not raised below . . . will not be considered on appeal.” *Murphy v. Town of Chino Valley*, 163 Ariz. 571, 578 (App. 1989) (citing *Norcor of Am. v. S. Ariz. Int’l Livestock Ass’n*, 122 Ariz. 542, 544-45 (App. 1979)); *see also Palmer v. City of Phx.*, 242 Ariz. 158, 165, ¶ 26 (App. 2017) (“[A] party must timely present his legal theories to the trial court so as to give it an opportunity to rule properly.”) (quoting *Payne v. Payne*, 12 Ariz. App. 434, 435 (1970)). And although Berry suggests his actions could have rightfully been undertaken by a certified legal document preparer (CLDP), *see* Ariz. R. Sup. Ct. 31(d)(24) (recognizing that a CLDP may perform services in compliance with Part 7, Chapter 2, of the Arizona Code of Judicial Administration), Berry admits he is not a CLDP, and the court found he was not a CLDP at the relevant time.



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Decision of the Court

question the sufficiency of evidence to sustain the ruling.”) (citing *Riley v. Jones*, 6 Ariz. App. 120, 122 (1967)).

## II. Constitutionality

¶9 Berry next challenges the constitutionality of Rule 31. We review constitutional challenges *de novo* and will presume constitutionality unless the challenger convinces us otherwise beyond a reasonable doubt. See *3613 Ltd. v. Dep’t of Liquor Licenses & Control*, 194 Ariz. 178, 182, ¶ 17 (App. 1999) (citations omitted).

¶10 Berry contends that Rule 31’s provisions governing the practice of law and unauthorized practice of law are unconstitutionally overbroad and vague because the rule identifies several exemptions. See Ariz. R. Sup. Ct. 31(d). But none of those exemptions apply to his conduct. Because Berry engaged in the type of conduct Rule 31 expressly prohibits, he is precluded from challenging Rule 31 on the grounds that it is unconstitutionally overbroad or vague.<sup>4</sup> See *Martin*, 195 Ariz. at 316, ¶ 77 (collecting cases); *Broadrick v. Oklahoma*, 413 U.S. 601, 608 (1973) (“[E]ven if the outermost boundaries of [a statute challenged for vagueness] may be imprecise, any such uncertainty has little relevance . . . where appellants’ conduct falls squarely within the ‘hard core’ of the statute’s proscriptions.”) (collecting cases).

## III. Antitrust Laws

¶11 Finally, relying upon *North Carolina State Board of Dental Examiners v. Federal Trade Commission* (N.C. Dental), 135 S. Ct. 1101 (2015), Berry contends enforcement of Rule 31 violates federal antitrust law because the members of the State Bar who regulate and enforce the rules are “active participants in the same profession as those [they] govern[.]” See Ariz. R. Sup. Ct. 32(c) (outlining parameters for membership in the State

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<sup>4</sup> An exception exists where the law’s “potential deterrent effect on First Amendment activities is ‘both real and substantial.’” *Martin v. Reinstein*, 195 Ariz. 293, 316, ¶ 78 (App. 1999) (quoting *Maricopa Cty. Juv. Action No. JT9065297*, 181 Ariz. 69, 73 (App. 1994)). Although Berry contends Rule 31 “outlaw[s]” commercial speech because it bans lawyer advertising, nothing in the text of the rule supports such an interpretation. Nor does he cite any authority suggesting he has a constitutional right to give legal advice in contravention of our supreme court rules prohibiting disbarred attorneys from practicing law.

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Decision of the Court

Bar).<sup>5</sup> We review legal questions *de novo*. *McNamara v. Citizens Protecting Tax Payers*, 236 Ariz. 192, 194, ¶ 5 (App. 2014) (citing *Lincoln v. Holt*, 215 Ariz. 21, 23, ¶ 4 (App. 2007)).

¶12 In *N.C. Dental*, the Federal Trade Commission (FTC) filed an administrative complaint alleging the efforts of the North Carolina State Board of Dental Examiners (the Board) to exclude non-dentists from the teeth-whitening services market “constituted an anticompetitive and unfair method of competition under the [FTC] Act.” 135 S. Ct. at 1108-09. The FTC rejected the Board’s claim that it was immune from antitrust laws. *Id.* at 1109. In affirming, the U.S. Supreme Court recognized that antitrust laws “confer immunity on anticompetitive conduct by the [s]tates when acting in their sovereign capacity.” *Id.* at 1110 (citing *Parker v. Brown*, 317 U.S. 341, 350-51 (1943)). When a state delegates control over a market to a non-sovereign actor that is controlled by active market participants, it “enjoys *Parker* immunity only if . . . the challenged restraint [is] clearly articulated and affirmatively expressed as state policy, and . . . the policy [is] actively supervised by the [s]tate.” *Id.* (quoting *FTC v. Phoebe Putney Health Sys., Inc.*, 568 U.S. 216, 225 (2013)); see also *Goldfarb v. Va. State Bar*, 421 U.S. 773, 788 (1975) (recognizing that where an anticompetitive program gets “its authority and its efficacy from the legislative command of the state,” there is no antitrust violation because the law “was intended to regulate private practices and not to prohibit a [s]tate from imposing a restraint as an act of government”) (citing *Parker*, 317 U.S. at 350-52, and *Olsen v. Smith*, 195 U.S. 332, 344-45 (1904)).

¶13 Berry contends Arizona’s regulation of the practice of law is analogous to North Carolina’s system of regulating dental practices. We disagree.

¶14 The Board in *N.C. Dental* admitted it was not actively supervised by the state and therefore, without doubt, ineligible for

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<sup>5</sup> In conjunction with this argument, Berry argues Rule 31 creates an illegal monopoly that only “promote[s] lawyer income and eliminate[s] competition [between lawyers and nonlawyers].” See 15 U.S.C. § 2 (designating the monopolization of trade or commerce as a felony offense); see also A.R.S. § 44-1403. Berry does not, however, suggest the State Bar controls pricing for legal services or that he, as a disbarred attorney, is a lawful competitor in the market for legal services. See *Pasco Indus., Inc. v. Talco Recycling, Inc.*, 195 Ariz. 50, 57-61, ¶¶ 22-49 (App. 1998) (explaining how the elements of a monopolization claim may be proven). Therefore, we need not and do not address the argument.

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immunity. *Id.* at 1116. The U.S. Supreme Court nonetheless identified “a few constant requirements of active supervision,” namely:

The supervisor must review the substance of the anticompetitive decision, not merely the procedures followed to produce it; the supervisor must have the power to veto or modify particular decisions to ensure they accord with state policy; and the “mere potential for state supervision is not an adequate substitute for a decision by the [s]tate.” Further, the state supervisor may not itself be an active market participant.

*Id.* at 1116-17 (citing *Patrick v. Burget*, 486 U.S. 94, 102-03 (1988), and then quoting *FTC v. Ticor Title Ins.*, 504 U.S. 621, 638 (1992)). “In general, the adequacy of supervision . . . will depend on all the circumstances of the case.” *Id.*

¶15 Examining those factors here, we find the State Bar adequately supervised by our supreme court. Indeed, the U.S. Supreme Court has previously recognized the Arizona Supreme Court’s supervisory authority over the State Bar, noting that while “the State Bar plays a part in the enforcement of the rules, its role is completely defined by the [Arizona Supreme] [C]ourt; the [State Bar] acts as the agent of the court under its continuous supervision.” *Bates v. State Bar of Ariz.*, 433 U.S. 350, 361 (1977) (holding an antitrust claim against the State Bar was precluded by *Parker* immunity). Our supreme court creates the rules and maintains the authority to veto or modify decisions of the State Bar. *See id.* at 359-60 (“[T]he challenged [disciplinary rule] is the affirmative command of the Arizona Supreme Court . . . . That court is the ultimate body wielding the State’s power over the practice of law, . . . adopt[s] the rules, and . . . is the ultimate trier of fact and law in the enforcement process.”). The Arizona Rules of the Supreme Court govern both the substantive requirements for admission and continued membership in the State Bar and the attendant procedures. *See generally* Ariz. R. Sup. Ct. 32 to 45. Finally, the Arizona Supreme Court is not an active market participant; by definition, judicial members of the State Bar are “not engaged in the practice of law.” Ariz. R. Sup. Ct. 32(c)(6). Sufficient state supervision exists here, and antitrust laws do not prohibit the State Bar from enforcing our supreme court’s regulations governing the practice of law and unauthorized practice of law.

STATE BAR v. BERRY  
Decision of the Court

CONCLUSION

¶16 The superior court's judgment is affirmed.



AMY M. WOOD • Clerk of the Court  
FILED: AA



**Supreme Court**  
STATE OF ARIZONA

**ROBERT BRUTINEL**  
Chief Justice

ARIZONA STATE COURTS BUILDING  
1501 WEST WASHINGTON STREET, SUITE 402  
PHOENIX, ARIZONA 85007  
TELEPHONE: (602) 452-3396

**JANET JOHNSON**  
Clerk of the Court

July 29, 2020

**RE: STATE BAR OF ARIZONA v RICHARD S' BERRY**  
Arizona Supreme Court No. CV-20-0044-PR  
Court of Appeals, Division One No. 1 CA-CV 18-0661  
Maricopa County Superior Court No. CV2017-000456

GREETINGS:

The following action was taken by the Supreme Court of the State of Arizona on July 28, 2020, in regard to the above-referenced cause:

**ORDERED: Petition for Review = DENIED.**

Janet Johnson, Clerk

TO:  
James D Lee  
Richard S Berry  
Amy M Wood  
pm

*Appendix C*

## REGULATION OF LAW PRACTICE

## Rule 31

### V. REGULATION OF THE PRACTICE OF LAW

#### A. Supreme Court Jurisdiction over the Practice of Law

#### 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;
- (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 38(a); 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 38(a), 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.

D. "Mediator" means an impartial individual who is appointed by a court or government entity or engaged by disputants through written agreement to mediate a dispute. Serving as a mediator is not the practice of law.

E. "Unprofessional conduct" means substantial or repeated violations of the Oath of Admission to the Bar or the Lawyer's Creed of Professionalism of the State Bar of Arizona.

(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.

(c) *Restrictions on Disbarred Attorneys' and Members' Right to Practice.* No member who is currently suspended or on disability inactive status and no former member who has been disbarred shall practice law in this state or represent in any way that he or she may practice law in this state.

(d) *Exemptions.* Notwithstanding the provisions of section (b), but subject to the limitations of section (c) unless otherwise stated:

1. In any proceeding before the Department of Economic Security or Department of Child Safety, including a hearing officer, an Appeal Tribunal or the Appeals Board, an individual party (either claimant or opposing party) may be represented by a duly authorized agent who is not charging a fee for the representation; an employer, including a corporate employer, may represent itself through an officer or employee; or a duly authorized agent who is charging a fee may represent any party, providing that an attorney authorized to practice law in the State of Arizona shall be responsible for and supervise such agent.

2. An employee may designate a representative, not necessarily an attorney, before any board hearing or any quasi-judicial hearing dealing with personnel matters, providing that no fee may be charged for any services rendered in connection with such hearing by any such designated representative not an attorney admitted to practice.

3. An officer of a corporation or a managing member of a limited liability company who is not an active member of the state bar may represent such entity before a justice court or police court provided that: the entity has specifically authorized such officer or managing member to represent it before such courts; such representation is not the officer's or managing member's primary duty to the entity, but secondary or incidental to other duties relating to the management or operation of the entity; and the entity was an original party to or a first assignee of a conditional sales contract, conveyance, transaction or occurrence that gave rise to the cause of action in such court, and the assignment was not made for a collection purpose.

4. A person who is not an active member of the state bar may represent a party in small claims procedures in the Arizona Tax Court, as provided in Title 12, Chapter 1, Article 4 of the Arizona Revised Statutes.

Appendix D

5. In any proceeding in matters under Title 23, Chapter Article 10 of the Arizona Revised Statutes, before any ministrative law judge of the Industrial Commission of izona or review board of the Arizona Division of Occupa- n Safety and Health or any successor agency, a corpo- e employer may be represented by an officer or other ly authorized agent of the corporation who is not charg- ; a fee for the representation.

6. An ambulance service may be represented by a cor- ate officer or employee who has been specifically au- rized by the ambulance service to represent it in an ministrative hearing or rehearing before the Arizona partment of Health Services as provided in Title 36, apter 21.1, Article 2 of the Arizona Revised Statutes.

7. A person who is not an active member of the state ; may represent a corporation in small claims proce- res, so long as such person is a full-time officer or horized full-time employee of the corporation who is : charging a fee for the representation.

8. In any administrative appeal proceeding of the De- tment of Health Services, for behavioral health services, suant to A.R.S. § 36-3413 (effective July 1, 1995), a ty may be represented by a duly authorized agent who ot charging a fee for the representation.

9. An officer or employee of a corporation or unincor- ated association who is not an active member of the te bar may represent the corporation or association ore the superior court (including proceedings before the ster appointed according to A.R.S. § 45-255) in the ernal stream adjudication proceedings conducted under zona Revised Statutes Title 45, Chapter 1, Article 9, vided that: the corporation or association has specifi- ly authorized such officer or employee to represent it in ; adjudication; such representation is not the officer's mployee's primary duty to the corporation but second- or incidental to other duties related to the management operation of the corporation or association; and the cer or employee is not receiving separate or additional pensation (other than reimbursement for costs) for h representation. Notwithstanding the foregoing provi- , the court may require the substitution of counsel never it determines that lay representation is interfer- with the orderly progress of the litigation or imposing lue burdens on the other litigants. In addition, the rt may assess an appropriate sanction against any party attorney who has engaged in unreasonable, groundless, sive or obstructionist conduct.

10. An officer or full-time, permanent employee of a poration who is not an active member of the state bar y represent the corporation before the Arizona Depart- it of Environmental Quality in an administrative pro- ding authorized under Arizona Revised Statutes. Title provided that: the corporation has specifically author- l such officer or employee to represent it in the particu- administrative hearing; such representation is not the

officer's or employee's primary duty to the corporation but secondary or incidental to other duties related to the man- agement or operation of the corporation; the officer or employee is not receiving separate or additional compensa- tion (other than reimbursement for costs) for such repre- sentation; and the corporation has been provided with a timely and appropriate written general warning relating to the potential effects of the proceeding on the corporation's and its owners' legal rights.

11. Unless otherwise specifically provided for in this rule, in proceedings before the Office of Administrative Hearings, or in fee arbitration proceedings conducted un- der the auspices of the State Bar of Arizona Fee Arbitration Committee, a legal entity may be represented by a full-time officer, partner, member or manager of a limited liability company, or employee, provided that: the legal entity has specifically authorized such person to represent it in the particular matter; such representation is not the person's primary duty to the legal entity, but secondary or inciden- tal to other duties relating to the management or operation of the legal entity; and the person is not receiving separate or additional compensation (other than reimbursement for costs) for such representation.

12. In any administrative appeal proceeding relating to the Arizona Health Care Cost Containment System, an individual may be represented by a duly authorized agent who is not charging a fee for the representation.

13. In any administrative matter before the Arizona Department of Revenue, the Office of Administrative Hear- ings relating to the Arizona Department of Revenue, a state or county board of equalization, the Arizona Department of Transportation, the Arizona Department of Economic Se- curity, the Department of Child Safety, the Arizona Corpo- ration Commission, or any county, city, or town taxing or appeals official, a taxpayer may be represented by (1) a certified public accountant, (2) a federally authorized tax practitioner, as that term is defined in A.R.S. § 42-2069(D)(1), or (3) in matters in which the dispute, including tax, interest and penalties, is less than \$5,000.00 (five thousand dollars), any duly appointed representative. A legal entity, including a governmental entity, may be represented by a full-time officer, partner, member or manager of a limited liability company, or employee, pro- vided that: the legal entity has specifically authorized such person to represent it in the particular matter; such repre- sentation is not the person's primary duty to the legal entity, but secondary or incidental to other duties relating to the management or operation of the legal entity; and the person is not receiving separate or additional compensa- tion (other than reimbursement for costs) for such repre- sentation.

14. If the amount in any single dispute before the State Board of Tax Appeals is less than twenty-five thousand dollars, a taxpayer may be represented in that dispute before the board by a certified public accountant or by a

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## REGULATION OF LAW PRACTICE

## Rule 31

federally authorized tax practitioner, as that term is defined in A.R.S. § 42-2069(D)(1).

15. In any administrative proceeding pursuant to 20 U.S.C. § 1415(f) or (k) regarding any matter relating to the identification, evaluation, educational placement, or the provision of a free appropriate public education for a child with a disability or suspected disability, a party may be represented by an individual with special knowledge or training with respect to the problems of children with disabilities as determined by the administrative law judge, and who is not charging the party a fee for the representation. The hearing officer shall have discretion to remove the individual, if continued representation impairs the administrative process or causes harm to the parties represented.

16. Nothing in these rules shall limit a certified public accountant or other federally authorized tax practitioner, as that term is defined in A.R.S. § 42-2069(D)(1), from practicing before the Internal Revenue Service or other federal agencies where so authorized.

17. Nothing in these rules shall prohibit the rendering of individual and corporate financial and tax advice to clients or the preparation of tax-related documents for filing with governmental agencies by a certified public accountant or other federally authorized tax practitioner as that term is defined in A.R.S. § 42-2069(D)(1).

18. Nothing in this rule shall affect the ability of non-lawyer assistants to act under the supervision of a lawyer in compliance with ER 5.3 of the rules of professional conduct. This exemption is not subject to section (c).

19. Nothing in these rules shall prohibit the supreme court, court of appeals, superior courts, or limited jurisdiction courts in this state from creating and distributing form documents for use in Arizona courts.

20. Nothing in these rules shall prohibit the preparation of documents incidental to a regular course of business when the documents are for the use of the business and not made available to third parties.

21. Nothing in these rules shall prohibit the preparation of tax returns.

22. Nothing in these rules shall affect the rights granted in the Arizona or United States Constitutions.

23. Nothing in these rules shall prohibit an officer or employee of a governmental entity from performing the duties of his or her office or carrying out the regular course of business of the governmental entity.

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.

25. Nothing in these rules shall prohibit a mediator as defined in these rules from preparing a written mediation agreement or filing such agreement with the appropriate court, provided that:

(A) the mediator is employed, appointed or referred by a court or government entity and is serving as a mediator at the direction of the court or government entity; or

(B) the mediator is participating without compensation in a non-profit mediation program, a community-based organization, or a professional association.

In all other cases, a mediator who is not an active member of the state bar and who prepares or provides legal documents for the parties without the supervision of an attorney must be certified as a legal document preparer in compliance with the Arizona Code of Judicial Administration, Part 7, Chapter 2, Section 7-208.

26. Nothing in these rules shall prohibit a property tax agent, as that term is defined in A.R.S. § 32-3651, who is registered with the Arizona State Board of Appraisal pursuant to A.R.S. § 32-3642, from practicing as authorized pursuant to A.R.S. § 42-16001.

27. Nothing in these rules shall affect the ability of lawyers licensed in another jurisdiction to engage in conduct that is permitted under ER 5.5 of the rules of professional conduct.

28. In matters before the Arizona Corporation Commission, a public service corporation, an interim operator appointed by the Commission, or a non-profit organization may be represented by a corporate officer, employee, or a member who is not an active member of the state bar if:

(A) the public service corporation, interim operator, or non-profit organization has specifically authorized the officer, employee, or member to represent it in the particular matter,

(B) such representation is not the person's primary duty to the public service corporation, interim operator, or non-profit organization, but is secondary or incidental to such person's duties relating to the management or operation of the public service corporation, interim operator, or non-profit organization, and

(C) the person is not receiving separate or additional compensation (other than reimbursement for costs) for such representation.

Notwithstanding the foregoing provisions, the Commission or presiding officer may require counsel in lieu of lay representation whenever it determines that lay representation is interfering with the orderly progress of the proceeding, imposing undue burdens on the other parties, or causing harm to the parties represented.

29. In any landlord/tenant dispute before the Arizona Department of Fire, Building and Life Safety, an individual may be represented by a duly authorized agent who is not



## Rule 31

charging a fee for the representation, other than reimbursement for actual costs.

30. A person licensed as a fiduciary pursuant to A.R.S. § 14-5651 may perform services in compliance with Arizona code of judicial administration, Part 7, Chapter 2, Section 7-202. Notwithstanding the foregoing provision, the court may suspend the fiduciary's authority to act without an attorney whenever it determines that lay representation is interfering with the orderly progress of the proceedings or imposing undue burdens on other parties.

31. Nothing in these rules shall prohibit an active member or full-time employee of an association defined in A.R.S. §§ 33-1202 or 33-1802, or the officers and employees of a management company providing management services to the association, from appearing in a small claims action, so long as:

(A) the association's employee or management company is specifically authorized in writing by the association to appear on behalf of the association;

(B) the association is a party to the small claims action.

Amended April 14, 1986, effective April 15, 1986; July 27, 1987, effective Sept. 1, 1987; April 25, 1988, effective May 1, 1988; Dec. 20, 1988, effective Jan. 15, 1989; June 27, 1989, effective Sept. 1, 1989; July 20, 1989, effective Jan. 1, 1990; Oct. 11, 1989, retroactively effective to July 1, 1989; Oct. 4, 1990, effective Dec. 1, 1990. Amended and effective Feb. 5, 1991. Amended July 16, 1991, effective Sept. 1, 1991; Sept. 26, 1991, effective Dec. 1, 1991; Dec. 12, 1991, effective Jan. 1, 1992; Sept. 30, 1992, effective Dec. 1, 1992; May 25, 1994, effective Dec. 1, 1994; Jan. 30, 1995, effective June 1, 1995; Feb. 6, 1995, effective June 1, 1995; July 20, 1995, effective Dec. 1, 1995; Sept. 21, 1995, effective Dec. 1, 1995; April 3, 1997, effective June 1, 1997; Oct. 6, 1997, effective Dec. 1, 1997; April 27, 1998, effective July 1, 1998. Amended and effective April 14, 1999. Amended June 17, 1999, effective June 30, 1999; June 17, 1999, effective July 1, 1999. Correction October 1, 1999. Amended Jan. 6, 2000, effective June 1, 2000; Oct. 11, 2002, effective Dec. 1, 2002; Oct. 28, 2002, effective Dec. 1, 2002; Jan. 15, 2003, effective July 1, 2003; Feb. 12, 2003, effective July 1, 2003. Amended and effective Oct. 16, 2003; Oct. 17, 2003. Amended June 8, 2004, effective Dec. 1, 2004; June 6, 2005, effective Dec. 1, 2005; Jan. 20, 2006, effective June 1, 2006; Jan. 27, 2006, effective June 1, 2006; Sept. 5, 2007, effective Jan. 1, 2008; Sept. 3, 2009, effective Jan. 1, 2010; Dec. 13, 2011, effective Sept. 1, 2012; Aug. 30, 2012, effective Jan. 1, 2013; June 11, 2014, effective on an expedited basis July 24, 2014; Sept. 2, 2014, effective on an expedited basis, Sept. 1, 2014. Amended and effective on a permanent basis, Dec. 16, 2014. Amended Aug. 27, 2015, effective Jan. 1, 2016.

### [Original] Comment

Rule 31 has not been significantly revised, except for the removal of former § 27(l), relating to the Disciplinary Commission, to new rule 47. A general statement of administrative responsibility has been added as § 31(h). Most definitions relating to discipline and disability proceedings have been removed from former § 27(b) and moved to rule 46 on that subject.

### [1991] Comment [to 31(a)]

The practice of law is a matter exclusively within the authority of the judiciary. *Hunt v. Maricopa County*

## RULES OF THE SUPREME COURT

## REGUI

Employees' Merit System Commission, 127 Ariz. 259 (1980). Nevertheless, under appropriate circumstances the Court may deem it in the public interest to implement a legislative enactment providing for lay representation under specified conditions. Ibid. The 1991 amendment adding subparagraph G adopts the provisions of A.R.S. § 22-512, providing for representation of corporations in small claims actions. It should be noted that, under the practice prevailing in the small claims divisions, litigants are barred from being represented by attorneys. A.R.S. § 22-512(B). The practice-of-law statute referred to in A.R.S. § 22-512(B), A.R.S. § 32-261, was repealed by Laws 1982, Ch. 202, § 17 eff. Jan. 1, 1985.

### Note to 1991 Amendment

This change [(c) 4.] incorporated specific reference to members on disability inactive status.

This change [(c) 5.] provides that a judge assumes active status in the bar upon retirement or resignation.

This change [(c) 6.] expressly provides for waiver of the annual fee for members who have been transferred to disability inactive status.

### NOTES TO 2002 AMENDMENTS

These amendments clarify that the Supreme Court authorizes the amount of the annual member assessment that goes to the Client Protection Fund, that the Court requires that the State Bar Board of Governor maintain a Client Protection Fund, and that the Fund is a separate entity from the State Bar. The amendments also correct references to the Fund to reflect the correct name of the Fund ("Client Protection Fund" instead of "Client Security Fund").

### The Oath of Admission to the Bar

I, (state your name), do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of Arizona.

I will maintain the respect due to courts of justice and judicial officers.

I will not counsel or maintain any suit or proceeding that shall appear to me to be without merit or to be unjust; I will not assert any defense except such as I honestly believe to be debatable under the law of the land.

I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor; I will never seek to mislead the judge or jury by any misstatement or false statement of fact or law;

I will maintain the confidence and preserve inviolate the secrets of my client; I will accept no compensation in connection with my client's business except from my client or with my client's knowledge and approval.

I will abstain from all offensive conduct; I will not advance any fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged;

I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, nor will I delay any person's cause for greed or malice;

I will at all times faithfully and diligently adhere to the rules of professional responsibility and a lawyer's creed of professionalism of the State Bar of Arizona.

### A Lawyer's Creed of Professionalism of the State Bar of Arizona

#### Preamble

As a lawyer I must strive to make our system of justice work fairly and efficiently. In order to carry out that responsibility, I will comply with the letter and spirit of the disciplinary standards applicable to all lawyers and will conduct myself in accordance with the following Creed of Professionalism when dealing with my client, opposing parties, their counsel, tribunals and the general public.

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