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

IN THE MATTER OF: )  
 )  
PETITION TO AMEND Rule 31, ) SUPREME COURT  
Arizona Rules of the Supreme Court and ) NO. R-02-0017  
TO ADD Rule 32 and Rules 76 through 80, )  
Arizona Rules of the Supreme Court )  
\_\_\_\_\_ )

**COMMENT ON PETITION TO AMEND SUPREME COURT  
RULE 31 AND TO ADD RULES 32, 76-80**

HALT – *An Organization of Americans for Legal Reform* (“HALT”),  
through the undersigned, hereby states its opposition to the Petition to  
Amend Supreme Court Rule 31 and to Add Rules 32, 76-80 (“Petition”).

HALT is a national nonprofit organization representing the interests  
of consumers of legal services by working to make the civil justice system  
more accessible and accountable to those consumers. As part of this  
mission, HALT advocates that consumers have access to a continuum of  
legal services to meet a range of legal needs. HALT therefore urges the

Court on behalf of our 50,000 members nationwide (including over 1,000 in Arizona) not to adopt the proposed rules.

**I. Consumers need unrestricted access to a continuum of legal services to meet a continuum of legal needs.**

Consumers have a continuum of legal needs, and should therefore have access to a continuum of legal services, including traditional representation, a variety of nontraditional alternatives to lawyer representation, and various mixes of the two.

The promise of diverse legal service delivery mechanisms was highlighted at an April 1999 symposium of legal service providers in Washington, D.C., where Ada Shen-Jaffe, the Director of Legal Services in Washington State, described a typical client population as presenting a pyramid of legal needs that can be served by a variety of providers:

- Fifty percent can be served through very low-cost interventions such as self-help legal publications and software, self-help legal videos, cable-access television, and multi-lingual brochures.
- Thirty-five percent need low-cost intervention involving a trained nonlawyer (for example, a domestic violence shelter worker or a legal forms preparer).
- Ten percent require some help from an attorney, but the legal representation involved is low-cost and may be supplemented with paralegal or non-lawyer support.

- Only five-percent require full-range, high-cost lawyer representation to address their more complex legal needs.

James C. Turner & Joyce A. McGee, *Freedom of Legal Information: Increasing Court Access for Americans of Limited Means*, 13 Management Information Exchange Journal 58-61 (1999).

The current system constrains consumer choice by forcing all consumers into a service that is appropriate for only one out of twenty of them. While Ms. Shen-Jaffe's comments were made in the context of legal services to the indigent, they apply much more broadly. According to the American Bar Association, each year, thirty-eight million low and moderate income households need legal help, but are denied access to the American civil justice system. *See Consortium on Legal Services and the Public, American Bar Association, Agenda for Access: The American People and Civil Justice – Final Report on the Implications of Comprehensive Legal Needs Study* (1996). The vast majority of Americans who require legal assistance continue to have unmet needs because they simply cannot afford the \$100 or more per hour in fees it takes to hire a lawyer. Part of the solution to this crisis in access lies in expanding the availability of less expensive legal services provided by non-lawyers. By limiting all consumers to options that only the richest can afford, the organized bar makes it impossible for most consumers to find any legal representation.

**II. The proposed rules are at best an overreaction to a minor problem, and at worst are blatant protectionism.**

The State Bar of Arizona, in its Petition, argues that the new rule is intended to protect consumers. As evidence of the “problem” caused by professionals such as document preparers and independent paralegals, the Bar refers (without documentation) to four hundred complaints that it received last year alleging the practice of law by non-lawyers. (Petition at 3.) The Bar does not state whether these complaints were brought by consumers, lawyers, judges, or fellow lay legal service providers.

According to a national study, only two percent of complaints against non-lawyer practice involved an allegation of injury by a consumer; the rest are brought by competing lawyers, unauthorized practice committees, state bar associations, and others. Deborah Rhode, *Policing the Professional Monopoly: A Constitutional and Empirical Analysis of Unauthorized Practice Prohibitions*, 34 Stanford Law Review 1, 33 (1981). Applying this percentage to the four hundred complaints the Bar claims to have received yields approximately eight cases where a consumer alleges harm from unauthorized practice.

Whether the number of legitimate complaints against lay service providers for unauthorized practice is eight or four hundred, this number needs to be put in perspective. For example, in 2000, the State Bar of Arizona received 2,524 complaints against its members alleging various infractions. Center for Professional Responsibility, American Bar Association, *Survey on Lawyer Disciplinary Systems* 1 (2000). As a consumer problem, unauthorized practice pales in comparison to the problems lawyers cause their clients.

No matter what the extent of the harm caused by unauthorized practice, the proposed Rules reach too far in trying to prevent it. Just as the solution to problems of lawyer discipline is not to ban all lawyers, the solution to problems that accompany non-lawyer delivery of legal services is not to ban the services provided by those professionals. Yet, that is exactly what the proposed Rules do, by abolishing an entire service industry because of a few bad actors within it.

The proposed definition of “practice of law” is far too broad. Proposed Rules 31(a)(2)(A) and 31(a)(2)(D) extend the definition of “practice of law” to the mere preparation of documents “intended to affect or secure legal rights” or “for filing in any court, administration or tribunal.” These rules would eliminate even document preparers who act only as a

typing service, filling in blanks in court-approved forms for submission to a court, or filling in blanks in a commercially-available will. Proposed Rule 31(a)(2)(B), which includes “[p]reparing or expressing legal opinions” as the practice of law is even more problematic, as it would encompass lecturers and magazine and newspaper columnists discussing the law. Proposed Rule 31(a)(2)(E) bans “[n]egotiating legal rights or responsibilities for a specific person or entity.” Under this rule, a person who has a limited grasp of English could not let her English-speaking daughter negotiate with her landlord on her behalf. Had this rule been in effect last year, the Arizona Diamondbacks might not have won the World Series, as several players could have had their contracts voided on public policy grounds for being negotiated by non-lawyers.

Proposed Rule 31(a)(3)(B), while not problematic on its face, has a potential flaw in its ban on using words “reasonably likely to induce others to believe that the person or entity is authorized to engage in the practice of law.” This Court and the courts below it should take care not to consider the use of generic words such as “advice”, “consultation” or “advocate” to be the exclusive province of lawyers. This provision, like all of Rule 31(a)(3) raises great First Amendment concerns.

Proposed Rule 31(a)(4), which defines paralegals only as individuals who work for attorneys and does not acknowledge independent paralegals, is an example of just such misappropriation of words by the legal profession. The Oxford English Dictionary defines paralegal as “one trained in subsidiary legal matters, though not fully qualified as a lawyer.” *Oxford English Dictionary Online Second Edition* (visited Sept. 30, 2002) <<http://dictionary.oed.com/cgi/entry/00171106>>. This definition does not restrict itself to paralegals working for an attorney. There is a large community of service providers calling themselves “independent paralegals” in Arizona and nationwide. The use of this term accurately describes the service provided by these individuals, and the Court should not make the use of this term illegal.

Similarly, Proposed Rule 31(a)(5), which defines mediators as “being appointed by a court or government entity or engaged by disputants through written agreement, signed by all disputants,” turns a common English word into a term of art. It is presumptuous to assume that mediators must work in such a formal, quasi-judicial matter. Many psychologists, family counselors, social workers and clergy mediate disputes regularly and should not be bound by such formalistic requirements.

All of these proposed rules combine to make it nearly impossible for consumers to use the services of independent paralegals for simple tasks in the civil justice system. This leaves the typical consumer with two choices: represent oneself or pay an exorbitant fee to an attorney. While HALT has frequently praised the Maricopa County Superior Court Self-Service Center as a wonderful example of helping people to proceed *pro se*, there are some matters where a consumer may need a little more help – or may be filing in another county. For these people, the only option would be to hire an attorney. As expensive as attorneys are, they would become even more expensive if their lay competition were eliminated.

While the Bar claims to have the best interests of consumers in mind in proposing these rules, it is members of the Bar that stand to profit from their implementation. A cynic might view these proposed rule changes as an attempt by the Bar to further protect its monopoly over the provision of legal services. (The cynic might also view the name change of the “Unauthorized Practice of Law Committee” to the “Consumer Protection Committee” as Orwellian doublespeak intended to camouflage this attempt.) Curiously, the Bar states that the problem with the current rules is that they do “not provide an adequate system for the prosecution of UPL cases.” (Petition at 4.) The Bar goes on to bemoan the fact that “[t]he Attorney General’s jurisdiction is

limited to those cases in which they can demonstrate consumer fraud. The existing rules do not specifically grant authority to the State Bar of Arizona to investigate and prosecute non-lawyers engaging in unauthorized practice of law.” Id. Why does the Bar feel the need to become the judge and two out of four members of the jury in unauthorized practice cases when the Attorney General has sufficient jurisdiction to prosecute cases where there is demonstrable consumer harm? Furthermore, why should the Bar – an arm of the judiciary – be acting as a prosecutor when that duty clearly belongs to the executive branch? The Bar’s actions might be attributed to its zealotry in protecting consumers. However, the cynic wonders whether the Bar is trying to change the rules to allow it to single-handedly eliminate competitors who are not currently subject to prosecution because they have caused no harm.

## **CONCLUSION**

The people of Arizona are in desperate need of affordable legal services. Document preparers and independent paralegals provide affordable access to the legal system in matters that are simple enough not to require an attorney and for which the average consumer cannot afford counsel. The proposed Rules would eliminate this important means of

access for consumers. While the Bar claims such a step is necessary to protect consumers, it also represents attorneys who have a financial interest in the passage of the new rules. HALT has no financial interest in this matter. It only speaks for the consumers whose access to the legal system it has been protecting for nearly a quarter of a century.

Arizona has been in the forefront of providing access to the civil justice system, both through its support of lay legal service providers and its assistance to *pro se* litigants in Maricopa County. The proposed rules would be a giant step backwards from the state's position as one of the leaders in legal access.

On behalf of its 50,000 members nationwide and especially its 1,000 members in Arizona, HALT respectfully asks the Court to deny the State Bar of Arizona's Petition to Amend Supreme Court Rule 31 and to add Rules 32, 76-80.

Dated this 30<sup>th</sup> day of September, 2002.

RESPECTFULLY SUBMITTED,

*HALT – An Organization of  
Americans for Legal Reform*

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Original and Six Copies  
Mailed by Overnight Delivery to the  
Supreme Court of Arizona

One Copy mailed to Petitioner  
Allen B. Shayo

This 30<sup>th</sup> Day of September, 2002.

By: \_\_\_\_\_  
Thomas M. Gordon