



UPL ADVISORY OPINION
UPL 04 -03
(December 2004)

Non-lawyer In-house Employee Legal Services

This is an Advisory Opinion regarding Rule 31 of the Rules of the Supreme Court of Arizona and Arizona Code of Judicial Admin. § 7-208 regarding the services provided by non-lawyer in-house employees of a company (not a law firm).¹

Issues:

1. May an in-house non-lawyer employee (not in a law firm) draft legal documents for use by the company, if the documents are not reviewed by an attorney? Yes
2. May the employee draft pleadings, or other filings that will be used in a tribunal? Yes, if she is certified as a legal document preparer.
3. May the employee coordinate information from outside counsels in various states and countries? Yes, as long as the “coordination” does not involve giving legal advice or opinions.
4. May the employee appear as a representative for the company in an American Arbitration Association arbitration or in a superior court trial? No.

Facts:

A Non-Lawyer Employee (“Employee”) is employed full-time by Company with the title of “Legal Coordinator.” Company is engaged in the manufacture of consumer products. Employee is not supervised by an attorney. Some of Employee’s job responsibilities include: 1) managing intellectual property owned by Company; 2) coordinating legal work by outside counsel both within and outside of the U.S.; 3) drafting intellectual property assignments and contracts; 4) drafting collection complaints that are filed with courts or the American Arbitration Association; 5) drafting agreements and other documents for use by Company in negotiations with customers, vendors, and consultants; 6) representing Company in AAA proceedings; and 7) reviewing Company marketing to assure compliance with certain federal regulations. Employee believes that she is not giving legal advice.

Employee will sometimes use form legal documents suggested by outside counsel but the final documents usually are completed by Employee. Employee may consult with outside counsel as she deems necessary. Non-lawyer officials in Company

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determine whether outside counsel should review documents prepared internally. While Employee is a certified paralegal, she is not a Certified Legal Document Preparer.

Relevant Authority:

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;
- (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/employee" 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.

* * *

(b) Authority to Practice. Except as hereinafter provided in section (c), 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, and no member shall practice law in this state or represent in any way that he or she may practice law in this state, while suspended, disbarred, or on disability inactive status.

(c) Exceptions. Notwithstanding the provisions of section (b):

* * *

19. 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.

Arizona Code of Judicial Administration § 7-208: Legal Document Preparers (4/1/03)

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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.

Discussion:

1. May an in-house employee (not in a law firm) draft legal documents for use by the company, if the documents are not reviewed by an attorney? Yes

Any inquiry into what legal services may or may not be provided by a non-lawyer must begin with reviewing the Arizona Supreme Court's 2003 definition of what is "the practice of law" as set forth in Arizona Supreme Court Rule 31(a)2.A. In brief, "practicing law" in Arizona includes preparing any documents that affect the legal rights of someone, representing someone before a tribunal, and giving legal advice or opinions. Only members of the State Bar of Arizona and certain specific categories of non-lawyers are authorized by the Supreme Court to practice law in Arizona.

Assuming Employee's job title is corrected, to clarify in all written communications that she is not a lawyer, an in-house non-lawyer employee such as Employee may prepare legal "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." Ariz. R.S.Ct. 31(c)(19). Regardless of whether the documents are sent to federal agencies, are contracts, assignments, or other documents affecting the legal rights of Company, Employee may prepare those documents that are incidental to the regular course of business. Employee may not, however, give legal advice to Company because that form of practicing law is limited to members of the State Bar of Arizona and lawyers admitted *pro hac vice*.

2. May the employee draft pleadings, or other filings that will be used in a tribunal? Yes, if she is certified as a legal document preparer.

The non-lawyer practice exception described above, Ariz. R.S.Ct. 31(c)(19) for drafting documents incidental to the business, was not contemplated to include drafting of pleadings or other legal documents filed with a tribunal. It is not regular and customary to have business owners drafting pleadings for their companies. However, a "certified legal document preparer" may prepare legal documents, including pleadings and other filings with tribunals. Ariz. Code of Judicial Admin. § 7-208F.2. (4/1/03). Thus, one who wants to prepare such legal documents must be either a member of the State Bar of Arizona or a certified legal document preparer.

Again, Employee is cautioned that even if she is certified as a legal document preparer to draft pleadings for Company, she may not express legal opinions about what course of action should be undertaken or give legal advice about how Company should proceed under interpretations of Arizona law. Certified legal document preparers are not authorized to give legal advice or opinions. Ariz. Code of Judicial Admin. § 7-208F.1.b (4/1/03)

One note of caution for Company; even if Employee becomes a certified legal document preparer, an entity cannot represent itself in superior court proceedings; it must

have counsel (unless it is representing itself in either a general stream adjudication under Arizona Revised Statutes Title 45, Chapter 1, Article 9 or a small claims matter. *See Ariz. R.S.Ct. 31(c)(7),(9)*).

3. May the employee coordinate information from outside counsels in various states and countries? Yes, as long as it does not require giving legal advice or opinions.

Having a non-lawyer coordinating the work of outside counsels for an entity may run afoul of the Arizona Supreme Court Rules, if the “coordination”² involves providing any legal advice or opinion to Company regarding legal options, defenses, strategies or requirements. Supreme Court Rule 31(a)2A.(2) notes that expressing legal opinions is part of the “practice of law” and neither employees nor certified document preparers are authorized by the Supreme Court to express legal opinions or give legal advice.

Unless Employee/Legal Coordinator is an attorney or officer or employee of the entity Company authorized to direct the actions of outside counsel, Employee cannot supervise the activities of outside counsel. Employee, if she is not an attorney, may not give Company any legal advice or opinions regarding how to proceed with outside counsel. While a non-lawyer officer or authorized employee of an entity client certainly may direct the actions of the client’s outside counsel, that client officer/employee cannot give legal advice within the entity. *See Restatement of the Law (Third), The Law Governing Lawyers § 96 (2001)*.

4. May the employee appear as a representative for the company in an American Arbitration Association arbitration? No.

The Supreme Court’s definition of the “practice of law” specifically includes “(3) representing another in a judicial, quasi-judicial, or administrative proceeding, or other formal dispute resolution process such as arbitration and mediation.” Ariz.S.Ct. R. 31(a)2.A. Only members of the State Bar of Arizona, lawyers admitted *pro hac vice*, and those lawyers authorized by ER 5.5(c)(3) may represent another in any such proceedings – except for a few narrow exceptions not relevant to this inquiry. The representation of another in a legal proceeding is one of the most fundamental elements of practicing law. Only representation by a lawyer is authorized for representation before a tribunal so as to assure that the client is afforded all of the protections of the Rules of Professional Conduct, as well as the evidentiary privileges of attorney/client and work product. None of those essential safeguards are available if a non-lawyer were to represent a client in a

² Note that the title “Legal Coordinator” suggests an individual who is supervising or otherwise directing the actions of lawyers. This title may violate Ariz. R.S.Ct. 31(a)2.B.(2), which prohibits the use of terms such as “law” or “lawyer” or their equivalents if their use 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.” Accordingly, the title should be changed to clarify that she is not authorized to practice law.

legal proceeding. Balancing the need for access to justice with assuring competent representation, the Arizona Supreme Court has not granted blanket authority to any non-lawyers to represent clients in legal proceedings. The very few limited exceptions to this rule that are listed in Ariz. R.S.Ct. 31(c)(1) – (14) were authorized only because the Arizona Supreme Court felt assured that the non-lawyer representations could be provided competently and with limited risk to the clients.

Here Employee's representation of Company would be a general legal representation in a tribunal where Employee would be representing the legal rights of Company and would be required to make legal arguments and give legal advice in the proceeding. None of those functions are authorized by the Arizona Supreme Court Rules for either employees or certified legal document preparers.