



**UPL ADVISORY OPINION NO. 12-01
(March 2012)**

SUMMARY

This is an advisory opinion regarding the scope of legal services that non-lawyers employed by (or who are principals/owners of) community association management companies (“CAMs”) may provide to homeowner and condominium associations (“Associations”) under Rule 31, Ariz. R. Sup. Ct., and Arizona Code of Judicial Administration (“ACJA”) § 7-208. Except under limited circumstances, CAM personnel would be engaging in the unauthorized practice of law by drafting documents for and providing legal services to Associations.

FACTS

CAMs contract with Associations to provide Associations with a variety of management services. CAMs may have non-lawyer personnel who perform these services, which may include filing notices of liens and preparing documents for filing in a tribunal. In addition, CAMs may employ in-house lawyers who provide legal services to Associations. Prior UPL Advisory Opinions 04-01, 04-02, and 04-03 addressed related questions to some extent, but they also precipitated other questions.

QUESTIONS PRESENTED

1. May a contract between a CAM and an Association authorize the CAM and its non-lawyer personnel to act on behalf of the Association in legal matters, including preparing and signing legal documents, such as notices of liens or summonses and complaints to be filed in a tribunal (including justice court, small claims court, and superior court); providing “legal services” to Associations; or authorizing the CAM and its non-lawyer personnel to appear in a tribunal (including justice court, small claims court, or superior court) in a representative capacity? *Answer to all: No*

2. Do the answers to Question 1 change if the CAM employee is a legal document preparer? *Answer: Yes and no. A legal document preparer may prepare certain legal documents as permitted by governing regulations but may not sign documents, provide legal advice or opinions, or appear in a tribunal on behalf of a party.*

Opinions of the Unauthorized Practice of Law Committee are advisory in nature only and are not binding in any disciplinary or other legal proceeding. This opinion is based on the rules in effect on the date the opinion was published. If the rule changes, a different conclusion may be appropriate.

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3. May a CAM's in-house lawyers perform legal work on behalf of the CAM's Association customers, including preparing legal documents for customers and representing the customer in a tribunal? If so, may the CAM charge the Association customers for these legal services? *Answer: No.*
4. May CAMs call employees "paralegals" if the employees prepare legal documents, negotiate legal matters, or represent Associations in court? *Answer: No.*
5. May an owner, officer, or employee of a CAM that provides management services to Associations be appointed as an officer or director of an Association to facilitate signing legal documents and/or appearing in a tribunal on behalf of the Association? *Answer: No, unless a separate basis other than the contractual arrangement permits the appointment.*
6. May CAM personnel negotiate legal matters on behalf of the Association with Association members? *Answer: No.*

APPLICABLE ARIZONA RULES

Rule 31, Ariz. R. Sup. Ct.; 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 authorized 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);...

...

- 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.

...

- (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.

...

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

...

- 18. 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. This exemption is not subject to section (c).

...

- 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.

...

- 24. Nothing in these rules shall prohibit a 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 as provided in § 7-208 of the Arizona Code of Judicial Administration.

Arizona Code of Judicial Administration § 7-208: Legal Document Preparer.

...

F. Role and Responsibilities of Certificate Holders. In addition to the requirements of ACJA § 7-201(F) the following requirements apply:

1. Authorized Services. A 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.

...

5. Performance in Accordance with Law.

...

- b. A legal document preparer shall not represent they are authorized to practice law in this state, nor shall the legal document preparer provide legal advice or services to another by expressing opinions, either verbal or written, or by representing another in a judicial, quasi-judicial, or administrative proceeding, or other formal dispute resolution process, except as authorized in Rule 31(d), Rules of the Supreme Court. A legal document preparer shall not attend court with a consumer for the purpose of assisting the consumer in the court proceeding, unless otherwise ordered by the court.

RELEVANT OPINIONS

UPL Advisory Ops. 04-01, 04-02, 04-03, 06-02; Ariz. Ethics Ops. 96-11, 98-08, 99-12

OPINION

- 1. May a contract between a CAM and an Association authorize the CAM and its non-lawyer personnel to act on behalf of the Association in legal matters, including preparing and signing legal documents, such as notices of liens or summonses and complaints to be filed in a tribunal (including justice court, small claims court, and superior court); providing “legal services” to Associations; or authorizing the CAM and its non-lawyer personnel to appear in a tribunal (including justice court, small claims court, or superior court) in a representative capacity?**

At issue is the CAM acting on behalf of an Association in legal matters, not clerical, accounting, maintenance, or other non-legal matters. As explained in Rule 31(a)(2)(A), Ariz. R. Sup. Ct., the “practice of law” includes acting on behalf of another by doing one of the following:

- (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.

Thus, acting on behalf of an Association in legal matters constitutes the practice of law. Rule 31(b) expressly provides that only lawyers duly licensed and in good standing may practice law in this state. Rule 31(d) enumerates exceptions to this restriction, but no provision of Rule 31(d) permits the CAM and an Association to circumvent the restriction of Rule 31(b) by entering into a contract to provide those services. No legal authority allows parties, by private contract, to alter the application of a Supreme Court rule. No exception in Rule 31(d) permits the CAM to act in a representative capacity regarding legal matters on behalf of an Association.

- a. Preparing and signing legal documents, such as notices of liens or summons and complaints to be filed in a tribunal (including justice court, small claims court, and superior court)**

Whether CAM personnel may prepare and sign legal documents raises two issues. First, may CAM non-lawyer personnel *prepare* legal documents (not non-legal correspondence or documents) for Associations? Second, may CAM non-lawyer personnel *sign* the legal documents on behalf of the Associations? Assuming the CAM personnel are neither lawyers duly licensed in Arizona in good standing nor legal document preparers (each of which is addressed separately below), Rule 31 prohibits CAM personnel from preparing and signing legal documents on behalf of the Associations.

UPL Advisory Op. 04-01 explained that preparing a notice of mechanic’s lien is the practice of law under Rule 31(a)(2)(A)(1) because a notice of lien is a document intended to affect or secure

legal rights for a specific person or entity, as well as under Rule 31(a)(2)(A)(4) because a notice of lien is prepared for filing with the county recorder. Likewise, Rule 31(a)(2)(A)(4) expressly prohibits preparing summonses, complaints or other documents to be filed in any tribunal.

Rule 31(d)(20) provides a limited exception to Rule 31(b)'s restriction, saying: "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." Thus, personnel of a business who are neither lawyers nor legal document preparers may prepare legal documents for the business provided: (1) the documents are incidental to the regular course of business, (2) the documents are for the use of the business, and (3) the documents are not made available to third parties. All three criteria must be met. *See Bither v. Country Mut. Ins. Co.*, 226 Ariz. 198, 200, 245 P.3d 883, 885 (App. 2010).

While Association personnel may be able to satisfy the first two criteria if they were to prepare notices of liens or pleadings -- because such documents are incidental to the business of running the Association and are for use in the Association's business -- they cannot satisfy the third criterion. By definition, documents such as notices of liens that are recorded and pleadings that are filed with a tribunal are "made available to third parties" because they are provided to the receiving institution and to the public who may review and rely on documents that are of public record. Thus, although UPL Advisory Op. 04-01 permitted the contractor to prepare and submit notices of mechanics liens because they were "incidental" to the contractor's regular course of business, that is not the case because Op. 04-01 did not consider all the language of what is now Rule 31(d)(20)¹. Opinion 04-01 did not address the prohibition of Rule 31(d)(20) that the resultant document drafted by the layperson business owner not be "made available to third parties." Because Op. 04-01 did not consider this part of the rule, the conclusion was flawed.

Similarly, UPL Advisory Op. 04-03, after admitting that Rule 31(d)(20) concerns documents that are "not made available to third parties," expressed the opinion that an in-house non-lawyer employee (not in a law firm) may draft legal documents, incidental to a regular course of business, for use by the company pursuant to Rule 31(d)(20), "[r]egardless of whether the documents are sent to federal agencies, are contracts, assignments, or other documents affecting the legal rights of (the) Company ... ," thereby ignoring the third criterion of the rule.

The application of the Rule 31(d)(20) exception becomes even more attenuated when the legal drafting is done not by the business itself, but by a subcontractor or contracting partner. Thus, a CAM, which is one step removed from the Association, cannot meet the Rule 31(d)(20) requirements if it drafts notices of liens or pleadings for the Association. UPL Advisory Op. 04-02 addressed the first requirement -- that the document be drafted incidentally to the regular course of the business -- and reached two conclusions. If the scope of employment of the CAM is broad, encompassing many aspects of the Association, then preparing notices of liens or pleadings may be incidental to the regular course of business, which may include accounting, collections, correspondence, maintenance, review for restrictions violations, or other matters. However, if the scope of the CAM's responsibility is limited such that the CAM did nothing but prepare notices of liens or pleadings, then it would not be incidental to the regular business of the CAM. Therefore, it would not fall within the ambit of the exception.

¹ In 2004, this part of the rule was numbered 31(c)(19).

If the CAM's scope of employment is broad, then the next consideration is whether the CAM prepared the document for "the use of the business." Opinions 04-01 and 04-02 reach conflicting conclusions. In Op. 04-01, a third party could not prepare a notice of lien for a fee because the third party's actions were not part of the contractor's provision of services. In Op. 04-02, a third party's preparation of legal notices was treated as though done by the business on whose behalf the notice was prepared. Rule 31(d)(20), however, is clear: the exception only applies if the document is prepared by the personnel of the business for use in that business. Accordingly, to the extent that Op. 04-02 is inconsistent with the rule, it is incorrect. Thus, because the CAM prepares a document in the regular course of its business for use by its client, an Association, such document preparation does not come within the exception of Rule 31(d)(20).

Even if the analysis of Op. 04-02 is correct -- that is, that because the CAM is preparing the document for the Association's use, the document should be treated as though it were created for use in the CAM's business -- Rule 31(d)(20) still does not apply because the third criterion is not met. Whether prepared by a CAM or the Association itself, any notice of lien or pleading will be made available to third parties. It will be recorded with the county recorder or filed with the tribunal (both third parties) and made available to the public (additional third parties). Thus, because a notice of lien or pleading will be made available to third parties and is not only for internal use of the Association, it cannot be drafted by CAM personnel. To the extent that Ops. 04-01, 04-02, and 04-03 did not consider this requirement of Rule 31(d)(20), they provided incomplete guidance.

The second issue is whether CAM personnel may *sign* the prepared document on behalf of the Association. Unless expressly permitted by the Association bylaws and appropriate corporate resolution, CAM personnel may not sign a document on behalf of the corporate entity. Generally speaking, only an authorized corporate officer may bind a corporation. If not acting as a duly authorized signer, Rule 31(a)(2)(A)(3) prohibits a non-lawyer, including CAM personnel, from representing a person or corporate entity in a judicial, quasi-judicial, or administrative proceeding, or other formal dispute resolution proceeding including arbitration and mediation. Such representation includes signing and submitting documents on behalf of another person or entity.

b. Providing "legal services" to Associations

A CAM may communicate to or on behalf of an Association as long as the communication does not include any expression of legal opinion or otherwise affect or secure legal rights for a specific person or entity because that type of communication would not constitute the practice of law as defined in Rule 31(a)(2)(A)(1) and (2). However, if the communication or "legal service" is intended to include the expression of legal opinions or otherwise affect or secure legal rights, then it is beyond the scope of the Rule 31(d) exemptions and constitutes the unauthorized practice of law.

c. Appearing in a tribunal (including justice court, small claims court, or superior court) in a representative capacity

Rule 31(a)(2)(A)(3) prohibits a non-lawyer, including CAM personnel, from representing a person or corporate entity in a judicial, quasi-judicial, or administrative proceeding, or other formal dispute resolution proceeding including arbitration and mediation. In addition, pursuant to A.R.S. § 22-512 an employee of a CAM cannot bring suit on behalf of an Association or represent the Association in small claims court.

2. Do the answers to Question 1 change if the CAM employee is a legal document preparer?

What legal document preparers are authorized to do is a legal issue outside the jurisdiction of the Unauthorized Practice of Law Committee and is within the purview of the Arizona Supreme Court and the Board of legal document preparers.

A legal document preparer may only provide “legal services” to a customer to the extent authorized in ACJA § 7-208(F)(1). A 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.

Pursuant to ACJA § 7-208(F)(1)(a), legal document preparers may complete legal documents for a party, such as an Association, so long as that party is not represented by a lawyer. Accordingly, legal document preparers may prepare notices of lien or pleadings for an Association. *See* UPL Advisory Ops. 04-01 and 04-02.

However, ACJA § 7-208(J)(5)(b) provides:

A legal document preparer shall not represent they are authorized to practice law in this state, nor shall the legal document preparer provide legal advice or services to another by expressing opinions, either verbal or written, or by representing another in a judicial, quasi-judicial, or administrative proceeding, or other formal dispute resolution process, except as authorized in Rule 31(d), Rules of the Supreme Court. A legal document preparer shall not attend court with a

consumer for the purpose of assisting the consumer in the court proceeding, unless otherwise ordered by the court.

No provision of ACJA § 7-201 or ACJA § 7-208 authorizes a legal document preparer to act in a representative capacity on behalf of the customer, including signing documents for a customer. Although UPL Advisory Ops. 04-01 and 04-02 conclude that legal document preparers may draft notices of lien and other legal documents, neither opinion provides authority for a legal document preparer to sign a legal document on behalf of a customer. In addition, nothing allows a legal document preparer to circumvent these regulatory requirements by entering into a contract with a customer that authorizes the legal document preparer to exceed the stated authority of a legal document preparer.

Likewise, a legal document preparer is not authorized to appear in a tribunal of any sort in a representative capacity upon behalf of an Association. *See* UPL Advisory Op. 04-03. Accordingly, a legal document preparer is expressly prohibited from acting in a representative capacity, unless authorized to do so by an exception as provided in Rule 31(d).

3. May a CAM’s in-house lawyers perform legal work on behalf of the CAM’s Association customers, including preparing legal documents for customers and representing the customer in a tribunal? If so, may the CAM charge the Association customers for these legal services?

The State Bar Committee on the Rules of Professional Conduct (“the Ethics Committee”) has issued several opinions dealing with analogous situations in which a lawyer-employee of a company sought to offer legal services to customers of the company as opposed to providing in-house-counsel services to the company alone. *See, e.g.*, Ariz. Ethics Ops. 96-11, 98-08, and 99-12. As the Ethics Committee has explained, such situations run afoul of several ethical duties, including Ethical Rule (“ER”) 1.6 (confidentiality of information), ER 5.3 (responsibilities regarding nonlawyer assistants), ER 5.4 (sharing fees with nonlawyer, forming partnership with nonlawyer where partnership activities constitute practice of law), and ER 5.5 (assisting another in the unauthorized practice of law). In particular, ER 5.4 prohibits lawyers from partnering with nonlawyers to offer legal services as suggested in this inquiry and from sharing with the CAM fees the CAM charges the Association customers for the legal services of the lawyer. Applying the logic as explained in these opinions, it is clear that a CAM’s in-house lawyers cannot perform legal work, including document preparation and representation, on behalf of the CAM’s customers.

4. May CAMs call employees “paralegals” if the employees prepare legal documents, negotiate legal matters, or represent Associations in court?

Rule 31(a)(2)(C) provides the only context in which the designation “paralegal” or “legal assistant” may be used:

“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.

Thus, even if a CAM employee had sufficient education and training to perform substantive legal work, because the CAM employee cannot be supervised by an active member of the State Bar of Arizona (as explained above), the CAM employee may not be held out to the public as a “paralegal.”

5. May an owner, officer or employee of a CAM that provides management services to Associations be appointed as an officer or director of an Association to facilitate signing legal documents and/or appearing in a tribunal on behalf of the Association?

As explained above, a CAM employee, even if a legal document preparer, is not authorized to sign a document or appear before a tribunal on behalf of an Association. No statute, rules, regulations or prior opinions provide authority to allow a CAM employee to sign documents or appear before a tribunal on behalf of a customer. In addition, the Board of legal document preparers has determined that legal document preparers may not circumvent the governing regulations by contract with an Association. No authority exists for the CAM and the Association to vary the terms of Rule 31 by contract or board resolution.

One possible exception would be if the CAM employee is a member of the Association or if another independent basis (other than CAM employment) allows the Association to appoint the CAM employee to be an officer of the corporation. For example, Association bylaws usually permit only members of the Association to be elected as directors, and only directors may be elected by the Association board to be an Association officer. If a CAM employee was also a member of the Association and duly elected as a director, and then an officer, the CAM employee might be empowered to sign documents and appear on behalf of the Association before a tribunal, but it would not be as a CAM employee.

6. May CAM personnel negotiate legal matters on behalf of the Association with Association members?

For CAM personnel to negotiate a legal matter on behalf of an Association, the CAM personnel would have to communicate with the Association member. Such communication would by definition include expressing legal opinions intended to affect or secure legal rights, and is beyond the scope of the Rule 31(d) exemptions. In addition, Rule 31(a)(2)(A)(5) prohibits anyone except a duly licensed lawyer from negotiating legal rights or responsibilities for a specific person or entity. As explained in UPL Advisory Op. 06-02, this is so even if the CAM personnel were a legal document preparer. As a result, CAM personnel may not negotiate legal matters with an Association member because doing so constitutes the practice of law.

CONCLUSION

Many homeowner and condominium associations have turned to professional community association management companies to help them fulfill their day-to-day duties in an efficient and cost-effective manner. This opinion provides guidance on the scope and extent of legal services

that these professional community management companies are permitted to provide. Except under the limited circumstances outlined above, community association management company personnel would be engaging in the unauthorized practice of law by drafting documents for and providing legal services to homeowner and condominium associations under Rule 31, Ariz. R. Sup. Ct., and Arizona Code of Judicial Administration § 7-208.