



The National Federation of Paralegal Associations

Position Statement on Non-Lawyer Practice

The National Federation of Paralegal Associations (NFPA) believes it is in the best interest of the NFPA to be prepared to respond to potential legislation or court rules providing for non-lawyer practice.

NFPA has adopted a position on the regulation of paralegals which is set forth in its Model Act for Paralegal Licensure. This position statement sets forth NFPA's position as it pertains to guidelines and criteria specific to non-lawyer practice and does not change NFPA's current position on the regulation of paralegals working under the supervision of an attorney.

NFPA believes that paralegals can and should play an integral role in the delivery of cost-effective legal and law-related services. Therefore, the NFPA adopts the following position statement regarding Non-Lawyer Practice, to be implemented consistent with the NFPA Resolution 01S-04 which imposes certain limits on advocacy efforts in those states with the NFPA voting member associations:

The NFPA supports legislation and adoption of court rules permitting non-lawyers to deliver limited legal services provided that such legislation or court rules include:

1. Exceptions from the unauthorized practice of law.
2. That non-lawyer practice rules contain minimum criteria as set forth herein.
3. Advanced competency testing as to specialty practice area and limitation of practice as prescribed by laws, regulations, or court rules.
4. Notwithstanding the foregoing, paralegals who choose to work in a traditional setting under the supervision of an attorney shall be specifically exempt from any such non-lawyer practice laws, regulations, or court rules.

BACKGROUND.

Over twenty years ago, the NFPA stated that “In examining contemporary legal institutions and systems, the members of the NFPA recognize that a redefinition of the traditional delivery of legal services is essential in order to meet the needs of the general public. We are committed to increasing the availability of affordable, quality legal services, a goal which is

served by the constant reevaluation and expansion of the work that paralegals are authorized to perform. Delivery of quality legal services to those portions of our population currently without access to them requires innovation and sensitivity to specific needs of people”¹ The growing gap between those few citizens who can afford quality legal services and those who must proceed without any legal representation whatsoever has gained increased prominence in recent years. Many observers now recognize the desirability and fairness of increasing the availability of basic legal services to a much broader portion of our community. Certain states have adopted or are considering legislation or judicial rules allowing non-lawyers to provide limited legal and law-related services directly to the public (such non-lawyers are commonly referred to as Legal Document Preparers (“LDP”)).²

RECOMMENDATIONS

In order to facilitate improved access to the legal system, qualified non-lawyers must be permitted to provide limited legal and law-related services directly to the public, including guidance and/or direction within a certain scope, according to their expertise, experience, and education. To be effective, any new non-lawyer regulation plan must include authority for qualified non-lawyers to provide a limited scope of legal advice under conditions which balance public protection with consumers’ individual needs.

However, the NFPA believes that the following four areas must be addressed in any non-lawyer practice regulation plan: 1) minimum licensing criteria; 2) practice state; 3) exemptions for traditional paralegals working under the supervision of an attorney; and. 4) specific exceptions from unauthorized practice of law (UPL) statutes (if any).

1. Minimum Registration Criteria

Currently, the educational standards in the State of Arizona for a person to become an LDP³ are far below what NFPA and the American Association for Paralegal Education (AAfPE) deem acceptable for entry into the paralegal profession. The Department of Labor, Bureau of

¹ Legal Assistant Today/Winter 1985

² Arizona Code of Judicial Administration § 7-208; California Business and Professions Code §§ 6400-6401.6; 2005 IL S.B. 335, Illinois 94th General Assembly

³ *Arizona minimum criteria.* 3. Initial Certification a. Eligibility for Individual Certification. The board shall grant an initial certificate to an individual applicant who meets the following qualifications: (1) A citizen or legal resident of this country; (2) At least 18 years of age; (3) Of good moral character; and (4) Comply with the laws, court rules, and orders adopted by the supreme court governing legal document preparers in this state. (5) The applicant shall also possess one of the following combinations of education or experience: (a) a high school diploma or a general equivalency diploma evidencing the passing of the general education development test and a minimum of two years of law related experience in one or a combination of the following situations: (i) under the supervision of a licensed attorney; (ii) providing services in preparation of legal documents prior to July 1, 2003; (iii) under the supervision of a certified legal document preparer after July 1, 2003; or (iv) as a court employee; (b) a four-year bachelor of arts or bachelor of science degree from an accredited college or university and a minimum of one year of law-related experience in one or a combination of the following situations: (i) under the supervision of a licensed attorney; (ii) providing services in preparation of legal documents prior to July 1, 2003; (iii) under the supervision of a certified legal document preparer after July 1, 2003; or (iv) as a court employee; (c) a certificate of completion from a paralegal or legal assistant program that is institutionally accredited but not approved by the American Bar Association, that requires successful completion of a minimum of 24 semester units, or the equivalent, in legal specialization courses; (d) a certificate of completion from an accredited educational program designed specifically to qualify a person for certification as a legal document preparer under this code section; 6 (e) a certificate of completion from a paralegal or legal assistant program approved by the American Bar Association; (f) a degree from a law school accredited by the American Bar Association; or (g) a degree from a law school that is institutionally accredited but not approved by the American Bar Association.

Labor Statistics, recognizes that it is no longer common for a person to become a paralegal without formal paralegal education⁴. The North Carolina Bar Association and the North Carolina Supreme Court recently adopted a plan for certification of paralegals, which provides very broad authority for non-lawyer practice for those who meet the certification standards. 27 N.C. Administrative Code, Subchapter 1G, Paralegal Regulation.

Because paralegals often perform the same functions as an attorney, it is recommended that paralegals attain a certain level of education and specifically, paralegal education. If this is the case for paralegals who work under the direct supervision of an attorney, then it is certainly necessary for those working directly with the public to attain at least the same. In fact, non-lawyers practicing directly to the public should be held to a higher standard than those working under the supervision of an attorney.

NFPA has resolved that any non-lawyer delivering legal and law-related services directly to the public meet the following minimum criteria:

- a. Minimum post-secondary education standards as further described on the attached Appendix A; and
- b. Continuing Legal Education criteria consistent with NFPA's, the standards of which are described in the attached Appendix B; and
- c. Attestation by an attorney licensed to practice law in that state as to the non-lawyers experience and work history; and
- d. Fitness and Character criteria as further described on the attached Appendix C; and
- e. Bonding or Insurance Requirements.

2. Practice Area and Practice State

The types of services being provided by LDP's in the States of Arizona and California require specific practice area knowledge. However, the current laws and/or rules are for general certification. If LDP's represent themselves as specialists in specific practice areas as Wills & Estates, Family Law, etc., then how will the consumer know that the LDP "specializing" in such areas has received only a general certification based on undefined law related experience? Further, with the growing use of the Internet and software technology there is a risk of LDP's, including businesses, so certified, extending beyond the jurisdiction in which they are licensed to practice to offer legal and law-related services to unsuspecting residents of other states.

⁴ While some paralegals train on the job, employers increasingly prefer graduates of postsecondary paralegal education programs; college graduates who have taken some paralegal courses are especially in demand in some markets. There are several ways to become a paralegal. The most common is through a community college paralegal program that leads to an associate's degree. The other common method of entry, mainly for those who have a college degree, is through a certification program that leads to a certification in paralegal studies. A small number of schools also offer bachelor's and master's degrees in paralegal studies. Some employers train paralegals on the job, hiring college graduates with no legal experience or promoting experienced legal secretaries. Other entrants have experience in a technical field that is useful to law firms, such as a background in tax preparation for tax and estate practice, criminal justice, or nursing or health administration for personal injury practice. See <http://www.bls.gov/oco/ocos114.htm#training>.

Therefore, practice area and jurisdictional restrictions should be LDP Rule disclosure requirements. Additionally, any such LDP Rule should provide for disciplinary action of the LDP and consumers with remedies in the event the consumer is harmed by an LDP working outside the scope of his or her knowledge and jurisdiction.

3. Exemption for Paralegals Working Under the Supervision of an Attorney

Historically, paralegals work under the supervision of an attorney and unless such paralegal applies and obtains licensure under a non-lawyer practice rule, he or she must be specifically exempt from such rule. Many traditional paralegals perform substantive legal work with very few restrictions because the work product is the responsibility of the supervising attorney. Attorneys have been able to provide lower cost services to their clients through the increased utilization of their paralegals. Without a specific exemption for traditional paralegals who work for and under the supervision of an attorney, there are substantial risks that the scope of work performed by traditional paralegals could exceed the limitations established by the non-lawyer practice laws and/or rules. Consequently, the fees associated with such work may be deemed non-recoverable. Equally important, the use of paralegals in a traditional setting may become limited by the parameters set forth in non-lawyer laws. Non-lawyer practice rules must be limited to those non-lawyers who deliver legal and law related services directly to the public without the supervision of an attorney.

4. UPL

If the intent of non-lawyer laws and/or rules is to create more choices for consumers to obtain legal and law related services by providing an additional level of service provider, then it is imperative that the non-lawyer laws and/or rules include specific exemptions from unauthorized practice of law statutes or court rules. Since some states rely on court interpretations of broad practice of law definitions and unauthorized practice of law, the activities permitted under any non-lawyer practice law and/or rule, would be subject to interpretation by state courts. This is counterintuitive to the intent of the creation of non-lawyer laws and may prevent consumers from receiving the services required to effectively resolve their legal issues. For example, in the State of Arizona, an LDP can “prepare or provide legal documents without an attorney’s supervision.” In certain instances, the mere provision of a legal document may require a degree of legal judgment. Alternatively, if a consumer chooses the wrong legal document for his or her situation, what responsibility does the LDP have to advise against the use of such document? The activity (preparing and providing legal documents) is authorized by Arizona’s LDP Rule; however, the application of this activity is subject to interpretation by state courts. If a non-lawyer is practicing in accordance with the laws and/or rules enabling such practice, it is in the best interest of the consumer that the non-lawyer be permitted to fully provide services without fear of prosecution for the unauthorized practice of law.

CONCLUSION

NFPA wants to avoid the creation of a legal document preparer profession where people purport to be paralegals, *but who have neither the requisite education nor training recommended by paralegals and paralegal educators for entry into the paralegal profession.*

NFPA desires to expand paralegal roles where qualified paralegals have alternate career paths.

NFPA desires to maintain the integrity of the paralegal profession and together with AAFPE, has worked to establish appropriate minimum paralegal education criteria, ethical standards, and Continuing Legal Education requirements.

NFPA desires to keep high standards intact. Allowing non-lawyers who have not met the minimum standards for entry into the paralegal profession to deliver legal and law-related services directly to the public or to identify themselves as paralegals may jeopardize the integrity of the entire paralegal profession.

It has taken many years of hard work for paralegals to be recognized as professionals and to establish paralegal industry standards that are becoming widespread today.

Any state seeking to regulate non-lawyers is to be commended for attempting to address the access to legal services crisis with the increased utilization of paralegals as an additional level of service providers.

Prepared for the National Federation of Paralegal Associations by the Ad Hoc Committee on Non-Lawyer Practice. The Ad Hoc Committee on Non-Lawyer Practice was created by Resolution 05-08, passed by the delegation at the 2005 Policy Meeting in Las Vegas, Nevada. The committee presented their draft position statement to the Board of Directors at the Summer Board Meeting held July 22-23, in Rochester, New York. The final position statement was presented to the Board of Directors via e-mail and published in the Inside on December 23, 2005.

The members of the Ad Hoc Committee on Non-Lawyer Practice were:

Sandra Heintz.

Sandi is a paralegal with Mistick PBT and its affiliates, Mistick Construction, Insurance Restoration Services, Mistick Management, North Side Associates, Allegheny Millwork, Bridges Construction and Wood Street Commons. She is involved in contracts, litigation, corporate, real estate, insurance litigation and collections with Mistick and the various subsidiaries.

She is a graduate from the Duquesne University and received both the general and litigation paralegal certificates and has been a member of Pittsburgh Paralegal Association since 1988.

She currently is serving her third term as the NFPA Primary Representative. In addition, she served two terms as PPA's vice-president, co-chaired and chaired the Litigation Section, co-chaired the Paralegal/Attorney Dinner, attended the first Leadership Conference sponsored by NFPA, and has been a member of the board and various committees over the years.

Patricia A. Junker.

Patricia A. Junker has been employed as a corporate paralegal since 1984. Currently, Patricia works in the business group of the Pittsburgh office of Klett Rooney Lieber & Schorling. Patricia specializes in commercial loan transactions and corporate compliance.

Patricia holds a Bachelor of Arts from the University of Dayton and received her paralegal training from The Institute for Paralegal Training in Philadelphia, Pennsylvania.

For the past three years, Patricia has served as the Secondary Representative to the National Federation of Paralegal Associations on behalf of the Pittsburgh Paralegal Association ("PPA"). Patricia also served as the Chair of the Education and Professional Development Committee of PPA.

Kelli Wilcox.

Kelli Wilcox is employed as a full-time paralegal with the law firm Oles Morrison Rinker & Baker, LLP in Seattle, Washington. . She works with the Business Practice Group, primarily in the areas of business acquisitions, corporate law and real estate. She is a graduate, with honors, of the Paralegal Program at Highline Community College in Des Moines, Washington. Kelli has also taught in Highline's Paralegal Program and served as the Chair of its Advisory Committee.

Kelli has been involved with the Washington State Paralegal Association (WSPA) for several years, working diligently for two years to form and nurture the South King County Chapter, then serving two terms as President, during which she presented before the Practice of Law Board on paralegal regulation and before the American Bar Association with regard to the proposed definition of the practice of law on behalf of WSPA. Additionally Kelli has worked on WSPA's committee to address Washington's proposed Legal Technician Rule to ensure that qualified Paralegals play an integral role in the delivery of legal and law-related services.

Kelli now serves as WSPA's CLE Chair, is the Vice President of Profession Development, and is the Association's Primary Representative to the National Federation of Paralegal Associations.

Wayne D. Akin.

Wayne Akin is a litigation paralegal with the law firm Miller Nash, LLP in Portland, Oregon. His primary practice is in securities litigation, but he also works in civil, construction, and employment litigation, insolvency and reorganization, and creditors' rights. Wayne also handles garnishments, background checks, skip-tracings, online information retrieval, asset evaluations, discovery and judgment searches, and trial preparation. Wayne also manages a number of the firm's document hubs and serves as his firm's Summation expert. Previously Wayne focused on intellectual property with an emphasis on patents.

Wayne has been involved with the Oregon Paralegal Association (OPA) and the National Federation of Paralegal Associations (NFPA). He has served as a chairperson of OPA's Intellectual Property Specialty Group, as a member of OPA's Board of Directors for two years, as OPA's Treasurer for two years, and was recipient of OPA's Outstanding New Member Award for 2000-2001. For the NFPA, Wayne served two and a half years as Special Research Coordinator. Wayne has written a number of articles for OPA's Paragram newsletter and NFPA's The National Paralegal Reporter. Wayne also teaches Computer Applications for Paralegals at Pioneer Pacific College in Wilsonville, Oregon.

Wayne currently serves as NFPA's Vice President and Director of Positions and Issues where he is responsible for the Bar Association, Case Law, Ethics & Professional Responsibility, Legislative, Special Research, Regulation Review, and Unauthorized Practice of Law Research Coordinators, the Ad Hoc Committee on Non-Lawyer Practice and the Ad Hoc Committee on Mandatory Paralegal Regulation, and serves on the Ethics Board.

Appendix A

Post-Secondary Education and Experience Standards

A candidate applying for certification under a non-lawyer practice rule shall:

- (a) Have graduated from a paralegal/legal assistant program that consists of a minimum of 90 quarter hours (900 clock hours or 60 semester hours) of which at least 45 quarter hours (450 clock hours or 30 semester hours) are substantive legal courses; or and that is approved by the American Bar Association (ABA) or a program which is in substantial compliance with ABA guidelines and shall have six (6) years substantive paralegal experience; or
- (b) A bachelor's degree in any course of study obtained from an institutionally accredited school and three (3) years of substantive paralegal experience;
- (c) A bachelor's degree and completion of a paralegal program which said paralegal program may be embodied in a bachelor's degree; and two (2) years substantive paralegal experience or
- (d) A post-baccalaureate certificate program in paralegal/legal assistant studies, or
- (e) Four (4) years substantive paralegal experience on or before December 31, 2000.

Appendix B

The National Federation of Paralegal Association Continuing Legal Education (CLE) Standards

NFPA accepts the following definition of Continuing Legal Education:

Continuing Legal Education shall include seminars on substantive legal topics, or topics applicable to substantive law issues, or must be oriented to the specific nature of the paralegal profession, such as enhancing computer skills or research techniques, increasing paralegal management skills, issues related to, or affecting, the paralegal profession.

Further, Continuing Legal Education includes authorship of articles by an individual paralegal, including research time; and/or speaking to paralegals regarding substantive law issues or topics oriented to the specific nature of the paralegal profession, including preparation time for such presentation; and attendance and successful completion of law-related classes at community colleges, colleges and universities.

NFPA recognizes continuing legal education offered by the following groups to be approved without further review by NFPA or a designated Coordinator: all bar associations, either mandatory or voluntary; National Association of Legal Assistants, Inc.; American Alliance of Paralegals, Inc.; Inns of Court; and Courts of all jurisdictions within the United States.

Appendix C

Fitness and Character Model

Applicants should be of good moral character based upon the following circumstances:

Whether the applicant has been convicted of a felony or comparable crime as defined by an individual state that does not have felony designations; OR

Whether the applicant has been suspended or disbarred from the practice of law in any jurisdiction; OR

Whether the applicant has been convicted of the unauthorized practice of law in any jurisdiction; OR

Whether the applicant has been convicted of any of the acts described in Section X below; OR

Whether the applicant is, for reasons of misconduct, currently under suspension, termination, or revocation of a certificate, registration, or license to practice by a professional organization, court, disciplinary board, or agency in any jurisdiction.

An applicant shall be rejected if any of the acts set forth in paragraphs 1-5 immediately above apply. An applicant should have the right to appeal a denial based on the provisions of these criteria. When considering the appeal, it should be considered, but shall not be limited to, the nature of the act, rehabilitation, the time that has transpired since the act, and any other extraordinary circumstances.